

Canada Revenue Agency Notice
Notice 181R
Revised February 2004

Discussion Paper:

The Application of the GST/HST to Independent Medical Evaluations and Other Independent Assessments

The purpose of this discussion paper is to clarify the position of the Canada Revenue Agency (CRA) on the application of the GST/HST to independent medical evaluations and other independent assessments. It is being released by the CRA in draft form for comments. Comments should be sent by **April 30, 2004** to:

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The Application of the GST/HST to Independent Medical Evaluations and Other Independent Assessments

Introduction

In a Tax Court of Canada decision concerning *Riverfront Medical Evaluations Ltd. v. Canada* (“Riverfront”), the issue was whether a corporation’s supplies of independent medical evaluation (“IME”) reports to insurance companies and lawyers were “institutional health care services” supplied by the operator of a health care facility and rendered to patients of the facility. Essentially, the Court found that an IME consisted of medical care because it consisted of a physical examination of an individual by a physician. In addition, the Court found that Riverfront was a “health care facility” for purposes of the *Excise Tax Act* (the “ETA”) because the physical examinations were provided at Riverfront’s facility.

The Court concluded that the individuals were “patients” of the Riverfront facility because they attended the facility to be examined by a physician. The Court concluded that because Riverfront provided the examination rooms and other equipment necessary for the examinations and remunerated the physicians for the examinations and reports, Riverfront’s supplies of IMEs and reports fell within the exemption provided in section 2 of Part II of Schedule V to the ETA. This provision exempts a supply made by the operator of a health care facility of an institutional health care service rendered to a patient of the facility. Thus, for an IME to be an exempt supply, the activities that comprise the IME must fall in one of the exemptions in the ETA.

In view of the Court’s comments regarding the physicians’ examinations, we reviewed our position on the tax status of supplies made directly by physicians of IME reports, as well as evaluations supplied by other health care professionals. Our position is noted below.

Section 2 of Part II of Schedule V to the ETA: “Institutional health care service”

As noted above, this exemption applies to supplies made by operators of health care facilities of “institutional health care services” rendered to patients of the facilities. When an operator of a health care facility contracts with a physician for an IME and report, two conditions must be met for the IME to fall within the meaning of “institutional health care service” as defined in the ETA: (1) the physician’s services must be provided in a health care facility and (2) the operator of the facility in which the physician’s services are provided remunerates the physician who rendered the services. Thus, when a physician receives remuneration from the operator of a health care facility for services rendered in the health care facility, the services come within the meaning of “institutional health care service” for purposes of the ETA.

The definitions “health care facility” and “institutional health care service” are linked in section 2, which provides that a supply made by the operator of a health care facility of an institutional health care service rendered to a patient of that facility is exempt from GST/HST. The wording used in this exemption connects the patient to the operator’s health care facility. It

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provides that institutional health care services rendered in the operator's facility to a patient of that facility are exempt.

Sections 5 and 7 of Part II of Schedule V to the ETA

Examinations, evaluations, and assessments supplied by physicians qualify as exempt supplies of health care services when they are rendered to individuals under section 5 of Part II of Schedule V to the ETA

Similarly, under section 7 of Part II of Schedule V to the ETA, examinations, evaluations, and assessments supplied by practitioners of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech-language pathology, occupational therapy, psychology, or dietetics qualify as exempt supplies when they are rendered to individuals.

Application of the GST/HST

The following scenarios illustrate the application of the GST/HST to IMEs when they are supplied in various ways:

1. All activities related to an IME are provided in the health care facility.

In this scenario, the operator of the health care facility acquires the services of a physician for the purpose of supplying an IME and report to a third party. The services rendered by the physician are provided in the operator's facility and consist of examining an individual and formulating a medical opinion on the individual's health status. The operator contacts the individual to arrange for the examination, and the individual attends the operator's facility for the examination. The physician receives remuneration from the operator for rendering the examination and formulating the medical opinion.

- The physician's supply made to the health care facility operator of examining an individual and providing a medical opinion concerning the health status of that individual is considered to be a health care service rendered to an individual. This supply is exempt under section 5 of Part II of Schedule V to the ETA.
- The services rendered by the physician for which the physician is remunerated by the health care facility operator fall within the definition of "institutional health care service" because these services are provided in the operator's facility. In this scenario, the individual attends the operator's facility to receive the institutional health service (i.e., a physical examination and the formulation of a medical opinion on the individual's health status). On this basis, the individual is considered a patient of the facility and the physician's services are considered rendered to that patient. The supply made by the operator to the third party (i.e., the services of the physician) is an institutional health care service rendered to a patient of the facility, which is exempt under section 2 of Part II of Schedule V to the ETA.

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2. Activities related to the IME are provided in the health care facility and in another facility.

Scenario A: In this scenario, the operator of the health care facility acquires the services of a physician for the purpose of supplying an IME and report to a third party. The services rendered by the physician are provided in the operator's facility and consist of examining an individual and formulating a medical opinion on the individual's health status. The operator contacts the individual to arrange for the examination, and the individual attends the operator's facility for the examination. The physician receives remuneration from the operator for rendering the examination and formulating the medical opinion.

In the course of rendering the examination, the physician determines that the individual requires a diagnostic test. The operator sends the individual to a separate facility, i.e., a radiology clinic operated by another person, for the diagnostic test ordered by the physician. The operator of the radiology clinic sends the results of the diagnostic test to the operator of the health care facility, who in turn gives the results to the physician. The physician reviews the results and includes them in the medical report. The operator of the radiology clinic receives payment from the health care facility operator for the diagnostic test.

- The physician's supply to the health care facility operator, which consists of several elements, i.e., examining an individual, ordering a diagnostic test, reviewing the test results and providing a medical opinion concerning the health status of the individual, is considered to be a health care service rendered to an individual. This supply is exempt under section 5 of Part II of Schedule V to the ETA.
- If the physician ordered the diagnostic test, then the supply by the radiology clinic is exempt under section 10 of Part II of Schedule V to the ETA.
- The services rendered by the physician for which the physician is remunerated by the operator of the health care facility fall within the definition of "institutional health care services" because these services are provided in the operator's facility. In this scenario, the individual attends the operator's facility to receive the institutional health care service (i.e., a physical examination and the formulation of a medical opinion concerning the individual's health status). On this basis, the individual is considered a patient of the facility and the physician's services are considered rendered to that patient. The supply made by the operator to the third party is an institutional health care service rendered to a patient of the facility, which is exempt under section 2 of Part II of Schedule V to the ETA.

Scenario B: In this scenario, the operator of the health care facility acquires the services of physician A in the course of supplying an IME and report to a third party. The services rendered by physician A are provided in the physician's office and consist of examining an individual, reviewing previous diagnostic test results, and formulating a medical opinion on the individual's health status. The operator contacts the individual to arrange for the examination, and the individual attends physician A's office for the examination. Physician A receives consideration from the operator for the supply of the examination rendered to the individual and the medical opinion.

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The operator of the health care facility then acquires the services of physician B for the purpose of supplying an IME and report to a third party. The services rendered by physician B are provided in the operator's facility and consist of reviewing physician A's medical opinion concerning the individual, the previous diagnostic test results, formulating a medical opinion on the individual's health status, and producing a final report, which the operator supplies to a third party. The operator remunerates physician B for these services.

- Physician A's supply made to the health care facility operator of examining an individual, reviewing diagnostic test results, and providing a medical opinion on the individual's health status is considered to be a supply of a health care service rendered to an individual. This supply is exempt under section 5 of Part II of Schedule V to the ETA.
- Physician B's supply made to the health care facility operator of reviewing physician A's medical opinion and the previous diagnostic test results, formulating a medical opinion on the individual's health status and producing a final report concerning the individual's health status is considered to be a supply of a health care service rendered to an individual. This supply is exempt under section 5 of Part II of Schedule V to the ETA.
- In this scenario, the operator has communicated with the individual and arranged for the individual to undergo a physical examination by physician A. At the operator's facility, physician B reviews the results of the examination and previous diagnostic test for the purpose of formulating a medical opinion concerning the individual's health status and producing a final report. On this basis, the individual is considered a patient of the facility and physician B's services are considered to be an institutional health care service rendered to that patient. The supply made by the operator to the third party is an institutional health care service rendered to a patient of the facility, which is exempt under section 2 of Part II of Schedule V to the ETA.

3. No examination or opinion relating to the IME is rendered in the health care facility.

In this scenario, the operator of the health care facility acquires the services of a physician in the course of supplying an IME and report to a third party. The services rendered by the physician are provided in the physician's office and consist of examining an individual and formulating a medical opinion on the individual's health status. The operator contacts the individual to arrange for the examination, and the individual attends the physician's office for the examination. The physician receives consideration from the operator for the supply of the examination rendered to the individual and the medical opinion. The operator may instruct the physician to send the medical opinion directly to the third party or if the physician sends it to the operator, the operator will forward the medical opinion to the third party.

- The physician's supply made to the health care facility operator of examining an individual and providing a medical opinion concerning the health status of that individual is considered to be a health care service rendered to an individual. This supply is exempt under section 5 of Part II of Schedule V to the ETA.
- The services rendered by the physician for which the physician receives consideration from the health care facility operator do not fall within the definition of "institutional health care

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service”. Therefore the supply made by the operator of the health care facility to the third party of the medical report is not exempt under section 2 of Part II of Schedule V to the ETA. The GST/HST is charged at the rate of 7% or 15% on the consideration charged by the operator of the health care facility for this supply. In this scenario, the physician’s services do not meet the criterion in the definition of “institutional health care service” of being rendered in the operator’s facility; therefore the supply made by the operator is not an institutional health care service.