

Point-of-Sale Rebate on Books with CD-ROMs

Explanatory Notes

Purchasers of printed books in Nova Scotia currently qualify for a rebate in respect of the 8 per cent provincial component of the Harmonized Sales Tax (HST) applicable to the purchase price.

Authority for the rebate is provided by the *Sales Tax Act* of Nova Scotia and section 8 of the *Sales Tax Act Regulations* made under that Act. Sellers of printed books are authorized to offset the amount of the rebate against the provincial component of HST applicable to the sale of a printed book so that, in effect, no amount of tax need be collected from the purchaser on account of that 8 per cent provincial component when the rebate is paid or credited at the time of sale. Purchasers of printed books who are not paid or credited the rebate by the vendor can obtain a rebate through the filing of an application with the Canada Revenue Agency. A rebate can also be obtained in respect of the provincial component of HST that applies in certain cases when a printed book is imported or brought into Nova Scotia.

Amendments to section 8 of the *Sales Tax Act Regulations* will expand the application of the rebate to include rebates in respect of certain products that fall within the new definition “composite property” in clause 8(1)(a), the only components of which are a printed book and property described in either, or both, subparagraphs 8(1)(a)(i) and (ii) of that definition.

These amendments apply for the purposes of determining a rebate in respect of the provincial component of HST that becomes payable, or is paid without having become payable, after August 31, 2006.

Sales Tax Act Regulations

Clause 8(1)(a) “federal minister”

Existing clause 8(1)(a) of the *Sales Tax Act Regulations*, which defines the expression “federal minister”, becomes clause 8(1)(ab), but is not otherwise amended.

Clause 8(1)(a) “composite property”

The new definition “composite property” in clause 8(1)(a) of the Regulations describes products that include a printed book as a component and in respect of which purchasers may be eligible to claim the rebate provided for under section 8.

The portion of the definition before subclause 8(1)(a)(i) specifies that a composite property must be prepared for sale as a single product. Preparation for sale can be performed at any level of the production chain, including by the retailer; however, a combination of products purchased at the same time, but prepared for sale as separate products, will not qualify for the rebate as a composite product. The non-printed book components of a composite property must also be described under subclause 8(1)(a)(i) or (ii), or under both of those subclauses, in order to fall within the definition.

Subclause 8(1)(a)(i) - “composite property”

Subclause 8(1)(a)(i) applies to products the only components of which are a printed book and storage medium that meets the new definition “read-only medium” in new clause 8(1)(dc).

The subclause stipulates that material described in either or both of paragraphs 8(1)(a)(i)(A) or (B) must be included on the read-only medium. Paragraph 8(1)(a)(i)(A) refers to a reproduction of the printed book. Thus, a product consisting of a printed book and an electronic reproduction of that same book on the accompanying read-only medium would meet the condition of paragraph 8(1)(a)(i)(A).

Paragraph 8(1)(a)(i)(B) refers to material that both makes specific reference to the printed book and the material contained in it and supplements and is integrated with that material. In order to meet the condition in paragraph 8(1)(a)(i)(B), material on the read-only medium must be supplementary to the material in the printed book rather than the primary focus of a combined product. For example, material on a read-only medium consisting of questions and problems adapted to the material in a printed textbook could fall under the description in paragraph 8(1)(a)(i)(B), whereas an electronic book on a read-only medium that was supplemented by questions and problems in the form of a printed book would not.

Material on the read-only medium that does not make specific reference to the printed book and its contents cannot meet the test in paragraph 8(1)(a)(i)(B), even if that material can be said to supplement the printed book. For example, material on a read-only medium giving additional information about the same topic addressed in a printed book, but without specific references to the printed book, and its contents, could not meet the test in that paragraph.

The material contained on the read-only medium component of a composite property described under subclause 8(1)(a)(i) must also meet a second test which requires that all or substantially all of the value of the material on the read-only medium be reasonably attributable to material referred to in either of both of paragraphs 8(1)(a)(i)(A) or (B). A read-only medium would not meet this test when it holds material, such as valuable computer software, that results in all or substantially all of the value of the material on the read-only medium not being attributable to the material described in those paragraphs. Low value material on the read-only medium, such as a trial use version of software, or material that can also be obtained free from public sources, would not prevent the read-only medium from meeting the test if all or substantially all of the value of material on the read-only medium continues to be attributable to material that is described in those paragraphs.

Subclause 8(1)(a)(ii) - “composite property”

Products the only components of which are a printed book and either, or both, a storage medium that meets the new definition “read-only medium” in new clause 8(1)(dc), and a right to access a website, can qualify as composite property under subclause 8(1)(a)(ii).

Subclause 8(1)(a)(ii) requires that there be information on the read-only medium or website component of the product that relates to the subject matter of the printed book. The required link between material on the read-only medium or website and the printed book under this subclause is not as close as that required under paragraph 8(1)(a)(i)(B) between the printed book and read-only medium. For example, a read-only medium containing an electronic book on the same subject matter as a printed book would meet the test in paragraph 8(1)(a)(ii) even if the electronic book did not specifically refer to the printed book and its contents, and so would not meet the test in paragraph 8(1)(a)(i)(B).

In order to qualify as a composite property under subclause 8(1)(a)(ii), the product as a whole must also be specially designed for use by students enrolled in a “qualifying course” as defined in new clause 8(1)(da). The product need not be designed with a particular qualifying course in mind. For example, a product consisting of a movie on a DVD and a printed book with an in-depth analysis of the movie as well as questions relating to it could qualify as a composite product under subclause (ii) if the product is specially designed to meet needs typical of students enrolled in qualifying courses, such as college or university film studies courses.

Clause 8(1)(aa) “exempt supply”

The new definition “exempt supply” in clause 8(1)(aa) of the Regulations is relevant for the purposes of the new definition “qualifying course” in clause 8(1)(da). The term “exempt supply” has the meaning assigned to it under subsection 123(1) of the *Excise Tax Act* (Canada). Under that subsection, an exempt supply is one included in Schedule V to that Act.

Clause 8(1)(c) “printed book”

The definition “printed book” in existing clause 8(1)(c) of the Regulations includes items that are updates of printed books, audio recordings of printed books or bound or unbound versions of scripture of any religion. The amended definition “printed book” does not include these items. However, as they are now included in the definition “qualifying property” in new clause 8(1)(db), they continue to be items in respect of which a rebate can be obtained under section 8.

Under the amended definition in clause 8(1)(c), “printed book” has the meaning assigned to it under subsection 259.1(1) of the *Excise Tax Act* (Canada), which is the ordinary meaning of printed book but not including anything that is, or the main component of which is, a newspaper or other item listed in paragraphs (a) to (p) of the definition “printed book” under that subsection.

Clause 8(1)(da) “qualifying course”

The new definition “qualifying course” in new clause 8(1)(da) of the Regulations is relevant for the purposes of the new definition “composite property” in clause 8(1)(a). In order to qualify as a composite property under subclause 8(1)(a)(ii) a product must be specially designed for use by students enrolled in a qualifying course. For a course to be a qualifying course, the service of instructing individuals in that course must either be an “exempt supply”, as defined in new clause 8(1)(aa), included in Part III of Schedule V to *Excise Tax Act* (Canada), or be a service that would be an exempt supply included in that Part if the supplier had not elected, under a section of that Part, to make the supply GST/HST taxable.

For example, services of instruction in most university and college courses are exempt supplies that would allow the course to meet the definition “qualifying course” under subclause 8(1)(da)(i).

Clause 8(1)(db) “qualifying property”

The new definition “qualifying property” in new clause 8(1)(db) of the Regulations lists those items for which a rebate can be obtained under section 8, provided the requirements for obtaining a rebate under the section are otherwise met. Included as qualifying property are printed books, in subclause 8(1)(db)(i), and updates of printed books, audio recordings of printed books and bound or unbound versions of scripture of any religion, in subclauses 8(1)(db)(iii) to (v) respectively, for which a rebate could previously be obtained because they were included in the definition “printed book” in clause 8(1)(c).

Subclause 8(1)(db)(ii) has the effect of adding to the items in respect of which a rebate can be obtained under section 8 those products, having a printed book as a component, that fall within the new definition “composite property” in clause 8(1)(a).

Clause 8(1)(dc) “read-only medium”

The new definition “read-only medium” in new clause 8(1)(dc) of the Regulations is relevant for the purposes of the new definition “composite property” in clause 8(1)(a) in that a read-only medium is one of the components that can be prepared, together with another component that is a printed book, for sale as a “composite property” as defined in clause 8(1)(a). A read-only medium must be a tangible medium that is designed for the read-only storage of information or other material in digital or other intangible format. For example, a storage device, such as a hard drive or MP3 player, that is designed to allow removal or replacement of information or other material stored on it would not be for the read-only storage of

information and therefore would not be a read-only medium.

Subsections 8(2) to (5)

Subsections 8(2) to (5) are amended by replacing the expression “printed book” as the reference to property in respect of which those subsections apply with a reference to the expression “qualifying property”. The expression “qualifying property” is defined in new clause 8(1)(db) and includes products that fall within the new definition “composite property” in clause 8(1)(a), the only components of which are a printed book and property described in either, or both, subparagraph 8(1)(a)(i) and (ii) of that definition, in addition to printed books and other items in respect of which a rebate of the provincial component of the HST can currently be claimed under section 8.

These amendments have the effect of expanding the availability of the rebate that can be claimed under section 8 in respect of the provincial component of HST to include rebates in respect of the provincial component of HST that applies to products that fall within the new definition “composite property” in clause 8(1)(a), in addition to printed books and other products in respect of which a rebate can currently be claimed.