

GST Headquarters Letters — Headquarters Letters — 2006 Headquarters Letters, 79779 -- Tax Status of Osteopathic Manual Therapy Services

Détails de transmission

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Transmis par: Mario Pépin

Dossier client: Aucun

Please note that the following document, although correct at the time of issue, may not represent the current position of the Agency. / Veuillez prendre note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'Agence. ... Excise and GST/HST Rulings Directorate Place de Ville, Tower A, 15th floor 320 Queen Street Ottawa ON K1A 0L5 ... Dear XXXXXXXXXXXX: ... Subject: GST/HST Ruling ... Tax Status of Osteopathic Manual Therapy Services ... This is in reply to the facsimile XXXXXXXXXXXX sent by your client, XXXXXXXXXXXX, regarding the application of the Goods and Services Tax ("GST")/Harmonized Sales Tax ("HST") to supplies of Osteopathic manual therapy

79779 -- Tax Status of Osteopathic Manual Therapy Services

Date: June 21, 2006

Reference: ETA Schedule V—Exempt Supplies (Part I—Part VIII): Part II Sec. 7(f)

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Excise and GST/HST Rulings Directorate
Place de Ville, Tower A, 15th floor
320 Queen Street
Ottawa ON K1A 0L5

Dear XXXXXXXXXXXX:

Subject: GST/HST Ruling

Tax Status of Osteopathic Manual Therapy Services

This is in reply to the facsimile XXXXXXXXXXXX sent by your client, XXXXXXXXXXXX, regarding the application of the Goods and Services Tax ("GST")/Harmonized Sales Tax ("HST") to supplies of Osteopathic manual therapy services. Our understanding of the facts of the supply in question is set out below.

All legislative references are to the *Excise Tax Act* (the "ETA") and the regulations therein, unless otherwise specified.

Statement of Facts

Our understanding of the facts is based on the above-noted facsimile, with attachments, a conference call between you and your client, XXXXXXXXXXXX, and XXXXXXXXXXXX of the Canada Revenue Agency, as well as additional research regarding the provision of Osteopathic services in Canada.

1. Your client, XXXXXXXXXXXX, is a Registered Massage Therapist (RMT) licensed to practise the profession of massage therapy XXXXXXXXXXXX.
2. XXXXXXXXXXXX is not a small supplier for purposes of section 148 of the ETA; i.e., XXXXXXXXXXXX revenues are in excess of \$30,000 over four calendar quarters. XXXXXXXXXXXX is registered for GST/HST purposes XXXXXXXXXXXX.
3. In addition to supplying massage therapy services, XXXXXXXXXXXX supplies Osteopathic manual therapy services as taught by the Canadian College of Osteopathy and XXXXXXXXXXXX clientele are referred by members of the medical community for treatment of conditions involving chronic pain. We understand that XXXXXXXXXXXX is currently in the XXXXXXXXXXXX and began including Osteopathic manual therapy as part of XXXXXXXXXXXX massage therapy services more than XXXXXXXXXXXX years ago. Gradually, XXXXXXXXXXXX began billing separately for Osteopathic manual therapy services and is now primarily offering these services.

4. There are at least three educational facilities in Canada teaching Osteopathic manual therapy: Sutherland Academy of Osteopathy and the Canadian Academy of Osteopathy in Ontario; and the Canadian College of Osteopathy with campuses in Montreal, Quebec City, Toronto, Halifax, and Vancouver.

5. Osteopathic physicians are required to be licensed, but there is no provincial licensing body in XXXXXXXXXXXX or anywhere else in Canada for providers of Osteopathic manual therapy.

6. Osteopathic manual therapy is not a regulated health profession in any province in Canada; i.e., there are no licensing or certification requirements to provide this therapy. Also, most students apply Osteopathic manual therapy techniques before completing the educational program, as they already have to be a licensed medical or manual therapy practitioner (e.g., physiotherapist, massage therapist, etc.) as a prerequisite to entering the program.

7. According to information you provided from the Canadian College of Osteopathy, www.osteopathicollege.com, anyone holding a degree in the biological sciences and who is currently licensed as a health care practitioner is eligible to enter. In order to enrol directly in the Traditional Osteopathy program, the applicant must meet three criteria:

(a) Hold a university degree in the Human Sciences, Health Sciences or equivalent health science or hold a degree in Medicine, Dentistry, Naturopathy, Physiotherapy, Occupational Therapy, Athletic Therapy, or Chiropractic;

(b) Be a member in good standing and hold an up-to-date licence, registration or certificate in a medical or manual therapy based practice; and

(c) Have a strong vocation to treat people.

8. Candidates lacking a university degree in the Health or related sciences can enrol in a supplementary pre-admissions program.

9. Following successful completion of five years of courses, and the submission and the defence of an original piece of Osteopathic research either in philosophy, or the experimental or clinical fields, the student is presented with a Diploma in Osteopathic Manual Practice. The Canadian College of Osteopathy uses the term ‘manual practice’ to distinguish it from ‘medical practice’, as the latter is reserved for those Osteopaths who have trained in the United States as physicians.

10. You provided information posted by the XXXXXXXXXXXX. The XXXXXXXXXXXX is not an official regulating body nor is it able to certify any provincial recognition. This organization describes manual practice Osteopathy as a very useful adjunct to health care options already offered XXXXXXXXXXXX. We also understand from this website that there are two fields of Osteopathy, one involving physicians, who are generally referred to as Doctors of Osteopathy (“DO”), and the other field providing Manual Practice Osteopathy—MPO.

11. Membership of the XXXXXXXXXXXX is open to graduates of Osteopathy (Osteopaths) under the bylaws of the society as set out in XXXXXXXXXXXX of the Province XXXXXXXXXXXX, with the following additions:

(a) XXXXXXXXXXXX.

(b) XXXXXXXXXXXX.

12. Information posted by the Ministry of Health XXXXXXXXXXXX, discusses traditional Osteopathy as a medical philosophy and practise among physicians XXXXXXXXXXXX DO. This information states that most Doctors of Osteopathy receive their training in other countries. Currently, there are no accredited training programs in Canada.

13. You advised that the fees for Osteopathic manual therapy services are generally not covered under the provincial health insurance plan XXXXXXXXXXXX. We also understand that if Osteopathic services are eligible for coverage under that

province's public health insurance plan (i.e., are insured services in the province XXXXXXXXXXXX), the circumstances for coverage require that these services be provided by a physician who is licensed XXXXXXXXXXXX.

14. XXXXXXXXXXXX.

15. XXXXXXXXXXXX.

Ruling Requested

You are requesting a ruling as to whether the supply of Osteopathic manual therapy services made by your client, XXXXXXXXXXXX, is a taxable supply and for which your client is required to collect and remit the 7% GST/HST on the value of the consideration for this supply.

Ruling Given

Based on the facts set out above, we rule that the supply of Osteopathy manual therapy services made by your client, XXXXXXXXXXXX, is a taxable supply for which your client is required to collect and remit the 7% GST/HST on the value of the consideration for this supply. For the reasons explained below, this supply is not exempt from GST/HST.

This ruling is subject to the qualifications in GST/HST Memorandum 1-4, Goods and Services Tax Rulings. We are bound by this ruling provided that none of the above issues is currently under audit, objection, or appeal, that no future changes to the ETA, regulations or our interpretative policy affect its validity, and all relevant facts and transactions have been fully disclosed.

The Minister of Finance announced in the Federal Budget of May 2, 2006, a proposal to reduce the rate of the GST and the federal component of the HST by 1%, effective July 1, 2006. The general rule is that the rate of GST will be reduced from 7% to 6% and the rate of the HST from 15% to 14% on supplies for which the GST/HST is paid on or after July 1, 2006, without having become payable before that date. Specific transitional rules apply to certain supplies, for example, real property. For more information on the transitional rules for the reduction of the GST/HST rate, please refer to Reduction in the Rate of the GST/HST—Questions and Answers <http://www.cra-arc.gc.ca/agency/budget/2006/gstrateqa-e.html> on the Canada Revenue Agency Web site.

Explanation

Your client's understanding that Osteopathic services are exempt supplies under the ETA prompted this GST/HST ruling request. Please note that the general rule under the ETA is that all supplies of goods and services are subject to the 7% GST (or to the 15% HST for supplies made in New Brunswick, Newfoundland and Labrador, and Nova Scotia), with a limited number of exceptions. The exceptions are those specific supplies described in Schedule V (which exempts from tax certain goods and services, such as those provided by charities, school authorities, municipalities as well as certain health care services) and Schedule VI (which applies the tax at a rate of 0% to certain goods and services, such as prescription drugs sold by pharmacies, basic groceries, and a limited number of medical devices).

In order for a particular health care service to be exempt from GST/HST, the supply must fall within an exempting provision in Schedule V. Two exempting provisions that would be relevant to the supply of Osteopathy services are paragraph 7(f) and section 9 of Part II of Schedule V.

Paragraph 7(f) of Part II of Schedule V

Section 7 of Part II of Schedule V enumerates certain services that are exempt from GST/HST, which include Osteopathic services (paragraph 7(f)), when these services are supplied by a “practitioner” of the service and rendered to an individual. Essentially, these exempt health care services are those that are provided in a practice that is regulated as a health care profession by the governments of at least five provinces, including the territories.

Therefore, the tax status of the supply of Osteopathic services depends on the identity of the supplier, as to fall within the exempting provision, these services must be supplied by a “practitioner” of the service as that term is defined in section 1 of Part II of Schedule V. Briefly, a “practitioner” in respect of a supply of Osteopathic services means a person who practises the profession of Osteopathy and who has the appropriate licence or certification in the province in which the service is supplied to practise that profession. If no licence or certification is required in the province where the services are provided, then the person must have the qualifications equivalent to those necessary to be licensed or certified in another province in order to

fall within the meaning of “practitioner” for purposes of the ETA. Accordingly, the exempting provision does not apply to Osteopathic services supplied by persons who are not “practitioners” as defined in the ETA, e.g., massage therapists, as such persons do not meet the legislative criteria of being a supplier as defined for purposes of the exempting provision.

On the basis of the information provided, your client, XXXXXXXXXXXX, does not fall within the meaning of “practitioner” as defined in the ETA. Therefore, XXXXXXXXXXXX supplies of Osteopathic manual therapy services cannot fall within the exemption in paragraph 7(f) of Part II of Schedule V.

That is, we understand that to meet the qualifications to be licensed or certified by a particular provincial or territorial government to practise the profession of Osteopathy, the practitioner must be a physician. XXXXXXXXXXXX is a massage therapist and XXXXXXXXXXXX is not licensed or certified by the Government XXXXXXXXXXXX to practise the profession of Osteopathy nor does XXXXXXXXXXXX have the qualifications necessary to be a licensed or certified to practise the profession in that province or in any other province or territory. Further, we understand that the Osteopathic manual therapy provided by XXXXXXXXXXXX is not regulated by a province or territory and there is no provincial licensing body in Canada for practitioners of Osteopathic manual therapy who are not physicians.

Section 9 of Part II of Schedule V

The exemption in section 9 of Part II of Schedule V applies to the extent that the consideration for a supply of a service or property is directly payable or reimbursable under a plan established under the legislature of a province to provide for health care services for all “insured persons” as that phrase is defined in section 1 of this Part, of that province. An “insured person” for purposes of this exempting provision has the same meaning as in the Canada Health Act (the “CHA”).

The CHA requires each province and territory to report annually to Parliament respecting the administration and operation of that Act for the fiscal year, and include all relevant information on the extent to which provincial health insurance plans have satisfied the criteria for payment under that Act. According to the information reported by the Government XXXXXXXXXXXX, we understand that insured services are provided under the authority of the XXXXXXXXXXXX Act. Under the XXXXXXXXXXXX Act, practitioners (including medical practitioners and health care practitioners, such as dentists) who are enrolled and who render benefits to a beneficiary are eligible to be paid for services rendered in accordance with the appropriate payment schedule. Our review of relevant information indicates that the XXXXXXXXXXXX Plan established under the XXXXXXXXXXXX Act is a type of plan for purposes of section 9 of Part II of Schedule V.

As a transactional tax, the application of the GST/HST is determined on a supply-by-supply basis. The application of section 9 of Part II of Schedule V to a particular supply is dependent on the mechanism under which the consideration, or portion thereof, payable or reimbursable is made for that supply. Therefore, it will be a question of a fact as to whether the consideration, or a portion of the consideration, payable for a particular service (whether massage therapy or Osteopathic manual therapy) supplied by XXXXXXXXXXXX is paid under a provincial health insurance plan described in this exempting provision; i.e., the XXXXXXXXXXXX Plan.

We note that while circumstances may exist in which the XXXXXXXXXXXX Plan XXXXXXXXXXXX may pay for or reimburse the consideration or a portion thereof charged for Osteopathic services (if provided by a physician), these circumstances were not evident in the ruling request and our review of the relevant information indicates that Osteopathic manual therapy services supplied by your client are not directly paid for or reimbursed by the XXXXXXXXXXXX Plan.

Accordingly, as there is no exemption that applies to the supplies of Osteopathic manual therapy services made by XXXXXXXXXXXX, these supplies are taxable. Further, as XXXXXXXXXXXX total taxable supplies are in excess of \$30,000 over four calendar quarters, XXXXXXXXXXXX is a registrant for purposes of the GST/HST. Although the massage therapy services supplied by XXXXXXXXXXXX were not the subject of this GST/HST ruling request, please note that the reference to total taxable supplies means all taxable supplies, which would include massage therapy services. The tax is collectible and remittable on the value of the consideration charged for taxable supplies of both Osteopathic manual therapy services and massage therapy services.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at (613) 952-6761.

Yours truly,

Susan Eastman
Municipalities and Health Care Services Unit
Public Service Bodies and Governments Division
Excise and GST/HST Rulings Directorate

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