



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

BDO Dunwoody LLP
Royal Bank Plaza
P.O. Box 32
Toronto ON M5J 2J8

AUG - 9 2006

Case Number: 64939

Attn: Bruce D. McLaughlin, C.A.

Dear Mr. McLaughlin:

Subject: GST/HST RULING
Application of GST to Fees Paid to Stewardship Ontario

Thank you for your letter of November 1, 2005 concerning the application of the Goods and Services Tax (GST) to fees paid by stewards to Stewardship Ontario (SO) pursuant to the *Waste Diversion Act, 2002*.

STATEMENT OF FACTS

Our understanding of the facts is as follows:

Waste Diversion Act, 2002

1. The *Waste Diversion Act, 2002*, S.O. 2002, c. 6 (WDA) was passed by the Ontario legislature on June 27, 2002. Section 1 of the WDA states "the purpose of this Act is to promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs."
2. Waste Diversion Ontario (WDO) was established as a corporation without share capital pursuant to section 3 of the WDA. Section 5 of the WDA sets out WDO's responsibilities that include the mandate to develop, implement and operate waste diversion programs for designated wastes in accordance with the WDA.
3. Section 16 of the WDA provides that the WDO has the capacity and powers of a natural person for the purpose of carrying out its responsibilities, except as otherwise provided by the regulations.
4. Section 17 provides that WDO is not an agent of the Crown in right of Ontario for any purpose.

5. Section 4 of the WDA provides that WDO is composed of the members of its board of directors.
6. The Ministry of the Environment (the Minister) is responsible for overseeing the WDA, including WDO activities.
7. Subsection 42(1) of the WDA provides the authority for the Minister to make regulations designating a material for which a waste diversion program is to be established. Section 2 of the WDA defines “designated waste” as Blue Box waste or material prescribed as a designated waste by the regulations. Section 2 defines Blue Box waste as “material prescribed as blue box waste by the regulations.” *Ontario Regulation 273/02* (OReg 273/02) made under subsection 42(1) of the WDA sets forth what constitutes Blue Box waste. It includes glass, metal, paper, plastic and textiles.
8. Pursuant to section 23 of the WDA and a September 23, 2002 letter to WDO, the Minister required WDO to develop a waste diversion program for Blue Box waste.
9. Subsection 23(3) of the WDA states “the Minister may require that the [waste diversion] program be developed in co-operation with (a) an existing industry funding organization (IFO); or (b) an industry funding organization to be incorporated under Part III of the *Corporations Act* by Waste Diversion Ontario for the purpose of the program.”
10. Section 26(1) of the WDA provides “After a waste diversion program has been developed under section 23, [WDO] shall submit the program to the Minister for his approval.”
11. At the request of the Minister, pursuant to ss. 24(1) of the WDA WDO caused Stewardship Ontario (SO) to be incorporated under Part III of the *Corporations Act*, R.S.O. 1990, c. 38 on November 6, 2002.
12. Subsection 2(1) of the OReg. 273/02 states “The corporation named Stewardship Ontario is continued and is designated as the industry funding organization [IFO] for the waste diversion program for Blue Box waste approved under section 26 of the Act.”
13. Subsection 2(2) of OReg 273/02 states “Stewardship Ontario is composed of the members of its board of directors.” The board of directors are listed in subsection 3(3) of the OReg. 273/02 as members from the Canadian Council of Grocery Distributors, the Canadian Newspaper Association, the Food and Consumer Products Manufacturers of Canada, the Liquor Control Board of Ontario, Refreshments Canada, the Retail Council of Canada, the Canadian Paint and Coatings Association/Canadian Consumer Specialty Products Association and the chief executive officer of SO.
14. Sections 16, 17 and 28 of the WDA provide that SO has all the capacity and powers of a natural person for the purpose of carrying out its responsibilities and it is not an agent of the Crown.

15. Section 25 of the WDA provides that a waste diversion program include: activities to reduce, reuse and recycle the designated waste; research and development activities relating to the management of the designated waste; activities to develop and promote products that result from the program; and educational and public awareness activities to support the program.
16. The Minister's Program Request letter to WDO dated September 23, 2002 for the Blue Box waste diversion program identified twelve specific issues that must be addressed. They include:
 - WDO shall develop a Waste Diversion Program for Blue Box Waste in accordance with all legislative requirements of the WDA;
 - The program shall support, at a minimum, all categories of wastes set out in Schedule 1 of Ontario Regulation 101/94 under the *Environmental Protection Act*;
 - The proposed funding rules under the program will designate and define as stewards, brand owners and first importers into Ontario of products that result in Blue Box wastes under the program. The program will include a rule to exempt stewards under ss. 30(1)(e) of the WDA based on de minimis criteria; and
 - The program shall include targets for the overall quantity of blue box waste to be diverted under the program.
17. Subsection 25(5) of the WDA provides that a waste diversion program developed for blue box waste "must provide for payments to municipalities to be determined in a manner that results in the total amount paid to all municipalities under the program being equal to 50 per cent of the total net costs incurred by those municipalities as a result of the program."
18. WDO developed the Blue Box waste diversion program in co-operation with SO and submitted it to the Minister for approval.
19. Upon approval of the Blue Box waste diversion program by the Minister, WDO and SO implemented the Blue Box Program Plan (BBPP) that was approved by the Minister on December 23, 2003 pursuant to section 34 of the WDA.
20. Under subsection 30 (1) of the WDA an IFO that is designated by regulations for waste diversion program (i.e., the SO) may make rules including designating persons as stewards, setting the amount of fees to be paid by stewards, prescribing times for payment of fees, allowing for interest and penalties for non-payment; exempting stewards or classes of stewards from payment of stewardship fees and requiring stewards to keep records. These rules are subject to any restrictions set out in the WDA and are elaborated upon in the BBPP. SO entered into an agreement with WDO, dated February 19, 2003, for implementation of the BBPP. Upon receiving approval for the BBPP from the Minister, and being designated as the IFO for Blue Box waste, SO was empowered to implement the program as outlined in the BBPP.

21. Companies that are designated as stewards for Blue Box wastes can discharge their legal obligations under the WDA by registering with the SO.
22. A company is obligated under the WDA to register with SO, will be designated as a steward and required to pay fees if it meets the following criteria: it must be a brand owner, first importer or franchisor doing business in Ontario; its products must result in residential blue box wastes in Ontario; its gross Ontario sales must be \$2 million or greater in a given year and it must have generated greater than 15 tonnes of blue box waste for a given year. Companies that fall below a de minimis threshold of \$2 million in sales in Ontario annually, or which generate less than 15 tonnes of Blue Box Waste in Ontario are exempted from paying fees under the WDA.
23. Pursuant to section 30 of the WDA and as stated on page 17 of the *SO 2004 Annual Report* SO has a legal responsibility to notify companies that are potentially obligated under the BBPP and to follow-up with these companies to ensure they file a steward's report if they are required to do so. The steward's report provides details of Blue Box waste produced by a steward annually and is used to determine fees to be paid to the SO each year. SO also has legal authority to assess late payment charges and interest on outstanding balances.
24. Subsection 30(3) of the WDA stipulates that stewards' fees reflect the cost to manage each material in the blue box system and that each fee should fairly reflect the proportion of the fee that is attributable to the steward. SO has the authority to conduct audits of steward's data, data collection and reporting procedures.
25. Section 31 of the WDA provides that a person who is designated under the rules made by SO as a steward shall pay to SO the fees determined in accordance with the rules set out in the BBPP.
26. A steward's fee is based upon the weight and quantity of blue box material produced each year. At page 49 of SO's *2004 Annual Report* it states "the fee rates (dollars per tonne or cents per kilogram) are calculated by dividing the total fee for each material type by the corresponding number of tonnes of each material generated."
27. Subsection 30(3) of the WDA provides that the total amount of fees paid by stewards not exceed the sum of:
 - i) the costs of developing, implementing and operating the program;
 - ii) a reasonable share of costs incurred by the WDO; and
 - iii) a reasonable share of costs incurred by the Ministry in administering the [WDA].The fee paid by a steward should reflect the proportion of these total costs attributable to the steward.
28. Under section 33 of the WDA each IFO designated for a waste diversion program is required to file an annual report with the WDO and make it available to the public.

29. Section 41 of the WDA provides that a person who contravenes the WDA, the regulations or the rules is guilty of an offence and subject to penalties set out in that section.
30. Section 42 of the WDA provides authority for the Minister to make regulations for a number of purposes.

The Blue Box Program Plan – Stewards’ Fees

31. The BBPP includes the funding formula to be used for determining payments by industry “stewards” and outlines funding provisions to support product and market research development, public education and awareness and incentives to encourage municipal program efficiency and effectiveness.
32. The BBPP proposes program rules for calculating the total net cost incurred by municipalities in running Blue Box programs and sets out industry’s 50 per cent share of these costs. Section 9.10 of the BBPP states the methodology for setting members fees integrates three key elements: the recovery rate of each designated Blue Box waste in any given year; the net cost of recycling each of the designated materials through municipal Blue Box programs in any given year; and the disproportionate contribution that some Blue Box materials make to the overall success of the BBPP in diverting wastes from disposal.
33. Section 9.10.1 of the BBPP sets out how the SO fee setting model allocates costs. In step one, the total quantities of designated Blue Box wastes are determined; step two – the total costs to SO in year one are determined; step three – the total costs are allocated across the designated Blue Box materials to determine a per tonne/per kilogram levy rate; step four – the levies assigned costs are added under the three factors and step 5 – the de minimis and compliance rates are assigned.
34. Section 9.12 of the BBPP sets out the Year One Fee Schedule by Material Type in Table 9.5. It formed the basis for the Fee Schedule for subsequent years. The current fee structure for stewards was approved by the Minister on June 30, 2004.
35. According to section 9.5 of the BBPP stewards are required to measure and report to SO the total quantity of Blue Box Wastes in the Ontario residential waste stream annually. The quantities of packaging and printed paper will be multiplied by material specific levies set out in section 9.11 of the BBPP to determine a steward’s total fee payable to SO for year 1 (and subsequent years).

SO Fund

36. Section 32 of the WDA states that “each industry funding organization for a waste diversion program shall establish and maintain a fund in respect of the program.” The fund is to be held in trust by the IFO to pay for: the costs of developing, implementing and operating the waste diversion program; a reasonable share of other costs incurred by

WDO; and a reasonable share of costs incurred by the Minister in administering the WDA.

37. SO uses the funds it collects from the stewards to discharge its obligations under the WDA.

38. According to SO's *2004 Annual Report*, in 2004, approximately \$40.68M was collected by SO from stewards. Approximately 93% of the fees collected was provided either directly or indirectly to municipalities to carry out their blue box program mandates. Less than 10% of the fees collected were used for WDO and SO program delivery and administration costs.

RULING REQUESTED

You would like to know whether the fee that SO charges to the stewards for assisting them in meeting their obligations under the WDA is consideration for a taxable supply.

RULING GIVEN

Based on the facts set out above, we rule that the fees paid by stewards to SO pursuant to the WDA are not consideration for a supply and therefore, are not subject to GST.

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.

EXPLANATION

The Province of Ontario passed the WDA to provide a regulatory scheme for the public purpose of promoting the reduction, reuse and recycling of waste. As part of the scheme, the WDO and the SO were established pursuant to the WDA to implement and operate a Blue Box waste diversion program. Upon designation by the WDO and the Minister, the SO was authorized to implement and operate the blue box waste diversion program in accordance with the BBPP.

Under the regulatory scheme, the stewards are designated by the SO and thereby are obligated under the WDA to register and file annual reports with the SO and to pay fees as determined by the SO in accordance with the WDA. The SO collects the fees, which are regulatory charges authorized under the WDA. The SO must hold the fees in trust to be used to fulfill its statutory obligations: to pay the costs of developing, implementing and operating the waste diversion program, to pay a reasonable share of the WDO's costs in carrying out its responsibilities under the WDA and to pay a reasonable share of the Minister's costs of administering the WDA. The SO is required to fund 50% of the cost to municipalities of their recycling programs.

The stewards do not receive a supply in return for paying the regulatory charges imposed on them pursuant to the WDA. The fees are not consideration for a supply and are not subject to GST.

If you require clarification with respect to any of the issues discussed in this letter, please call me directly at 613-952-4157.

Yours truly,



Glenda MacInnes
Industry Sector Specialist
Public Service Bodies and Governments Division
Excise and GST/HST Rulings Directorate