

# BULLETIN



GOVERNMENT FINANCE OFFICERS ASSOCIATION

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Of The United States and Canada

*Alberta Chapter*

## **Alberta GFOA Special Release Bulletin #3 – June 28, 2006**

### **[More GST refunds could be available for your municipality](#)**

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Your municipality may be entitled to more GST refunds than it has historically applied for with respect to certain road and street infrastructure improvements. In April 2005, 3 Alberta municipalities challenged the federal government's Canada Revenue Agency (CRA) in a Tax Court of Canada general procedure case and won a victory for all municipalities in Alberta as well as some other Canadian provinces. The CRA was not pleased with this result and decided to Appeal the case to the Federal Court of Appeal, but we have recently learned that this Appeal has been withdrawn, leaving the municipal sector with this very favorable court decision. The debate between the CRA and municipalities has for many years, been over the fact that the full GST paid on costs related to road and street construction and certain upgrades cannot be recovered through claiming ITCs and only the old 57.14% rebate would apply.

Since February 2004, this has not been a concern for most Canadian municipalities as the total GST paid on any outlay is now refundable through the GST rebate mechanism for public bodies. However, prior to that time, 3/7 of every GST dollar paid was generally unrecoverable by municipalities in the CRA's view despite several written rulings and other administrative decisions made by CRA officials over the years. Where a municipality received funding under one of several of Alberta's grant programs for transportation infrastructure improvements, there was an argument that the ensuing construction (or re-construction in some cases) to the street, road or highway was a taxable service provided to the province in exchange for the payment received in the form of the grant funding. Since most provinces are immune from paying GST, the municipality would not be required to charge GST, but could claim back 100% of the GST paid to perform the road infrastructure work.

Determining what is eligible for "construction" however has now become the remaining unknown variable in municipalities' quest for the GST that was previously "lost". In order for municipalities to be entitled to now claim back the GST paid up to four years ago, (potentially longer in some cases) the municipality must direct the spending to activities that are considered to be construction rather than maintenance, since the latter is not eligible for a 100% GST refund claim. The CRA has been strict on this interpretation and has generally not allowed a full refund of GST for costs related to road, street or highway maintenance.

Besides the parties in the court case, we are now aware of various other Alberta municipalities that have recently filed for these refund claims and these have mostly been paid out after a brief review by CRA auditors. There is no guarantee that every

claim will be successful and we strongly urge you to seek professional guidance from a GST specialist or your preferred tax advisor that is familiar with these issues. In addition, most Alberta cities who are required file their GST returns monthly will not generally be eligible for this claim, however most municipalities who are not required to file monthly will have approximately 2 years of un-recovered GST that they may be eligible to file a refund today. However, this refund “window” will shrink every quarter starting July 31 for most municipalities, so timing is critical if you should decide to file a claim for GST.

In some cases, more than 2 years of GST may be recovered depending on whether or not the CRA decides to audit the claim. If the CRA does not audit the claim or your municipalities other activities and simply pays your claim out, generally only 2 years (part of 2002 and 2003) of GST may be claimed. If the CRA simply audits the claim and does not enquire about any other of your municipality’s activities, you may be able to claim more than 2 years’ worth of GST. Lastly, the judgment in the court case was specific to Alberta; however it may have application in other provinces as we are aware that municipalities in Manitoba have been able to recover the full GST since the GST was first introduced.

Regards,

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