



Tax Court of Canada Addresses Whether Health Care Staffing Companies Need to Remit GST/HST

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In recent years, the CRA has engaged in targeted audits, assessing health care staffing companies in regards to alleged unremitted GST/HST. These staffing companies have historically not billed or collected GST/HST, based on the understanding that the supply was exempt as they are providing health care services. By way of the audits, the CRA has challenged this position, assessing the staffing companies on the basis that they were not exempt, as they were providing staffing services, not health care services. As a result, health care staffing companies have found themselves asking whether they need to collect and remit GST/HST.

In the recent Tax Court of Canada decision of *A-Supreme Nursing & Home Care Services Inc. v. The King*, the taxpayer placed nurses in long-term care facilities and nursing homes. The taxpayer maintained that as it was providing nursing services, it was an exempt from collecting and remitting GST/HST. The Minister took the position that the taxpayer should have collected and remitted GST/HST as it was providing staffing services. The Tax Court of Canada confirmed that whether the taxpayer was supplying health care services or staffing services, is determined by reviewing the nature of the relationship. To that end, particular focus is placed on who exercised management and control over the nurses. Is it the staffing company or the facilities/homes that

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is responsible for delivering the health care services? If a health care issue arises (e.g. a nurse needs guidance, a nurse needs to be disciplined, etc.), is it the staffing company or the facilities/homes that is responsible for addressing it? This test for determining whether the agreements are only staffing agreements and thus subject to GST/HST obligations was previously established in the Supreme Court of Canada decision of *Hôpital Santa Cabrini v Canada*.

In review of the relevant facts in the matter before it, the Tax Court of Canada determined that, for the most part, the taxpayer was providing nursing services, not staffing services. In rendering this decision, the Tax Court of Canada noted that the taxpayer had trained many of its nurses and regularly provided the services of a charge nurse (meaning that the taxpayer was at least partially responsible for the health care services). The Tax Court of Canada also confirmed that the relevant legislation allows nursing services to be provided by a staffing agency. As such, the GST/HST reassessments were remitted back to the Minister.

In review of the above, it is important for health care staffing companies to properly determine and satisfy their GST/HST obligations. If a health care staffing company is taking the position that it is not obligated to collect GST/HST, then it should ensure that the client agreements and the relationships confirm that it is providing nursing services. The staffing company should be responsible for delivering health care services, not just staff. It should be training its staff, supervising its staff, addressing questions and issues that arise, handling performance issues, etc.

For more information or to ensure you are properly dealing with your potential GST/HST obligations, please speak with one of our tax litigators.

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