

Application of GST/HST to Interment Rights and Prepaid Cemetery Arrangements

Note: This Technical Information Bulletin supersedes the version dated February 2006.

The information in this bulletin does not replace the law found in the *Excise Tax Act* (the Act) and its Regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or its Regulations, or contact a Canada Revenue Agency (CRA) GST/HST Rulings Centre for more information. These centres are listed in GST/HST Memorandum 1.2, *Canada Revenue Agency GST/HST Rulings Centres*. A ruling should be requested for certainty in respect of any particular GST/HST matter.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please contact Revenu Québec by calling 1-800-567-4692. For general information, please visit their Web site at www.revenu.gouv.qc.ca.

Reference in this publication is made to supplies taxable at 5% (the rate of the goods and services tax or GST) or 13% (the rate of the harmonized sales tax or HST). The HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the "participating provinces"). If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-078, *Place of Supply Rules Under the HST*.

For information on how to determine the rate of the GST/HST that applies to supplies of interment rights and prepaid cemetery arrangements entered into before 2008, refer to GST/HST info sheets GI-016 *Applying the GST/HST Rate Reduction to Prepaid Funeral and Cemetery Arrangements* (covering the transition to the initial rate reduction from 7% and 15% to 6% and 14% which took effect on July 1, 2006) and GI-040 *Applying the 2008 GST/HST Rate Reduction to Prepaid Funeral and Cemetery Arrangements* (covering the transition to the second rate reduction from 6% and 14% to 5% and 13% which took effect on January 1, 2008).

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La version française du présent document est intitulée *Application de la TPS/TVH aux droits d'inhumation et aux accords de prévoyance pour biens ou services de cimetières*.



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Introduction

This bulletin clarifies the timing of the application of the goods and services tax/harmonized sales tax (GST/HST) to supplies of interment rights¹, and supplies of cemetery products and services provided under prepaid arrangements. Supplies of cemetery products and services provided under prepaid funeral arrangements are discussed in GST/HST Technical Information Bulletin B-091, *Application of the GST/HST to Prepaid Funeral Arrangements*.

This bulletin does not apply to persons who are small suppliers and not registrants for purposes of the GST/HST, except that a small supplier must collect tax on the consideration for taxable supplies of real property when supplied by way of sale. Refer to GST/HST Memorandum 2.2, *Small Suppliers*, for information on determining whether a person is a small supplier.

In some provinces, some supplies of interment rights and some supplies of cemetery products and services provided under prepaid arrangements are regulated by provincial law, whereas in other provinces or for certain entities, they are not regulated. As a result, some of the practices discussed in this bulletin may not apply to a particular supply of interment rights or to a particular supply of cemetery products or services provided under a prepaid arrangement. If in doubt, cemetery operators are advised to refer to the applicable provincial laws to determine their obligations and the provincial requirements with respect to the supply of interment rights or with respect to entering into a prepaid arrangement to supply cemetery products or services.

Please note that for the purposes of this bulletin the term “cemetery operator” refers to a person who owns or operates a cemetery, mausoleum or columbarium. Where a cemetery operator does not own the cemetery, mausoleum or columbarium, as the case may be, the operator is usually acting as agent of the owner in making supplies of interment rights. Refer to GST/HST Info Sheet GI-012, *Agents*, for further information on determining whether a person is acting as agent on behalf of another. If you are an operator who is neither an owner nor acting as agent, please contact any GST/HST Rulings Centre for assistance in determining the application of tax to your supplies.

Finally, please note that the examples provided in this bulletin are for illustrative purposes only and do not represent any particular supply made by any particular cemetery operator.

Interment rights

Interment rights are a form of real property for GST/HST purposes. The tax status of a supply of interment rights (i.e., whether the supply is a taxable supply) made by certain public service bodies, such as municipalities or religious groups that are charities, may differ depending on the person making the supply. Further information on

¹ The meaning of this term, as well as of other terms relating to cemetery property and services, is explained in Appendix 1 to this bulletin.

determining the nature of a supply of interment rights provided by such persons may be found under the heading “Supplies made by charities, public institutions and other public service bodies”.

1. Supplies by lease, licence or similar arrangement

The supply of interment rights is generally made by way of lease, licence or similar arrangement. Although it sometimes may be difficult to distinguish between a lease and licence, given the specific use and purpose of the lot, plot, crypt, niche, etc. and the fact that a purchaser may have little or no control over it, these supplies of real property are generally supplies by way of licence.

Refer to GST/HST Memorandum 19.1, *Real Property and the GST/HST*, for information concerning leases, licences and similar arrangements.

2. When tax is payable

Interment rights may be supplied separately from, or together with, a prepaid arrangement for cemetery products or services. In either case, the rules for determining when the GST/HST is payable on a taxable supply of interment rights are the same.

Where a taxable supply of interment rights is made by way of lease, licence or similar arrangement, the GST/HST is payable on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due. However, if the consideration is paid or becomes due on more than one day, as through a series of payments, the GST/HST is payable separately on the value of each payment on the earlier of the day on which the payment is paid and the day on which the payment becomes due.

Example

An individual acquires interment rights in 2008 by way of lease, licence or similar arrangement in a non-participating province. The total cost is \$3,000 plus GST, \$1,000 becoming due on the first of each month for three months. The GST ($\$1,000 \times 5\% = \50) is payable on the first day of each of the three months.

3. Single and multiple supplies

GST/HST Policy Statement P-077R2, *Single and Multiple Supplies*, provides guidelines for determining whether a transaction consisting of several elements is a single supply or two or more supplies. This distinction is important in cases where a combination of elements is supplied, some of which would be taxable at 5% or 13%, and some of which would be zero-rated or exempt from the GST/HST, if supplied separately.

Generally, multiple supplies occur when one or more of the elements can sensibly or realistically be broken out of a transaction. Conversely, two or more elements are part of a single supply when one element of the transaction is so dominated by another element that the first element has lost any identity for fiscal purposes.

Where there are multiple supplies with respect to a transaction, sometimes one of these supplies is incidental to another and is deemed to form part of a single supply pursuant to the Act. To be considered incidental, a supply generally must play only a minor or subordinate role in relation to the provision of another supply.

Where a cemetery operator supplies interment rights and cemetery products or services together, the operator is regarded as having made multiple supplies for GST/HST purposes. Furthermore, none of the supplies is considered to be incidental to any of the others.

4. Care and maintenance trusts

Sometimes, under provincial law, when a cemetery operator enters into an agreement for the supply of interment rights, the operator must deduct or set aside a portion of the money paid under the agreement for the care and maintenance of the cemetery. These funds are placed in a care and maintenance trust, which generates income to pay for the ongoing care and maintenance of the cemetery as a whole, rather than a particular lot, plot, crypt, niche or other space.

In accordance with GST/HST Policy Statement P-077R2, *Single and Multiple Supplies*, the amount paid for the interment rights and the care and maintenance trust is consideration paid for a single supply of the interment rights. Therefore, even if the amount to be placed in a care and maintenance trust is identified separately on an invoice or invoices, the cemetery operator is required to account for the GST/HST, if applicable, on the total consideration for interment rights and the care and maintenance trust on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due, as discussed under the heading “When tax is payable”. However, no GST/HST is payable when amounts are withdrawn from the care and maintenance trust for the maintenance of the cemetery.

Marker maintenance

Sometimes, under provincial law, a cemetery operator who sells a marker for use in the operator’s cemetery must pay a portion of the money received from the sale into the care and maintenance trust. Similarly, under some provincial laws, when another person installs a marker in an operator’s cemetery, that other person must pay a prescribed amount to the cemetery operator, who must then place the amount into the care and maintenance trust.

Generally, the cemetery operator must place the amounts into the care and maintenance trust when the marker is sold or installed, as the case may be. However, in some provinces, the operator may place the money in a marker maintenance account before the amount is placed into the care and maintenance trust.

In accordance with GST/HST Policy Statement P-077R2, *Single and Multiple Supplies*, the amount paid for the marker and the care and maintenance trust is consideration paid for a single supply of the marker. Therefore, even if the amount to be placed in a care and maintenance trust is identified separately on an invoice or invoices, the cemetery operator or other person, as the case may be, is required to account for the GST/HST, if applicable, on the total consideration for the marker and the care and maintenance trust on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due. However, no GST/HST is payable when amounts are transferred from a marker maintenance account to a care and maintenance trust, or when withdrawn from the care and maintenance trust for the maintenance of the cemetery.

5. Supplies of future interment rights

Sometimes, under provincial law, when a cemetery operator supplies interment rights in respect of a cemetery, mausoleum or columbarium that has not been built, developed or otherwise made ready for the interment of human remains, the cemetery operator must place the money that would otherwise be payable for the care and maintenance trust into a trust separate from any other money held by the cemetery operator. In some provinces, any money received from the supply of any cemetery products and service related to the supply of the future interment rights must also be placed in the separate trust. Generally, all the money must remain in the separate trust until the part of the cemetery, mausoleum or columbarium that relates to the future interment rights has been built, developed or otherwise made ready for the interment of human remains. When the amounts are withdrawn from the separate trust in accordance with provincial laws, usually the cemetery operator must place the portion attributable to the care and maintenance trust, and in some provinces, any interest earned on that amount while it was held in the separate trust, into the care and maintenance trust within a prescribed period of time.

In these circumstances, the cemetery operator is required to account for the GST/HST on the consideration for the supply of the future interment rights and the related cemetery products and services as well as the amount that would otherwise be payable for the care and maintenance trust on the earlier of the day the consideration is paid or becomes due. Any interest earned on the amount attributable to the care and maintenance trust is not subject to GST/HST provided the interest amount is placed in, or transferred to, the care and maintenance trust.

Example

XYZ Cemeteries ("XYZ") enters into an agreement in 2008 with Mr. R to provide interment rights in a part of a cemetery that is not ready for the interment of human remains. The future interment rights are provided in a non-participating province.

The cost of the future interment rights is \$3,000 plus \$750 for the care and maintenance trust. Under provincial law, XYZ must place the \$750 for the care and maintenance trust into a separate trust until the part of the cemetery that relates to the interment rights is made ready for the interment of human remains.

Mr. R pays for the supply of the future interment rights by making a lump sum payment. As a result, XYZ charges \$187.50 GST ($\$3,750 \times 5\%$) on the consideration payable for the future interment rights, even though the amount for the care and maintenance trust is placed in a separate trust.

At the time the part of the cemetery that relates to the future interment rights is ready for the interment of human remains, interest of \$100 has been earned on the amount held in the separate trust. In accordance with provincial law, XYZ places \$850 ($\$750 + \100 interest earned) into the care and maintenance trust. No GST is payable on the interest earned and placed into the care and maintenance trust.

Prepaid arrangements for cemetery products and services

A prepaid arrangement for cemetery products or services is an arrangement whereby a supplier, generally a cemetery operator, enters into an agreement with a person to supply specific cemetery products or cemetery services in respect of one or more named individuals upon the death of the individual(s). The person may pay a lump sum or make instalment payments, which are placed in a trust by the cemetery operator. The total of the contributions and any interest that accumulates in the trust is intended to approximate the value of the consideration for the cemetery products or services and the GST/HST that will eventually be payable. When the cemetery products or services are provided, the amounts held in trust are applied against the consideration and GST/HST payable for the products or services.

This bulletin applies to those written prepaid arrangements where:

- contributions are made by the purchaser to the cemetery operator in advance of the provision of the cemetery products or services;
- some or all of the contributions, and where applicable, some or all of the compounding interest, are required either by provincial law or the terms of the arrangement to be held in trust by the cemetery operator for the purchaser, or are held in trust as a result of the cemetery operator's normal business practices; and
- the cemetery operator is prohibited from withdrawing any of the funds held in trust (unless otherwise allowed under provincial law) until the earlier of the day the amounts become payable to the cemetery operator for the cemetery products or services, or the day the arrangement is cancelled.

Please note that the arrangements described in this bulletin do not necessarily constitute eligible funeral arrangements for purposes of the *Income Tax Act*. Refer to Interpretation Bulletin IT-531, *Eligible Funeral Arrangements*, for more information on the income tax implications of the use of prepaid funeral and cemetery arrangements.

1. Amounts held in trust

Where an agreement is entered into to provide products or services, the Act deems the entering into of the agreement to be a supply of the products or services made at the time the agreement is entered into. As a consequence, GST/HST applies to any prepayment or part payment of the consideration for a supply even if the products or services are not supplied at the time the payment is made.

However, if a cemetery operator places some or all of the contributions made under a prepaid arrangement for cemetery products or services in trust in accordance with either provincial law or the terms of the arrangement itself, or as a result of the cemetery operator's normal business practices, those contributions or parts thereof are not considered to be prepayments, and the cemetery operator does not account for the GST/HST on them, even where they are held for a short period of time before being segregated in trust.

In these circumstances, the amount(s) withdrawn from trust by the cemetery operator for the cemetery products or services provided under the prepaid arrangement are regarded as consideration for the supplies and the GST/HST will apply on the value of that consideration at the time it becomes due. For example, the GST/HST is payable when funds are withdrawn from the trust to pay for cemetery products or services provided upon the death of the individual(s) named in the agreement.

The cemetery operator must include GST/HST in respect of any amount distributed from the trust in determining its net tax for the reporting period in which the amount is paid or becomes due, whichever is earlier. If the amount paid or due to the cemetery operator represents the total of the consideration and tax (i.e., the amount is considered to include the tax), the GST/HST portion of the amount must be included in determining the cemetery operator's net tax for the reporting period in which the amount is paid to the cemetery operator or becomes due, whichever is earlier.

Any additional amounts payable by the purchaser or the individual's estate at the time the cemetery products or services are provided will also be subject to the GST/HST at that time.

Example

ABC Cemeteries ("ABC") enters into a written prepaid arrangement in 2008 with Ms. S for the provision of cemetery products and services. The products and services will be provided in a non-participating province.

Ms. S is required to make initial and monthly contributions totalling \$2,205. The calculation of the total amount of contributions includes an estimate of the consideration (\$2,100) and GST (\$105) that, together with the interest that accumulates in the trust, will be payable at the time the cemetery products and services are provided. All of the contributions and the compounding interest are required to be held in trust by ABC for Ms. S.

ABC does not account for GST with respect to the initial and monthly contributions made under the prepaid arrangement as long as they are kept in a trust account.

2. Amounts not held in trust

Any contribution received under a prepaid arrangement and not held in trust is part of the consideration payable for the cemetery products or services provided by the cemetery operator. As such, the cemetery operator is required to include GST/HST in respect of the amount in determining its net tax for the reporting period in which the amount is paid or becomes due, whichever is earlier.

Where the cemetery operator charges a purchaser a tax-included amount, the operator is required to include the GST/HST portion of that amount in determining its net tax for the reporting period in which the amount is paid or becomes due, whichever is earlier.

Example

UVW Cemeteries ("UVW") enters into a written prepaid arrangement in 2008 with Ms. X who makes a lump sum contribution of \$3,390. The cemetery products and services will be provided in a participating province.

The calculation of the total amount of the contribution includes an estimate of the consideration (\$3,000) and the HST (\$390) that, together with the interest that accumulates in the trust, will be payable at the time the cemetery products and services are provided.

Ninety percent of the contribution and the compounding interest are required to be held in trust by UVW for Ms. X. The remaining 10% (\$339) is not placed in trust. Of that amount, \$300 is consideration and \$39 ($\$339 \times 13/113$) is HST paid for the cemetery products and services to be provided by UVW under the terms of the arrangement.

UVW must include the HST collectible (\$39) in determining its net tax for the reporting period that includes the day the arrangement with Ms. X is entered into. UVW will be required to include HST collectible on the balance of the consideration payable for the cemetery products and services in determining its net tax for the reporting period in which consideration for the cemetery products and services is paid or becomes due, whichever is earlier.

3. Interest generated by funds held in trust

Interest may accumulate in the trust over the duration of the arrangement. Any interest generated by funds held in trust and later disbursed to the cemetery operator is part of the consideration payable for the cemetery products or services provided by the cemetery operator. The GST/HST on this part of the consideration becomes payable when it is withdrawn from the trust and is paid to the cemetery operator or when it becomes due, whichever is earlier. The cemetery operator is required to include GST/HST in respect of the amount in determining its net tax for the reporting period in which the amount is paid or becomes due, whichever is earlier. If, instead, the amount paid represents the total of the consideration and tax (i.e., the total amount is considered to include the tax), it is the GST/HST portion of the amount that must be included in determining the cemetery operator's net tax for the reporting period in which the amount is paid to the cemetery operator or becomes due, whichever is earlier.

4. Transfer of funds to another arrangement

Generally, funds held in trust can be transferred to a prepaid arrangement for the same individual with another cemetery operator without any GST/HST consequences, provided that the transfer is made in trust. For example, one financial institution may transfer funds in trust directly to another financial institution. Alternatively, a financial institution may transfer the funds in trust either to the cemetery operator of the first prepaid arrangement or to the cemetery operator of the second arrangement.

Where the funds are transferred to a cemetery operator, there are no GST/HST consequences if the cemetery operator continues to hold them in trust and does not have access to them. Similarly, when a cemetery operator transfers some of the funds in trust there will be no GST/HST consequences with respect to the funds that remain in trust. However, the cemetery operator will have to account for GST/HST with respect to amounts withdrawn from the trust (e.g., in respect of cancellation fees).

5. Cancellation

If a purchaser cancels a prepaid arrangement before the cemetery products or services are provided, the cemetery operator is required to account for the GST/HST on a tax-included basis with respect to any amount that is not refunded to the purchaser or transferred in trust to another arrangement. The cemetery operator must account for GST/HST in its net tax for the reporting period in which the amount is paid or forfeited.

The cemetery operator does not account for the GST/HST in respect of any funds received from the trust and disbursed to the purchaser.

Example

EFG Cemeteries ("EFG") enters into a written prepaid arrangement in 2008 with Ms. H, who makes a lump sum contribution of \$3,390 upon signing the arrangement. The cemetery products and services will be provided in a participating province.

The contribution amount includes an estimate of the consideration (\$3,000) and HST (\$390) that, together with the interest that accumulates in the trust, will be payable at the time the cemetery products and services are provided.

The contribution and the compounding interest are required to be held in trust by EFG for Ms. H. Therefore, EFG does not account for HST on the contribution at the time it is made.

One year later, Ms. H moves to another city in the same province and requests that the contribution made under the original arrangement with EFG be transferred to a prepaid arrangement entered into with IJK Cemeteries ("IJK"). IJK is also required to hold the funds in trust. The funds are transferred in trust directly from one financial institution to another financial institution, and thus there are no HST consequences as a result of this transfer.

Three months later, Ms. H decides to cancel the arrangement with IJK. Pursuant to the cancellation terms of the arrangement, IJK returns the total amount held in trust to Ms. H (i.e., the \$3,390 contribution and accumulated interest), less a cancellation fee of \$200.

IJK is required to account for the HST on a tax-included basis with respect to the \$200 cancellation fee. IJK will include HST of \$23.01 ($\$200 \times 13/113$) in its net tax calculation for the reporting period during which the arrangement was cancelled.

6. Excess amounts in trust

In some cases the funds held in trust, including accumulated interest, may exceed the amount payable to the cemetery operator, including the GST/HST payable, at the time the cemetery products or services are provided.

The cemetery operator does not account for GST/HST in respect of excess funds received from a trust, provided that they are disbursed to the purchaser or the individual's estate.

Example

PQR Cemeteries ("PQR") enters into a written prepaid arrangement in 2008 with Mr. D. The products and services will be provided in a non-participating province.

Mr. D is required to make initial and monthly contributions totalling \$3,150. The calculation of the total amount of contributions includes an estimate of the consideration (\$3,000) and GST (\$150) that, together with the interest that accumulates in the trust, will be payable at the time the cemetery products and services are provided.

At the time of Mr. D's death, \$500 interest has accumulated in the trust. PQR charges \$3,300, plus 5% GST, for the cemetery products and services. Any excess funds remaining after the provision of the cemetery products and services are payable to Mr. D's estate.

PQR does not account for GST at the time Mr. D makes the contributions. PQR must include the GST collectible of \$165 ($\$3,300 \times 5\%$) in determining its net tax for the reporting period during which the consideration for the cemetery products and services is paid or becomes due, whichever is earlier.

There are no GST consequences with respect to the excess \$185 [$(\$3,150 + \$500) - (\$3,300 + \$165)$] disbursed from the trust to Mr. D's estate.

7. Deficit in trust amounts

In some cases, the funds held in trust, including accumulated interest, may not cover the amount payable to the cemetery operator, including the GST/HST payable, at the time the cemetery products or services are provided.

If the amount disbursed from the trust represents the total consideration and tax (i.e., the total amount is considered to include the tax), the GST/HST portion of that amount must be included in determining the cemetery operator's net tax for the reporting period in which the amount is paid to the cemetery operator or becomes due, whichever is earlier. The cemetery operator does not account for tax on the difference between the

amount held in trust and the fair market value of the cemetery products or services, provided that the operator does not recover the difference from the purchaser or the individual's estate.

Example

QRS Cemeteries ("QRS") enters into a written prepaid arrangement in 2008 with Mr. G. The cemetery products and services will be provided in a non-participating province.

Mr. G is required to make initial and monthly contributions totalling \$3,150. The calculation of the total amount of contributions includes an estimate of the consideration (\$3,000) and GST (\$150) that, together with the interest that accumulates in the trust, will be payable at the time the cemetery products and services are provided.

At the time of Mr. G's death, \$425 interest has accumulated in the trust. However, the price of the cemetery products and services has risen to \$3,500. The GST on that amount would be \$175 (5% × \$3,500). Consequently, there is a deficit in the trust of \$100. Provincial law prohibits QRS from recovering the deficit from Mr. G's estate.

The total funds in the trust (\$3,575) are disbursed to pay for the supply of the cemetery products and services and the tax on those supplies. QRS is required to include GST collectible of \$170.24 ($\$3,575 \times 5/105$), not \$175, in determining its net tax for the reporting period during which the consideration for the cemetery products and services is paid or becomes due, whichever is earlier.

8. Instalment payment charges

A cemetery operator may allow a purchaser to make periodic instalment payments as opposed to a single lump sum contribution at the time of entering into a prepaid arrangement. In exchange for doing so, the cemetery operator may charge the purchaser an instalment payment charge. This amount may be described under various names such as a finance charge or service charge.

Application of GST/HST to instalment payment charges

An instalment payment charge is consideration for a taxable supply. However, due to information previously provided by the CRA, some cemetery operators may not have been collecting and accounting for the GST/HST on instalment payment charges.

In this regard, the CRA recognizes that some cemetery operators may be unable to comply with the requirements for collecting and accounting for tax at the time of this clarification. Consequently, cemetery operators who have not been collecting and accounting for GST/HST on instalment payment charges will have until April 1, 2009 to comply with this clarification.

Amounts held in trust

Some or all of the instalment payment charges may be required either by provincial law or the terms of the arrangement to be held in trust by the cemetery operator for the purchaser, or may be held in trust as a result of the cemetery operator's normal business practices. In situations where the instalment payment charge is held in trust, the cemetery operator:

- does not account for the GST/HST on instalment payment charges withdrawn from trust before April 1, 2009; and
- must account for the GST/HST on instalment payment charges withdrawn from the trust on or after April 1, 2009.

These rules apply even where the cemetery operator holds the amount for a short period of time before it is placed in trust.

Any interest generated on instalment payment charges held in trust and later disbursed to the cemetery operator is part of the consideration payable for the cemetery products or services provided by the cemetery operator. The GST/HST on this part of the consideration becomes payable when it is withdrawn from the trust and is paid to the cemetery operator or when it becomes due, whichever is earlier. The cemetery operator is required to include GST/HST in respect of the amount in determining its net tax for the reporting period in which the amount is paid or becomes due, whichever is earlier.

Amounts not held in trust

In situations where the cemetery operator does not place the instalment payment charge in trust, the cemetery operator:

- does not collect and account for the GST/HST on instalment payment charges payable by the purchaser, under the prepaid arrangement, before April 1, 2009; and
- must collect and account for the GST/HST on instalment payment charges payable by the purchaser, under the prepaid arrangement, on or after April 1, 2009.

These rules apply regardless of when the cemetery operator entered into the prepaid arrangement with the purchaser.

9. Effective date

The rules outlined in this bulletin on supplies of cemetery products and services provided under prepaid arrangements are effective with the implementation of the GST on January 1, 1991 and the HST on April 1, 1997. However, some prepaid arrangements may be grandfathered as discussed in Appendix 3.

The CRA recognized that some cemetery operators had not been accounting for the GST/HST on supplies of cemetery products or services provided under prepaid arrangements in accordance with the rules outlined in this bulletin. In this regard, no additional GST/HST will be payable with respect to the consideration for cemetery products or services specified in the original prepaid arrangements that were entered into before May 1, 2006, provided that:

- the contributions that were required to be placed in a trust fund by either provincial law or the terms of the arrangement itself, or in accordance with the cemetery operator's normal business practices, as the case may be, were placed in trust;
- the cemetery operator that was the original party to the prepaid arrangement has, since its registration for the GST/HST, accounted for the GST/HST in respect of the contributions at the time the prepaid arrangements were entered into or, where the contributions were made through a series of payments, at the earlier of the time the payments were paid or due;
- the GST/HST has not been refunded, credited, or rebated to the purchaser; and
- the cemetery operator has not subsequently claimed an input tax credit or an adjustment for any GST/HST refunded or credited in its net tax.

Where the cemetery operator has complied with the above requirements and a prepaid arrangement of the type described above is amended, the following rules apply:

- GST/HST will be payable on the value of the consideration of any cemetery products or services that are added to the prepaid arrangement at the rate of GST/HST that applies on the date when the consideration for the new products or service is paid or becomes due, whichever is earlier;

- where the prepaid arrangement is amended to increase the value of a particular cemetery product or service, GST/HST is payable on the additional value of the consideration for the product or service at the rate of GST/HST that applies on the date when the additional consideration for the product or service is paid or becomes due, whichever is earlier;
- where a supply of cemetery products or services that was to have been provided under the prepaid arrangements is cancelled, the cemetery operator may refund or credit the contributor for the tax calculated and collected with respect to the consideration for the original cemetery products or services and may deduct a corresponding amount in determining its net tax, provided that the requirements of the Act are met (e.g., a credit or debit note is issued and the refund or credit is provided in, or within four years after, the end of the reporting period in which the consideration was reduced); and
- where the value of the consideration for a particular cemetery product or service that is part of the prepaid arrangement is reduced, the cemetery operator may refund or credit the contributor for the tax calculated and collected with respect to the amount by which the consideration for the original product or service is reduced and may deduct a corresponding amount in determining its net tax, provided that the requirements of the Act are met.

Where additional amounts of GST/HST are payable by the contributor, the cemetery operator is required to include the GST/HST in respect of the additional amount in determining its net tax for the reporting period in which the amount is paid or becomes due, whichever is earlier.

Note that the above rules only apply when an existing prepaid arrangement is amended. If a new prepaid arrangement were created instead, the GST/HST would apply to that new arrangement in accordance with the applicable rules.

Example

TUV Cemeteries ("TUV") entered into a written prepaid arrangement on June 24, 2002, with Mr. W for the provision of cemetery products and services upon his mother's death. The cemetery products and services are to be provided in a non-participating province.

Mr. W then gave two cheques to TUV, the first a contribution of \$2,500 to be held in trust and the second in the amount of \$175 for the GST ($\$2,500 \times 7\%$, the GST rate in effect at that time). TUV included the \$175 in determining its net tax for the reporting period during which the amount was paid. The contribution and the compounding interest are required to be held in trust by TUV for Mr. W until the amounts become payable for the cemetery products and services provided upon his mother's death or Mr. W cancels the arrangement.

TUV has been accounting for the GST collectible with respect to prepaid arrangements at the time the arrangements are entered into since it registered for the GST. TUV has not refunded or credited the amount collected as or on account of the GST to Mr. W and has not claimed an input tax credit or an adjustment in respect of this amount. Also, Mr. W has not obtained a rebate of the amount.

Upon Mr. W's mother's death in 2008, TUV provides the cemetery products and services as agreed under the terms of the arrangement. Interest of \$250 has accumulated in the trust.

No additional GST is required to be included in TUV's net tax with respect to the cemetery products and services provided for under the arrangement. This means that TUV does not account for GST with respect to the amount equal to the interest that has accumulated in the trust and that is payable to it as consideration for the cemetery products and services.

Adding cemetery products and/or services

At the request of the family, an additional cemetery service was provided by TUV that was not included in the prepaid arrangement. The charge for this service was \$500 plus GST.

TUV must include GST collectible of \$25 (since the GST rate of 5% applied in 2008) on this additional cemetery service in determining its net tax for the reporting period during which the consideration for this additional service is paid or becomes due, whichever is earlier.

Cancelling cemetery products and/or services

A service that was to have been provided by TUV under the written prepaid arrangement of June 24, 2002, was cancelled at the request of the family, thereby amending the arrangement. The cancelled service was valued at \$500 plus GST.

The cemetery operator may refund or credit the \$35 GST ($\$500 \times 7\%$) paid for the \$500 service that was cancelled provided that the requirements of the Act are met, that is, the amount of GST that is refunded or credited must be the amount of GST that was paid.

Where TUV has refunded or credited the amount to Mr. W and complied with the requirements of the Act, TUV may deduct \$35 in its next return.

10. Transitional rules

The CRA recognized that some cemetery operators who were accounting for the GST/HST on supplies of cemetery products or services provided under prepaid arrangements as the contributions were received, may have been unable to comply with the new requirements for collecting and accounting for tax by May 1, 2006. As a result, such cemetery operators did not have to comply until January 1, 2007. For prepaid arrangements entered into on or after May 1, 2006, these cemetery operators were permitted to account for the GST/HST as follows:

- The amount as or on account of GST/HST for the cemetery products or services to be provided which was separately paid by the purchaser or segregated by the cemetery operator from the funds held in trust, was required to be included in the cemetery operator's net tax for the reporting period in which it became collectible or was collected in accordance with the usual rules.
- Interest amounts earned by the trust which were disbursed to the cemetery operator were to be treated in the manner described in the section entitled "Interest generated by funds held in trust". That is, the amount represents either consideration or both consideration and tax.
- If at the time of the provision of cemetery products or services the consideration payable to the cemetery operator is greater than the amount on which GST/HST was previously calculated, collected and accounted for, the cemetery operator will be required to collect and account for the difference between the GST/HST collectible on the value of the consideration and the GST/HST that was previously collected and accounted for in the cemetery operator's net tax at the rate of GST/HST that applies on the date the additional consideration is paid or becomes due, whichever is earlier. As indicated previously, the value of the consideration paid or payable to the cemetery operator will include an amount equal to any interest that has accumulated in the trust.

Supplies made by charities, public institutions and other public service bodies

1. Charities

For purposes of the GST/HST, a charity means a registered charity as defined under subsection 248(1) of the *Income Tax Act*, but does not include a public institution.

Generally, supplies of real property and services made by charities are exempt from the GST/HST, while supplies of tangible personal property, unless the property is used property or is donated to the charity, are generally taxable at 5% or 13%.

The following supplies made by a charity are exempt:

- real property (e.g., interment rights) where the supply is made by way of lease, licence or similar arrangement; and
- services (e.g., cemetery services) other than those supplied in respect of tangible personal property (e.g., cemetery products) that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and that was neither donated to the charity nor used by another person before its acquisition by the charity.

The following supplies made by a charity are taxable at 5% or 13%:

- tangible personal property (e.g., cemetery products) (other than property supplied by way of lease, licence or similar arrangement in conjunction with an exempt supply by way of lease, licence or similar arrangement by the charity of real property) that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and that was neither donated to the charity nor used by another person before its acquisition by the charity; and
- services supplied in respect of the tangible personal property described in the preceding bullet. For example, if a supply of a marker includes the service of erecting it or engraving it, regardless of whether the service forms part of, or is separate from, the supply of the marker, both are subject to the GST/HST.

2. Public institutions

The definition of “public institution” includes a registered charity that is a local authority determined to be a municipality. Most supplies of services made by a public institution are exempt from the GST/HST.

The following supplies made by a public institution are exempt:

- services (e.g., cemetery services) other than those supplied in respect of tangible personal property (e.g., cemetery products) that were acquired, manufactured or produced by the institution for the purpose of making a supply of the property and that were neither donated to the institution nor used by another person before their acquisition by the institution; and
- real property (e.g., interment rights) where the supply is made by way of lease and the period throughout which continuous possession or use of the property is provided under the lease is one month or more. Note that this exemption does not apply to supplies made by a federal or provincial government or a municipality.

The following supplies made by a public institution are taxable at 5% or 13%:

- tangible property (e.g., cemetery products) that was acquired, manufactured or produced by the institution for the purpose of making a supply of the property and that was neither donated to the institution nor used by another person before its acquisition by the institution;
- services supplied in respect of such tangible property; and
- real property (e.g., interment rights) where the supply is made by way of licence in the course of a business carried on by the body. Under the Act, the term “business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment.

3. Public service bodies

A public service body includes, amongst other organizations, a non-profit organization and a municipality, but, for purposes of the following discussion, does not include a charity. Many supplies made by public service bodies are taxable.

The following supplies made by a public service body are taxable at 5% or 13%:

- real property (e.g., interment rights) where the supply is made by way of licence in the course of a business carried on by the body;
- tangible property (e.g., cemetery products); and
- services (e.g., cemetery services) whether supplied in respect of tangible property (e.g., cemetery products) or not.

The following supplies made by a public service body are exempt:

- real property (e.g., interment rights) where the supply is made by way of lease and the period throughout which continuous possession or use of the property is provided under the lease is one month or more. Note that this exemption does not apply to supplies made by a federal or provincial government or a municipality.

4. Election to make a supply of real property taxable

Charities, public institutions and other public service bodies may make an election in respect of certain supplies of real property. The effect of the election is to make such leases and other supplies of real property taxable for purposes of the GST/HST. While the election is in place, the property is excluded from the general exempting provision for supplies made by charities and the exempting provision for supplies of real property made by certain public service bodies.

However, if a supply is exempt under any other provision of the Act, this election will not exclude the supply from the other exemption.

Refer to form GST 26, *Election or Revocation of an Election by a Public Service Body to Have an Exempt Supply of Real Property Treated as a Taxable Supply*, for more information on making the election.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287

General enquiries on the GST/HST: 1-800-959-5525 (Business Enquiries)

If you are located in Quebec: 1-800-567-4692 (Revenu Québec)

All technical publications related to the GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthstech.

Appendix 1 – Explanations of terms

Although provincial laws may use different terms, the following terms are used for ease of reference in this bulletin:

“Cemetery” includes a mausoleum and columbarium, unless the context suggests otherwise.

“Cemetery operator” means a person who owns or operates a cemetery, mausoleum or columbarium.

“Cemetery products” includes burial vaults, urns, gravestones, grave liners or markers for use in a cemetery, mausoleum or columbarium, but does not include interment rights.

“Cemetery services” means services that are, or are to be, provided in respect of places of interment including

- (a) opening and closing a grave, crypt or niche,
- (b) sealing a tomb, crypt, compartment or vault in a mausoleum, or a niche or compartment in a columbarium,
- (c) interring or disinterring human remains,
- (d) providing temporary storage in a vault,
- (e) providing a tent or canopy for an interment service,
- (f) providing carrying, lowering, or elevating devices,
- (g) placement and removal of artificial grass dressing and coco-matting at the grave site,
- (h) levelling, tamping, re-grading and sodding a grave site, or
- (i) preparing flower beds and planting flowers and shrubs.

“Human remains” means a deceased human body and includes a cremated human body.

“Interment of human remains” means the burial of human remains in a cemetery, the entombment of human remains in a mausoleum or the inurnment of human remains in a columbarium.

“Interment rights” means any of the following used for the interment of human remains

- (a) a lot or plot in a cemetery,
- (b) a tomb, crypt, compartment or vault in a mausoleum,
- (c) a niche or compartment in a columbarium, or
- (d) any other similar place used for the interment of human remains.

“Marker” means any marker, memorial, monument, tombstone, plaque, headstone, cornerstone, tablet, plate or any other structure or ornament affixed to or intended to be affixed to a lot, plot, tomb, niche or other similar place used for the interment of human remains.

Appendix 2 – Accounting for the GST/HST

1. Mixed supplies including prepaid cemetery products or services

As indicated on page 3, interment rights may be supplied separately from, or together with, a prepaid arrangement. Similarly, some cemetery operators may supply cemetery products, such as markers, separately from a prepaid arrangement, but at the same time the arrangement is entered into. Depending on the situation, the cemetery operator may make separate payment arrangements for the amounts payable or one payment arrangement for the total amount payable.

Given that such payment arrangements are for multiple supplies and that the GST/HST payable for interment rights and cemetery products acquired before death is due at an earlier time, whereas the GST/HST payable for other elements is due at a later time (i.e., prepaid cemetery products or services), the CRA will not require cemetery operators to apportion the payments, and the applicable GST/HST, to specific items unless the cemetery operators are required to do so either by provincial law or the terms of an arrangement, or do so as a result of the operators' normal business practice.

Cemetery operators who are not required to apportion the payments to specific items may first apply the payments to the amount payable for interment rights or cemetery products acquired before death, as the case may be, if that is their normal business practice. In such cases, cemetery operators will account for GST/HST on each payment or part thereof received until such time as the entire tax obligation owing for the interment rights or the cemetery products is paid in full. Any remaining payments or parts thereof will be regarded as contributions made under the prepaid arrangement.

Conversely, cemetery operators may first apply the payments to the amounts payable for the prepaid cemetery products or services, if that is their normal business practice, until paid in full. Any remaining payments or parts thereof will be regarded as consideration for the interment rights or cemetery products acquired before death. In such cases, cemetery operators will account for GST/HST on each payment or part thereof received for the interment rights or cemetery products until such time as the entire tax obligation owing is paid in full.

In any event, cemetery operators will be required to maintain proper documentation to demonstrate that the GST/HST has been accounted for. However, not all of the necessary information need be contained in one document. Portions can be contained in several documents.

Example

Background

ABC Cemeteries ("ABC") agrees in 2008 to provide Mr. F with a cemetery lot and various cemetery products and services in a non-participating province.

Some of the items will be provided to Mr. F before his death (i.e., not pursuant to a prepaid arrangement), while other items will be supplied upon his death (i.e., pursuant to a prepaid arrangement). The items to be provided to Mr. F before his death are the cemetery lot (i.e., interment rights) and an upright marker with base (i.e., cemetery products). Mr. F is not entitled to use the interment rights or to receive the marker until they have been paid for in full. Furthermore, in accordance with provincial laws, ABC must place a portion of the contributions for the interment rights and the marker into a care and maintenance trust.

The items to be provided upon Mr. F's death include an opening and closing service and a standard depth interment (i.e., prepaid cemetery services). The amount payable for these items includes an estimate of the GST that will be payable when the services are supplied at a future date. In accordance with provincial laws, ABC must place the contributions for these items into a prepaid trust. ABC itemizes the information as illustrated in the following table.

Interment Rights	\$2,985.00	
Care and maintenance (25% of purchase price)	<u>746.25</u>	\$3,731.25 *
Upright marker with base	1,660.00	
Care and maintenance (flat fee based on marker size)	<u>200.00</u>	1,860.00 *
Opening and closing service (prepaid)	1,000.00	
Standard depth interment (prepaid)	355.00	
Estimated GST payable on prepaid cemetery services	<u>67.75</u>	<u>1,422.75</u> ^
Subtotal		\$7,014.00
GST (($\$3,731.25 + \$1,860$) \times 5%)		<u>279.56</u>
Total price		\$7,293.56
Less deposit (20% of total price)		<u>1,458.71</u>
Total owing		<u>\$5,834.85</u> ^a

* Interment rights and marker are subject to GST when payment for these items becomes due or when payment is made, whichever is earlier.

^ Prepaid cemetery services are subject to GST when provided at time of death and amounts are withdrawn from trust.

^a The \$5,834.85 is to be paid in 15 quarterly instalment payments of \$388.99 each.

Even if ABC issues Mr. F a statement that shows a GST amount of \$347.31 ($\$279.56 + \67.75), ABC still places \$67.75 in the trust since that amount relates to the estimated GST included in the contributions to the prepaid cemetery services.

Explanation

The supply of the interment rights and the supply of the marker (including the base) are considered to be two separate supplies. However, because the GST is payable in both cases on the earlier of when the instalment payments are paid or due, there is no difference in terms of when to account for GST in both instances. The supply of the prepaid cemetery services is considered to be a separate supply from the supplies of the interment rights and marker. In other words, ABC is making separate supplies of the interment rights, the marker and the prepaid cemetery services, even though all three items are provided for in one agreement.

ABC is not required to allocate the deposit or instalment payments to specific items, either by provincial law or under the terms of the arrangement itself. Scenario 1 describes how ABC would account for GST if its normal business practice is to allocate the deposit and instalment payments first to the interment rights, then to the marker, and finally to the prepaid cemetery services. Scenario 2 describes how ABC would account for GST if its normal business practice is to allocate the deposit and instalment payments first to the prepaid cemetery services, then to the marker, and finally to the interment rights.

Scenario 1

This scenario assumes that ABC's normal business practice is to allocate the deposit and instalment payments first to the interment rights until that item is paid in full. The remaining instalment payments are then allocated to the marker until that item is paid in full, and finally to the prepaid cemetery services (including the estimated GST payable).

The deposit and instalment payments are tax-included amounts, as applicable. As a result, the GST included in the deposit is payable when ABC applies the amount to the consideration payable for the interment rights or marker. The GST included in the instalment payments for the supply of the interment rights or marker is payable when the instalment payments are paid or due, whichever is earlier.

The deposit of \$1,458.71 consists of GST of \$69.46 ($\$1,458.71 \times 5/105$) and consideration of \$1,389.25 ($\$1,458.71 - \69.46). Each instalment payment of \$388.99 includes GST of \$18.52 ($\$388.99 \times 5/105$) and consideration of \$370.47 ($\$388.99 - \18.52), where applicable. ABC applies the payments as illustrated in the following table.

Table 1 A
Allocation of Payments Between Interment Rights and Marker

	Interment Rights		Marker	
	Consideration Owing	GST Owing	Consideration Owing	GST Owing
Opening balance	\$3,731.25	\$186.56	\$1,860.00	\$93.00
Less: Deposit	(1,389.25)	(69.46)		
Instalments 1-6	<u>(2,222.82)</u>	<u>(111.12)</u>		
	\$119.18	\$5.98	\$1,860.00	\$93.00
Instalment 7	(119.18)	(5.98)	(251.29)	(12.54)
Instalments 8-11			<u>(1,481.88)</u>	<u>(74.08)</u>
			\$126.83	\$6.38
Instalment 12			<u>(126.83)</u>	<u>(6.38)</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

At the end of the 6th instalment payment, the consideration owing for the interment rights is \$119.18 and the GST owing for the interment rights is \$5.98. Therefore, \$125.16 (\$119.18 + \$5.98) from the 7th instalment payment is allocated to the balance owing for the interment rights and the item is then paid in full. The remaining \$263.83 (\$388.99 -- \$125.16) of the 7th instalment is allocated to the consideration and GST owing for the marker. This amount includes consideration of \$251.29 (\$370.47 -- \$119.18) and GST of \$12.54 (\$18.52 -- \$5.98).

At the end of the 11th instalment payment, the consideration owing for the marker is \$126.83 and the GST owing for the marker is \$6.38. Therefore, \$133.21 (\$126.83 + \$6.38) from the 12th instalment payment is allocated to the balance owing for the marker and the item is then paid in full. The remaining \$255.78 (\$388.99 -- \$133.21) of the 12th instalment payment, plus the full amount of instalment payments 13 to 15 are allocated to the prepaid cemetery services, which are then paid in full. See Table 1 B for more information.

Table 1 B
Allocation of Payments to Interment Rights, Marker, and Prepaid Cemetery Services

	Amount Paid	Interment Rights then Marker		Prepaid Cemetery Services
		Allocated to Consideration	Allocated to GST	
Total payable		\$5,591.25	\$279.56	\$1,422.75
Less: Deposit	\$1,458.71	(1,389.25)	(69.46)	
Instalments 1-11	4,278.89	(4,075.17)	(203.72)	
Instalment 12	388.99	(126.83)	(6.38)	(255.78)
Instalment 13-15	1,166.97			<u>(1,166.97)</u>
Balance		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

Scenario 2

This scenario assumes that ABC's normal business practice is to allocate the deposit and instalment payments first to the prepaid cemetery services (including the estimated GST payable) until those items are paid in full. The remaining instalment payments are then allocated to the marker until that item is paid in full, and finally to the interment rights. ABC applies the payments as shown in the following table.

Table 2 A
Allocation of Payments to Prepaid Cemetery Services, Marker and Interment Rights

	Amount Paid	Prepaid Cemetery Services	Marker and Interment Rights	
			Allocated to Consideration	Allocated to GST
Total payable		\$1,422.75	\$5,591.25	\$279.56
Less: Deposit	\$1,458.71	(1,422.75)	(34.25)	(1.71)
Instalments 1-15	5,834.85		(5,557.00)	(277.85)
Balance		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

Note: to ensure that the amounts in the table above balance, certain liberties have been taken with the rounding of amounts of cents.

In this scenario, the deposit of \$1,458.71 more than covers the full amount of the prepaid cemetery services. As a result, the remaining \$35.96 (\$1,458.71 -- \$1,422.75) of the deposit is allocated to the consideration and GST owing for the marker. This remaining amount includes GST of \$1.71 (\$35.96 × 5/105) and consideration of \$34.25 (\$35.96 -- \$1.71).

At the end of the 4th instalment payment, the consideration owing for the marker is \$343.87 and the GST owing for the marker is \$17.20. Therefore, \$361.07 (\$343.87 + \$17.20) from the 5th instalment payment is allocated to the balance owing for the marker and the item is then paid in full. The remaining \$27.92 (\$388.99 -- \$361.07) from the 5th instalment payment is allocated to the consideration and GST owing for the interment rights. This amount includes consideration of \$26.60 (\$370.47 -- \$343.87) and GST of \$1.32 (\$18.52 -- \$17.20). The full amount of instalment payments 6 to 15 is allocated to the interment rights, which are then paid for in full. See Table 2 B for more information.

Table 2 B
Allocation of Payments Between Marker and Interment Rights

	Marker		Interment Rights	
	Consideration Owing	GST Owing	Consideration Owing	GST Owing
Opening balance	\$1,860.00	\$93.00	\$3,731.25	\$186.56
Less: Deposit	(34.25)	(1.72)		
Instalments 1-4	<u>(1,481.88)</u>	<u>(74.08)</u>		
	\$343.87	\$17.20	\$3,731.25	\$186.56
Instalment 5	(343.87)	(17.20)	(26.60)	(1.32)
Instalments 6-15			<u>(3,704.65)</u>	<u>(185.24)</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

Note: To ensure that the amounts in the table above balance, certain liberties have been taken with the rounding of amounts of cents.

2. Withdrawals from prepaid trusts

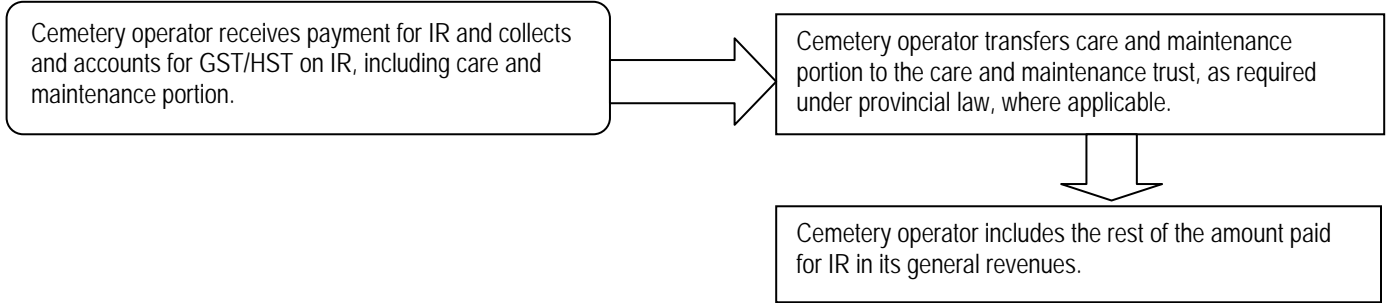
In the example below, the flow chart summarizes how cemetery operators are to account for GST/HST when withdrawing funds from prepaid trusts. It outlines the most common steps taken by cemetery operators in supplying interment rights as well as future cemetery products and services under prepaid arrangements.

The transactions described below are based on a fact pattern where a husband and wife (Mr. and Mrs. B) pre-arrange and prepay their interments under one arrangement with the same cemetery operator. These transactions highlight the fact that cemetery operators withdraw funds from trusts at different times in order to provide various cemetery products and services in relation to each individual's death.

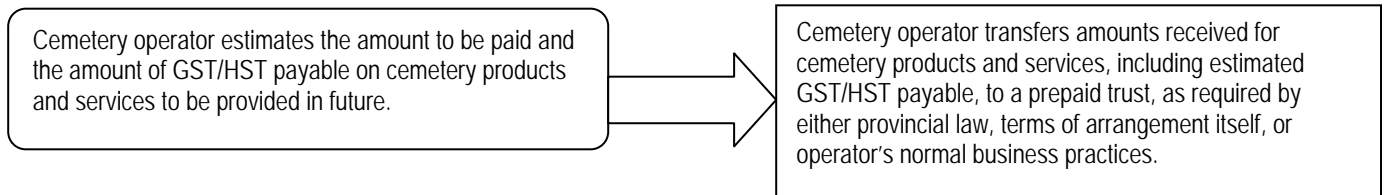
In this example, the cemetery operator applies the contributions it receives first to the interment rights and then to the prepaid arrangement. In another situation, the operator might apply the contributions received to the prepaid arrangement first, as illustrated in Scenario 2 above.

Example

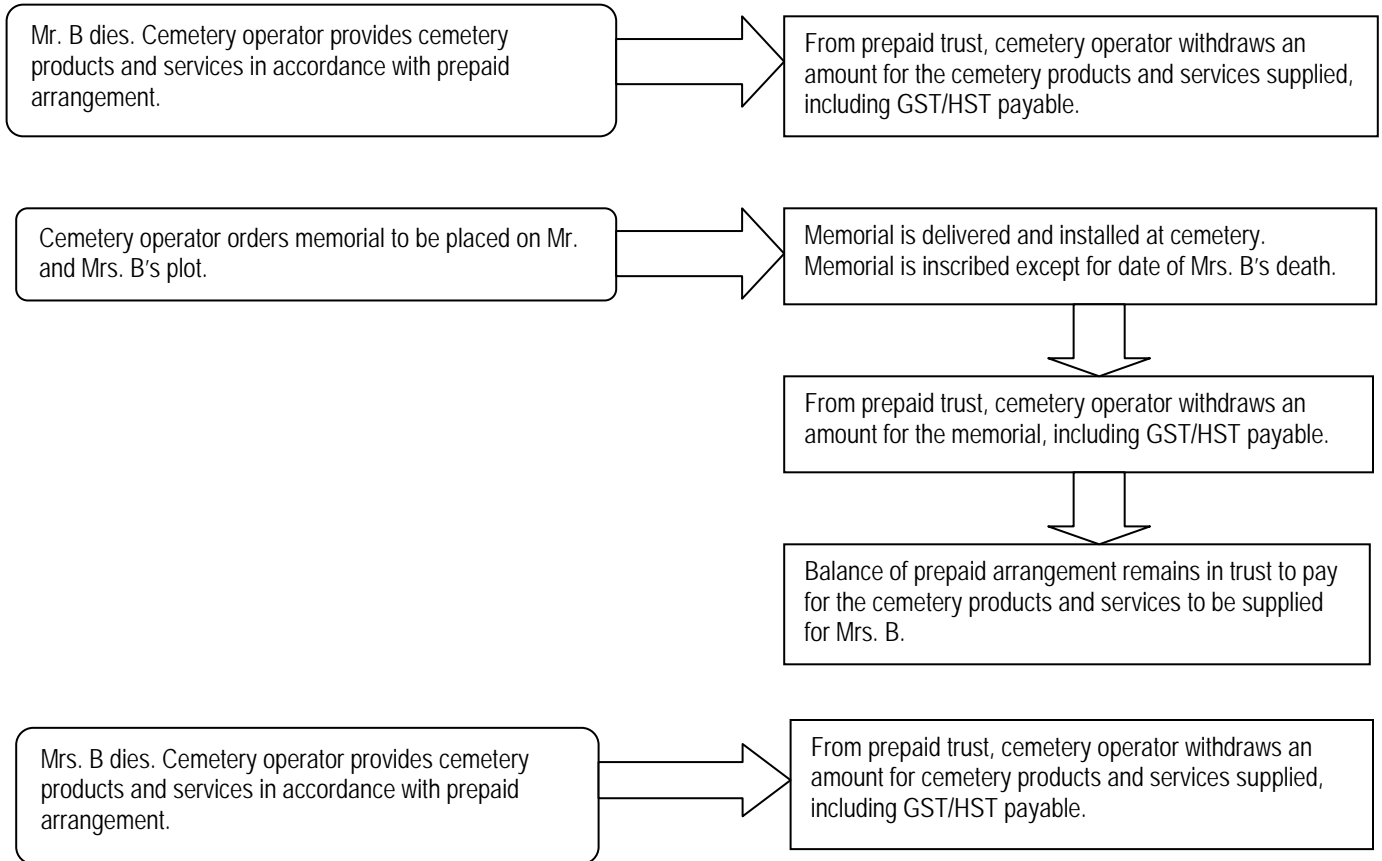
1. Contributions received for interment rights (IR)



2. Contributions received for cemetery products and services under prepaid arrangement



3. Withdrawals from prepaid trust fund for cemetery products and services



Cemetery operator orders date of Mrs. B's death to be inscribed on memorial.

Inscription is completed on memorial previously installed at cemetery.

From prepaid trust, cemetery operator withdraws an amount for the inscription, including GST/HST payable.

4. Excess amounts in prepaid trust

Cemetery operator withdraws and refunds any surplus in prepaid trust to Mrs. B 's estate.

Prepaid arrangement for cemetery products and services is fulfilled and closed.

Appendix 3 – Prepaid arrangements entered into before implementation of the GST/HST

The Act provides relief from the GST for certain supplies of cemetery products or services made under a written prepaid arrangement entered into before September 1990. As well, the Act provides relief from the provincial component of the HST for certain supplies of cemetery products or services made in a participating province, for consumption or use in that province, where the supplies are made under a written prepaid arrangement entered into before April 1, 1997.

The Act defines the term “funeral services”, for the purpose of the relieving provisions, to include the provision of a coffin, headstone, or any other property relating to the funeral, burial or cremation of an individual that is provided under an arrangement for the provision of funeral services. Therefore, the definition of funeral services in these sections includes cemetery services.

Where an arrangement to supply funeral services in respect of an individual is entered into in writing before September 1990, no GST is payable in respect of any supply under the arrangement. Similarly, where an arrangement to supply funeral services in a participating province in respect of an individual is entered into in writing before April 1, 1997, the provincial component of the HST (i.e., 8%) is not payable in respect of the supply of funeral services under the arrangement for consumption or use in that province.

These provisions apply only where, at the time the arrangement is entered into, it is reasonable to expect that all or part of the funds required to pay for the funeral services will be paid before the individual's death.

Where a new cemetery operator is substituted for an original cemetery operator, and there is a written substitution clause in the existing prepaid arrangement to permit this substitution (or the arrangement is silent with respect to the substitution of a cemetery operator), the tax relief will continue to apply.

However, where a clause in the existing prepaid arrangement does not permit the substitution of a cemetery operator, and a substitution occurs, this substitution will create a new arrangement. The tax relief will not apply to the new prepaid arrangement.

There are certain circumstances in which the substitution of one cemetery operator for another may occur for reasons beyond the control of the purchaser of a prepaid arrangement. For example, if a cemetery changes ownership, a cemetery operator's prepaid arrangements may be assigned to another cemetery operator. In situations where the substitution of one cemetery operator for another is made for reasons beyond the control of the purchaser, and provided that the new cemetery operator honours the original arrangement, the tax relief will continue to apply.

If another individual is substituted for the original individual who is the object of a prepaid arrangement, the substitution will create a new arrangement. As a result, the tax relief under the original arrangement provided will not apply.

Example

A number of individuals entered into written prepaid arrangements, before September 1990, with OPQ Cemeteries (“OPQ”) for the supply of cemetery products and services in a non-participating province. The funds covering the cost of the cemetery products and services were paid at the time the arrangements were entered into.

OPQ ceased operations and sold the business to RST Cemeteries (“RST”). As part of the agreement for the purchase of the business, RST will honour the prepaid arrangements previously entered into by OPQ.

Provided that RST honours the prepaid arrangements, the grandfathered status of the arrangements will not be affected by the change of cemetery operators and the GST relief afforded will continue to apply.
