



Late-filed Section 156 Elections and Revocations

Legislative references: Subparagraph 156(4)(b)(ii) of the *Excise Tax Act* (the Act)

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Please note that the following policy statement, although correct at the time of issue, may not have been updated to reflect any subsequent legislative changes.

Issue

When a section 156 election or revocation is filed late, that is after the required due date, the Canada Revenue Agency (CRA) will not process the election or revocation. However, upon written request, consideration may be given to accepting a late-filed election or revocation under subparagraph 156(4)(b)(ii) of the Act.

This policy statement provides guidelines on when the CRA will accept a late-filed section 156 election or revocation of the election. For more information on this election, refer to GST/HST Memorandum 14.5, *Election for Nil Consideration* and Form RC4616, *Election or Revocation of an Election for Closely Related Corporations and/or Canadian Partnerships to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration for GST/HST Purposes*.

Decision

A request to accept a late-filed section 156 election or revocation of the election will be considered on a case-by-case basis within the context of the following guidelines. These guidelines will apply to both specified members of a qualifying group intending to make the election or revocation. In the case of multiple elections or revocations on one Form RC4616, these guidelines will apply to all of the specified members listed on the Form RC4616 and on any attached page.

1. A written request to have the election or revocation of an election filed late must be submitted to the Assistant Director of Audit of the tax services office of the first specified member making or revoking the election as identified on the Form RC4616. A request to have a Form RC4616 accepted late cannot be made electronically.
2. The written request must provide a clear explanation as to why the specified members have filed the election or revocation late and must include the completed and signed paper copy of Form RC4616. The request must also be signed by the first specified member and include an undertaking that the first specified member will notify the other specified member whether or not the late-filed election or revocation is accepted by the CRA. In the case of multiple elections or revocations, the first specified member must notify all specified members listed on the Form RC4616 and on any attached page.

La version française de la présente publication est intitulée *Production tardive d'un choix ou de la révocation d'un choix prévu à l'article 156*.



3. In the case of making an election, the written request must indicate that both specified members meet all of the conditions for making the election as of the requested effective date, for example, that they are specified members of the same qualifying group,; that is, registrants that are closely related. In the case of multiple elections, all of the specified members identified on Form RC4616 and on any attached page must meet all of the conditions as of the requested effective date.

4. As of the requested effective date for the election, both parties to the election must have consistently treated the applicable supplies made between them as having been made for no consideration and have included a statement to that effect in the written request. That is, the supplier must not have charged the GST/HST and the recipient must not have paid the GST/HST in respect of the supplies. Both parties must have completed their GST/HST returns accordingly; that is, the supplier did not include any GST/HST collectible or collected in its GST/HST returns and the recipient did not claim any input tax credits in respect of the supplies. In addition, the recipient must not have filed any rebate application in respect of the supplies. All GST/HST returns for both parties to the election must have been filed as required (no outstanding returns), all amounts owing must have been remitted, and both parties must be fully compliant with the GST/HST legislation. Records must exist for the CRA to verify that both parties acted as if the election was in effect.

5. In the case of a revocation of the election, as of the requested effective date for the revocation, both parties must have consistently treated the applicable supplies as if the election was not in effect and have included a statement to that effect in the written request. That is, the supplier must have charged the GST/HST and the recipient must have paid the GST/HST in respect of the supplies. The supplier must have completed its GST/HST returns accordingly; that is, the supplier must have included any GST/HST collectible or collected in its GST/HST returns. All GST/HST returns for both parties to the revocation must have been filed as required (no outstanding returns), all amounts owing must have been remitted, and both parties must be fully compliant with the GST/HST legislation. Records must exist for the CRA to verify that both parties acted as if the revocation was in effect.

6. The requested effective date of a late-filed election or revocation must relate to a reporting period that is not statute barred.

7. The parties to the late-filed election or revocation must not have been negligent or careless in complying with the provisions of section 156 of the Act.

8. Both parties making the late-filed election or revocation must not have filed an objection or appeal relating to an assessment for a reporting period that is within the retroactive period that is from the requested effective date up to the day the request is made.

Discussion

Section 156 of the Act permits a corporation resident in Canada or a Canadian partnership that is a specified member of a qualifying group to jointly elect (or jointly revoke an election) with another specified member of the same qualifying group to deem taxable supplies between them (with certain exceptions) to have been made for no consideration.

Parties to the election or revocation must specify on the Form RC4616 the day on which the election or revocation of the election becomes effective. Form RC4616 must be filed on or before the earliest day on which the specified members are required to file a GST/HST return for the reporting period that includes the effective date of the election or revocation; that is, the CRA must receive Form RC4616 by the earliest of the due dates of the GST/HST returns that are required to be filed by the specified members who intend to make the election or revocation.

The discretion to accept a late-filed election or revocation does not allow registrants to intentionally avoid their legal obligations under the Act but allows the CRA to consider a request to accept a late filed election or revocation on a case-by-case basis.

The first specified member may be contacted during the review of their request to late-file the election or revocation for additional information or clarification.

Acceptance of a late-filed election does not constitute confirmation that the election is valid. Where the CRA accepts a late-filed election, and it is subsequently determined upon audit that the parties to the election are not specified members of a qualifying group or the other conditions for making the election are not met, the effect of the election does not apply and the CRA will assess the parties for any GST/HST that was not collected in respect of taxable supplies made between the parties, together with interest and any applicable penalties.

Example

Facts

1. Corporation X and Corporation Y are specified members of the same qualifying group and they wish to make an election under subsection 156(2) of the Act to deem taxable supplies made between them, with certain exceptions, as having been made for no consideration effective March 1, 2016.
2. Corporation X has a quarterly reporting period based on calendar quarters and Corporation Y is an annual filer based on a calendar year. The election form must be filed by the earliest date on which either of the parties is required to file a GST/HST return for the reporting period that includes the day on which the election becomes effective. In this case, Form RC4616 must be filed (that is, received by the CRA) on or before April 30, 2016 – the due date of the return for Corporation X.
3. As of March 1, 2016, Corporation X and Corporation Y treat their supplies as having been made for no consideration; that is, they do not charge or pay GST/HST in respect of the applicable supplies.
4. The conditions in section 156 of the Act for making the election are met.
5. Corporation X and Corporation Y have not filed any notices of objections or appeals relating to an assessment in respect of a reporting period that includes the effective date of March 1, 2016, or any subsequent reporting period.
6. Corporation X submitted a written request on June 1, 2016, to file the section 156 election late with an effective date of March 1, 2016. Included in the request is an explanation as to why the election form was filed late, a statement that the parties have acted as if the election was in effect (GST/HST was not charged or paid in respect of the supplies) as well as a statement by Corporation X that it will advise Corporation Y whether or not the CRA has accepted the late-filed election. The completed and signed Form RC4616 is attached to the request.
7. As of June 1, 2016, all GST/HST returns that are due have been filed by both Corporation X and Corporation Y, and there are no outstanding debts on their accounts.

Issue

Will the request to file the section 156 election late be accepted?

Comments

The request would generally be accepted where the explanation as to why the election was filed late demonstrates that the parties were not negligent or careless in complying with the election provisions.