

Determining Whether a Public Service Body is Resident in a Province for Purposes of the Public Service Bodies' Rebate

This info sheet explains the rules for determining whether a public service body (PSB), as defined herein, is resident in a particular province for the purposes of claiming a PSB rebate for the provincial part of the HST. It also includes a worksheet that helps PSBs make that determination.

For information on the PSB rebate, refer to Guide RC4034, *GST/HST Public Service Bodies' Rebate*.

Meaning of significant terms used in this document

“Charity” means a registered charity or a registered Canadian amateur athletic association,¹ but does not include a public institution.

“Designated municipality” refers to a person that supplies certain municipal services and is designated by the Minister of National Revenue to be a municipality for the purpose of claiming the municipal rebate for those services.

“External supplier” means a charity, a public institution, or a qualifying non-profit organization (other than a hospital authority or a facility operator), that makes ancillary supplies, facility supplies or home medical supplies.

“Facility operator” means a charity, a public institution, or a qualifying non-profit organization (other than a hospital authority), that operates a qualifying facility.

“Federally incorporated” means incorporated by or under the laws of the Parliament of Canada.

¹ As these terms are defined in subsection 248(1) of the *Income Tax Act*.

“Fixed place of activities” includes a determined or ascertained space in which there is some presence or routine over which the PSB has some degree of control and in which some undertaking or operations of the PSB occur. In most cases, this includes an office, branch, factory, workshop, warehouse, plant, mine, oil well, farm, timberland or natural resource used in the day-to-day activities of the PSB. It does not mean that the place of activities must exist for a long time or be located in a durable building; for instance, a temporary field office on a construction site could be a fixed place of activities. For more information, refer to Interpretation Bulletin IT-177R2 (Consolidated), *Permanent Establishment of a Corporation in a Province*.

“Hospital authority” means an organization that operates a public hospital and that has been designated as a hospital authority for GST/HST purposes by the Minister of National Revenue.

“Municipality” means an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated. It also includes a local authority that the Minister of National Revenue has determined to be a municipality (otherwise referred to as a determined municipality) and for the purpose of this info sheet includes a designated municipality.

“Non-profit organization” (NPO) is an organization which is organized and operated solely for non-profit purposes and a proprietor, member, or shareholder of the organization cannot receive or benefit from any of the income unless they are a club, society, or association that promotes amateur athletics in Canada. An NPO cannot be an

La version française du présent document est intitulée *Déterminer si un organisme de services publics réside dans une province aux fins du remboursement pour les organismes de services publics*.



individual, estate, trust, charity, municipality, public institution or government, and for the purpose of this info sheet, does not include a prescribed government organization.

“Participating province” means the provinces of Ontario, Nova Scotia, New Brunswick, British Columbia, or Newfoundland and Labrador.

“Provincially incorporated” means incorporated by or under the laws of a provincial legislature.

“Public college” means an organization that operates a post-secondary college or post-secondary technical institute that:

- receives funds from a government or a municipality to help the organization to continuously provide educational services to the general public; and
- the primary purpose of which is providing programs of instruction in one or more fields of vocational, technical, or general education.

“Public institution” means a registered charity² that is a school authority, a public college, a university, a hospital authority, or a local authority determined by the Minister of National Revenue to be a municipality.

“Public service body” for the purpose of this info sheet means:

- a non-profit organization;
- a charity;
- a municipality;
- a school authority, a university or a public college that is established and operated otherwise than for profit;
- a hospital authority;
- an external supplier; and
- a facility operator.

“Qualifying non-profit organization” means a non-profit organization whose percentage of government funding is at least 40% of its total revenue, and for the purposes of this info sheet

² As this term is defined in subsection 248(1) of the *Income Tax Act*.

does not include a prescribed government organization.

“School authority” means an organization that operates an elementary or secondary school in which it provides instruction that meets the standards of educational instruction of the province in which it is operated.

“University” means a recognized degree-granting institution, an organization that operates a college affiliated with, or a research body of, such an institution.

Resident in a province

A PSB that is resident in a participating province may be eligible to claim a PSB rebate for the provincial part of HST on eligible expenses using the applicable provincial rebate percentage for that province.

A person (including a PSB) is deemed to be resident in a province³ if the person is resident in Canada and

- (a) if the PSB is a corporation, the corporation is incorporated or continued under the laws of that province and not continued elsewhere;
- (b) if the PSB is a partnership, an unincorporated society, a club, an association or an organization, or a branch thereof, the member, or a majority of the members, having management and control is or are resident in that province;
- (c) if the PSB is a labour union, it is carrying on activities as such in that province and has a local union or branch in that province; or
- (d) in any case, the PSB has a permanent establishment in that province.

Permanent establishment

A PSB⁴ has a permanent establishment in a province if a place in that province would be a permanent establishment⁵ for income tax purposes under the following circumstances:

³ Pursuant to subsection 132.1(1) of the *Excise Tax Act*.

⁴ Pursuant to subsection 132.1(3) of the *Excise Tax Act* and the *New Harmonized Value-added Tax System Regulations, No. 2*.

⁵ As defined for the purposes of Part IV of the *Income Tax Regulations*.

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- (a) the PSB were a corporation; and
 - (b) the PSB's activities were a business for income tax purposes.

Normally, a permanent establishment is a fixed place of activities. However, in addition to having a fixed place of activities, there are other circumstances where a PSB may have or be deemed to have a "permanent establishment" in a province.

Purpose of the worksheet

The attached worksheet helps a PSB determine if it is resident in a province. This determination must be made for each period it wishes to claim a PSB rebate for the provincial part of HST.

This determination has no bearing on a PSB's ability to claim a PSB rebate of the GST or federal part of the HST.

This info sheet 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 appropriate regulation, or contact any CRA GST/HST rulings office for additional information. A ruling should be requested for certainty in respect of any particular GST/HST matter. Pamphlet RC4405, *GST/HST Rulings – Experts in GST/HST Legislation* explains how to obtain a ruling and lists the GST/HST rulings offices. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

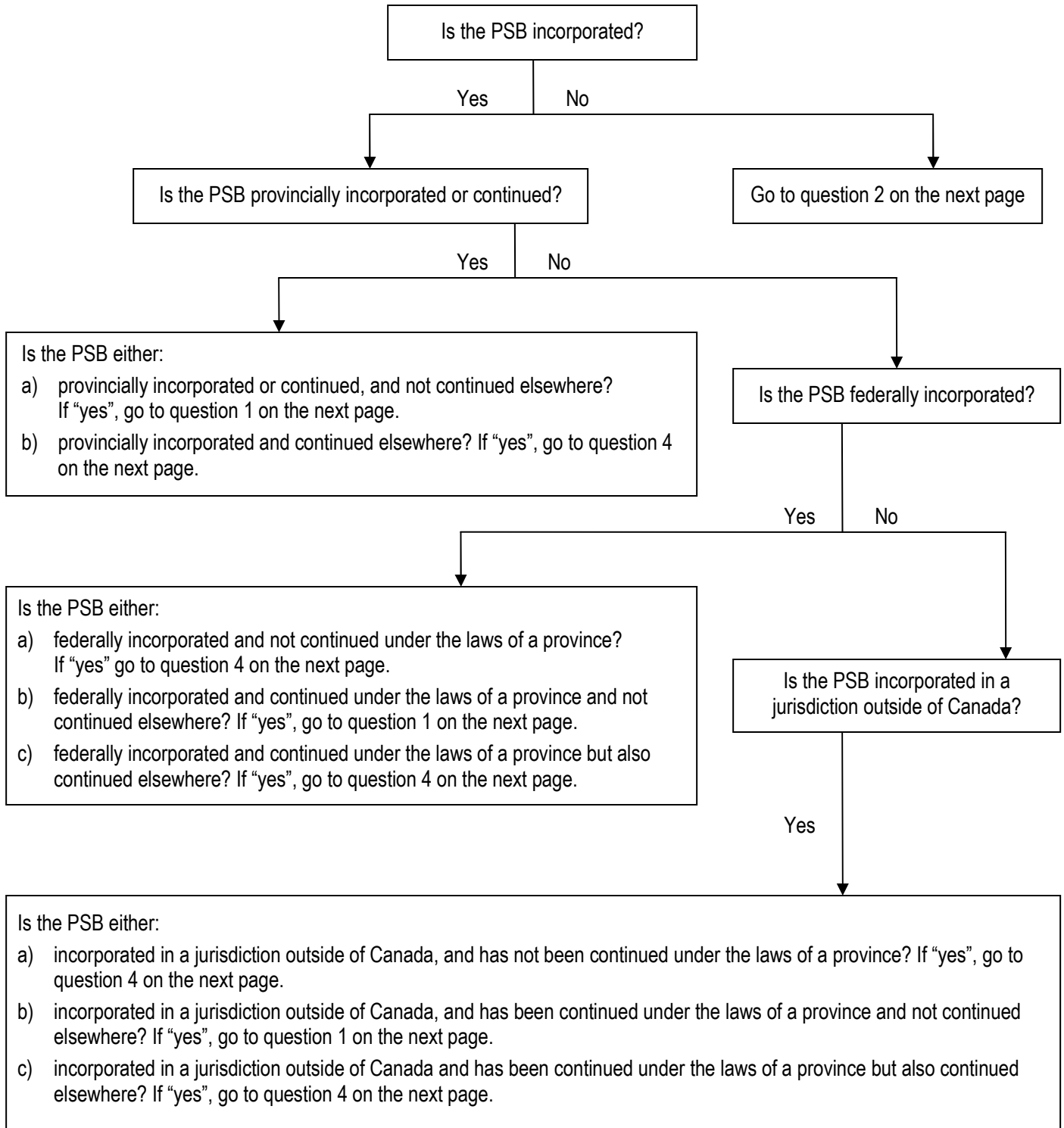
Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in the participating provinces at the following rates: 13% in Ontario, New Brunswick and Newfoundland and Labrador, 15% in Nova Scotia, and 12% in British Columbia. The GST applies in the rest of Canada at the rate of 5%. 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-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.

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 at 1-800-567-4692. You may also visit the Revenu Québec Web site to obtain general information.

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

Determining if a PSB is resident in a province

Answer the following questions and the questions on the next page, **as directed**. If you do not know whether your PSB has been continued under the laws of a province, contact the relevant provincial government corporate information office e.g. British Columbia Corporate Registry; Ontario Companies and Personal Property Security Branch; Nova Scotia Registry of Joint Stock Companies.



For the purposes of the PSB rebate, a PSB is considered to be a resident in every province entered in this column.



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Answer the questions as directed and write your answers in the right column. Do not skip any question unless instructed to do so.

- 1. In which province is the PSB currently incorporated or continued?
After recording your answer, go to question 4.
- 2. If the PSB is a partnership, an unincorporated society, a club, association, or an organization, or a branch thereof, in which province is the member, or majority of the members having management and control of the PSB, resident?
- 3. If the PSB is a labour union, in which province(s) does it carry on its activities and have a local union or branch office?
- 4. Whether or not the PSB is incorporated, it is resident in every province in which it has a permanent establishment. (See note 1 on page 6)
 - a) In which province does the PSB have a fixed place of activities?
 - b) If the PSB does not have any fixed place of activities, in which province is the principal place where the PSB’s activities are conducted?

Normally, a permanent establishment is a fixed place of activities. However, in addition to having a fixed place of activities, there are other circumstances where a PSB may have or be deemed to have a “permanent establishment” in a province. **Answer questions 5 to 11 to determine if the PSB has a permanent establishment in any other provinces.**

- 5. If the PSB carries on activities through an employee who is established in a particular place and has general authority to contract for the employer PSB, in which province is that particular place located?
- 6. If the PSB carries on activities through an employee who is established in a particular place and has a stock of merchandise owned by the employer PSB from which the employee regularly fills orders which the employee receives, in which province is that particular place located?
- 7. If the PSB carries on activities through an agent who is established in a particular place and has general authority to contract for the principal PSB, in which province is that particular place located? (See Note 2 on page 6)

For the purposes of the PSB rebate, a PSB is considered to be a resident in every province entered in this column.



8. If the PSB carries on activities through an agent who is established in a particular place and has a stock of merchandise owned by the principal PSB from which the agent regularly fills orders which the agent receives, in which province is that particular place located?
(See Note 2 below)

9. If the PSB uses substantial machinery or equipment in a particular place at any time during the period, in which province is that particular place? (“Substantial” may relate to the equipment’s size, quantity or dollar value. Generally, where a PSB uses (rented or owned) substantial machinery or equipment in a province either for 30 continuous days or for 90 cumulative days in a 12-month period, the PSB would meet this requirement.)

10. If any of questions 4 to 9 have applied to the PSB, in which other provinces (if any) does the PSB own land?

11. If none of questions 4 to 10 have applied to the PSB, in which province is the PSB’s head office or registered office as set out in its incorporating documents or bylaws?

Note 1: The fact that an incorporated PSB has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in trade or business in a place shall not of itself be held to mean that the PSB is operating a permanent establishment in that place.

Note 2: The fact that a PSB has activities through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise does not always mean that the PSB has a permanent establishment in that province.