GST/HST Technical Information Bulletin

April 2002 B-089

RETURNABLE CONTAINERS

This bulletin does not replace the law found in the *Excise Tax 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 Canada Customs and Revenue Agency (CCRA) tax services office for additional information. If you are located in the Province of Quebec, please contact the Ministère du Revenu du Québec (MRQ) for additional information.

This bulletin reflects amendments proposed to the Excise Tax Act contained in the Notice of Ways and Means Motion tabled on February 8, 2002. At the time of publication, Parliament has not enacted these proposed amendments. Any commentary should not be taken as a statement by the CCRA that such amendments will in fact be enacted into law in their current form.

Reference in this publication is made to supplies taxable at 7% or 15% (the rate of the HST). The 15% HST applies to supplies made in Nova Scotia, New Brunswick, and Newfoundland and Labrador (the "participating" provinces). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, Place of Supply Rules under the HST, available from any CCRA tax services office.

Table of Contents

Introduction

This bulletin explains the proposed amendments to the Goods and Services Tax/Harmonized Sales Tax (GST/HST) provisions of the *Excise Tax Act* (the Act) applying to supplies of returnable containers.

Currently, special GST/HST rules apply to deposits and environmental levies paid on returnable beverage containers for taxable consumer products such as soft drink cans and beer bottles. These rules provide for the reimbursement of the GST/HST paid on the refundable deposit where the container is returned to a retailer or an authorized depot.

To simplify compliance, the amendments provide that deposits that are refundable to the consumer will be excluded from the GST/HST base. All non-refundable levies or handling charges would continue to be subject to tax on the same basis as the beverage, as is the case under the current rules.

Under the amendments to section 226 of the Act, a retailer making a supply of a soft drink in a returnable container would charge tax on any non-refundable environmental levy, but not on the refundable deposit. Generally, the sections of this bulletin that explain how the amendments will apply to the normal operations of retailers are:

- Returnable containers;
- Taxable supply of a beverage in a returnable container;
- Supply of used and empty containers; and
- Special rules in the participating provinces (for retailers in Nova Scotia, New Brunswick, and Newfoundland and Labrador), particularly the subheadings called "Application of the special rules" and "Non-application of the special rules".

The section called "Specified beverage retailers" will apply to certain retailers, chiefly operators of restaurants and bars that do both eat-in and take-out business. Both appendices to this publication also provide useful information for retailers.

In general, the amendments respecting returnable containers are proposed to come into force on May 1, 2002, and apply to supplies for which consideration becomes due on or after that day, or is paid on or after that day without having become due. Transitional rules are provided for the period between May 1, 2002, and July 15, 2002, to take into account that there will be containers in circulation on May 1, 2002, that would have been sold under the existing rules.

NOTE: This publication covers only proposed amendments to the current provisions respecting returnable containers. Any questions on the current provisions should be directed to the nearest CCRA tax services office.

Returnable Containers

Under subsection 226(1) of the Act, a "returnable container" in a province means a beverage container of a class of containers that:

(a) are ordinarily acquired by consumers;

(b) when acquired by consumers, are ordinarily filled and sealed; and

(c) are ordinarily supplied in the province used and empty by consumers for consideration.

This definition applies to any type of beverage container, whether refillable or recyclable, including aluminium or other metal cans, glass or plastic bottles, paper-based polycoat containers and aseptic boxes. The definition of returnable container includes containers for beverages that are supplied on a zero-rated basis such as milk or juice. A returnable container does not have to be returned for a refund (defined in Appendix A) to the person who supplied the beverage.

The phrase “class of container” describes the distinguishing characteristics that group certain containers together; for example, the type of material with which the container is made, the size of the container, and the contents of the container (e.g., a 341 ml glass beer bottle and a 2 litre plastic pop bottle are in different classes).

The definition of returnable container specifies that it applies “in a province”. Consequently, a certain class of container may be a returnable container in one province where a refund is imposed and not in another province where a refund is not imposed.

Taxable Supply of a Beverage in a Returnable Container

Supply of a beverage in a returnable container
(para 226(2)(a))

Where a supplier makes a taxable supply (other than a zero-rated supply) in a province of a beverage in a filled and sealed returnable container in circumstances in which the supplier typically does not unseal the container, and the supplier charges the recipient a returnable container charge (defined in Appendix A), the consideration for this supply is generally deemed to be equal to the amount determined by the formula

A – B

where

A = the consideration for the supply as otherwise determined for purposes of the GST/HST, and

B = the returnable container charge.

Section 137 of the Act deems the container to form part of the beverage. Therefore, the consideration for the supply as otherwise determined for purposes of the GST/HST is the total of the consideration for the beverage and the returnable container charge. Paragraph 226(2)(a) deems the consideration for the supply to be this total consideration less the returnable container charge.

For example, if $1.00 is charged for the supply of a beverage in a returnable container and $0.15 is charged as the returnable container charge, under paragraph 226(2)(a), the consideration for the supply of this beverage in a returnable container is deemed to be $1.00 (i.e., $1.15 – $0.15 = $1.00).

Deemed supply of a service where the returnable container charge exceeds the refund
(para 226(2)(b))

Where the returnable container charge charged by the supplier of a beverage in a filled and sealed returnable container exceeds the refund for the container, the supplier is deemed to have made to the recipient, at the time at which the consideration for the supply of the beverage becomes due, or would, but for section 156 of the Act, have become due, a taxable supply in the province of a

service in respect of the container. The consideration for this deemed supply is considered to be separate from the consideration for the beverage, and due at that time.

The calculation used to determine the value of the consideration for the deemed supply of a service in respect of the container depends on whether a provincial Act that imposes the returnable container charge has been prescribed for this purpose.

Consideration for a deemed supply of a service in the non-participating provinces (subpara 226(2)(b)(i))

In provinces where a provincial Act has not been prescribed, i.e., the non-participating provinces (all those except Nova Scotia, New Brunswick, and Newfoundland and Labrador), the consideration for the deemed supply of a service in respect of the container is equal to the amount by which the returnable container charge exceeds the refund for the container.

There is tax only on the part of the returnable container charge that exceeds the refund. Consequently, where the refund for a returnable container of a particular class in a province is equal to the returnable container charge, no part of the returnable container charge will be taxable. A fully refundable deposit for a returnable container will not be subject to the GST/HST.

Example – Supply of a single beverage in a returnable container in a non-participating province (e.g., retailer to consumer)

Taxable beverage sold in a returnable container	$1.00
Returnable container charge	$0.15
Refund	$0.10
Deemed consideration for the beverage [$1.15 – $0.15]:	$1.00
Deemed consideration for deemed supply of a service [$0.15 – $0.10]:	$0.05
Total taxable consideration	$1.05
Total GST payable [$1.05 × 7% = $0.0735]	$0.07 (rounded)

Consideration for a deemed supply of a service in the participating provinces (subpara 226(2)(b)(ii))

A separate calculation rule applies in provinces where a provincial Act has been prescribed. The intention is to prescribe the following Acts of the Provinces of Nova Scotia, New Brunswick, and

Newfoundland and Labrador:

- The *Environment Act*, SNS 1994-95 c. 1, under which the *Solid Waste-Resource Management Regulations* are made,
- The *Beverage Containers Act* SNB 1991 c. B-2.2, under which the *General Regulation – Beverage Containers Act* is made, and
- the *Waste Management Act* SN 1998 c. W-3.1, under which the *Waste Management Regulations* are made.

These provincial Acts specify that the amount charged for a returnable container, which exceeds the refund for the container, includes any applicable sales tax. To determine the value of the consideration for the deemed supply of a service in respect of the container, the tax component of this tax-included charge must be removed as well as the refund.

In participating provinces the consideration for a deemed supply of a service in respect of the container is determined using the formula

A × [100/(100 + B)]

where

A = the amount by which the tax-included charge exceeds the refund for the container, and

B = the 15% HST.

Example – Supply of a single beverage in a returnable container in a participating province (e.g., retailer to consumer)

Taxable beverage sold in a returnable container	$1.00
Tax-included charge under prescribed provincial Act	$0.10
Refund	$0.05
Deemed consideration for beverage [$1.10 – $0.10]:	$1.00
Deemed consideration for deemed supply of a service [tax-included charge – refund] × 100/115 [$0.10 - $0.05] × 100/115 = $0.0435:	$0.04 (rounded)
Total consideration	$1.04
Total HST payable [$1.04 × 15% = $0.156]:	$0.16 (rounded)

Currently, only the participating provinces impose a tax-included charge for a returnable container that is not fully refunded. Regulations may be prescribed in the future to determine the

value of the consideration for the deemed service in the case of a non-participating province, if under an Act of that province, a tax-included charge that is not fully refunded is imposed in respect of returnable containers.

Deemed supply of a service acquired by a recipient
(para 226(2)(c))

Where the supplier of a beverage in a filled and sealed returnable container is deemed to have made a taxable supply of a service in respect of the container, the recipient is deemed to have acquired the service for the same purpose as that for which the recipient acquired the beverage.

This determines the extent to which the recipient may be eligible to claim an input tax credit (ITC) for the tax calculated on the non-refundable portion of the returnable container charge.

Supply of Used and Empty Containers

Supply of a used and empty container
(ss 226(4))

If a person supplies a used and empty returnable container (or the material resulting from its compaction), the value of the consideration for the supply is deemed to be nil. If the consideration for the supply, as determined without reference to this subsection, exceeds the refund for the container, the supplier is deemed to have made to the recipient, at the time the consideration for the supply becomes due or would, but for section 156, have become due, a taxable supply of a service in respect of the container for separate consideration equal to that excess amount.

A supplier (e.g., a retailer who accepts used and empty returnable containers) who supplies a used and empty returnable container (or the material resulting from its compaction) to another person (e.g., a recycling corporation) can deduct the amount of the refund for the container in determining the consideration for the supply for GST/HST purposes.

If two separate supplies are actually made of the used container (or the material resulting from its compaction) and of a service of handling the container, subsection 226(4) applies only to the supply of the container or the material.

Subsection 226(4) does not apply to supplies for which consideration is paid or becomes due on or before July 15, 2002.

Exceptions
(ss 226(5))

The two exceptions to subsection 226(4) of the Act are:

Subsection 226(4) does not apply for purposes of section 5 of Part V.1 or section 10 of Part VI of Schedule V to the Act (i.e., it does not apply for purposes of determining if a supply falls into the exemption provision for supplies of property or services ordinarily supplied free of charge by a charity or a public sector body).

Subsection 226(4) does not apply to a supply made in a province of a used and empty returnable container of a particular class (or the material resulting from its compaction) where the recipient's usual business practice is to pay consideration for supplies in the province of used and empty returnable containers of that class (or of the material resulting from their compaction) that is determined based on the value of the material from which the containers are made, or on any basis other than the amount of the refund or the returnable container charge for the containers.

Recycling Services

Supply of a recycling service to a distributor
(ss 226(6))

Subsection 226(6) applies in certain circumstances where a recycler (defined in Appendix A) of returnable containers makes a taxable supply in a province of a service in respect of the recycling (defined in Appendix A) of returnable containers of a particular class to a distributor (defined in Appendix A), but does not supply the containers to the distributor. If the distributor is not a recycler who supplies such services to other distributors of returnable containers of that class, and the consideration for the supply is based in whole or in part on the amount in that province of the returnable container charge, or on an amount that a consumer could reasonably expect to receive for a used and empty returnable container of that class, the value of the consideration for the supply is deemed to be equal to the amount determined by the formula

A – B

where

A = the consideration for the supply as otherwise determined for GST/HST purposes, and

B = the total of all amounts each of which is the returnable container charge in that province for a returnable container in respect of which that consideration is paid or payable.

The following two examples illustrate the calculation of the total tax payable where a distributor contracts with a recycler for a service in respect of the recycling of the returnable containers that the distributor supplies filled and sealed in a province.

Example 1 - Recycling services supplied to a distributor – per container

Returnable container charge for a filled and sealed container	$.010
Actual consideration for service in respect of container	$0.10
Deemed consideration for the service [actual consideration – returnable container charge] [$0.10 – $0.10]:	$0.00
Total GST payable [$0.00 × 7%]	$0.00

Example 2 – Recycling services supplied to a distributor – per 1000 containers

Returnable container charge for filled and sealed container	$0.10
Actual consideration for service (equal to returnable container charge plus $0.02 handling charge)	$0.12
Deemed consideration for service [actual consideration – returnable container charge] × 1000 [$0.12 – $0.10] × 1000:	$20.00
Total GST payable [$20.00 × 7%]	$1.40

Subsection 226(6) does not apply for purposes of section 5 of Part V.1 or section 10 of Part VI of Schedule V to the Act (i.e., it does not apply for purposes of determining if a supply falls into the exemption provision for supplies of property or services ordinarily supplied free of charge by a charity or a public sector body).

If the distributor is also receiving from the recycler a supply of the empty containers, subsection 226(4) would apply.

Subsection 226(6) does not apply to supplies for which consideration is paid or becomes due on or before July 15, 2002.

Supply of a recycling service between recyclers
(ss 226(7))

Where a recycler of returnable containers makes a taxable supply in a province of a service in respect of the recycling of returnable containers of a particular class to another recycler of returnable containers without supplying the containers to the other recycler, and the consideration for the supply is based in whole or in part on the amount of the refund or the

returnable container charge for a returnable container of that class, the value of the consideration for the supply is deemed to be equal to the amount determined by the formula

A – B

where

A = the consideration for the supply as otherwise determined for GST/HST purposes, and

B = the total of all amounts each of which is the refund in that province for a returnable container in respect of which that consideration is paid or payable.

Example – Supply of recycling service between recyclers – per 1000 containers

Refund for container	$0.05
Actual consideration for service (equal to the refund plus $0.02 handling charge):	$0.07
Deemed consideration for service [actual consideration – refund] × 1000 [$0.07 - $0.05] ×1000:	$20.00
Total GST payable [$20.00 × 7%]	$1.40

If the recycler who is the recipient of the recycling service is also acquiring the used and empty returnable containers, subsection 226(4) would apply.

Subsection 226(7) does not apply to supplies for which consideration is paid or becomes due on or before July 15, 2002.

Specified Beverage Retailers

Addition to net tax
(ss 226(18))

A registrant who makes a supply of a beverage in a returnable container of a particular class in respect of which the registrant is a specified beverage retailer (defined in Appendix A) where paragraph 226(2)(a) applies in determining the consideration for that supply, and at any time

supplies that container used and empty for consideration without having acquired it used and empty for consideration, is required to add an amount in determining its net tax for the reporting period that includes that time calculated by the formula

A × B

where

A = if the province is a participating province, the 15% HST, and in any other case, the 7% GST, and

B = the refund for a returnable container of that class in the province.

Under paragraph 226(2)(a), a specified beverage retailer can deduct the refundable container charge from the consideration for the sale of the beverage. This gives the appropriate result where the purchaser of the beverage retains the container to obtain the refund. This is not the case, however, where the specified beverage retailer retains the container for the refund. In this situation, a specified beverage retailer is required under subsection 226(18) to add to its net tax an amount of tax calculated on the refund it receives for the container.

Exception for a specified beverage retailer
(ss 226(3))

Subsection 226(2) does not apply to a supply of a beverage in a returnable container by a specified beverage retailer if the specified beverage retailer elects not to deduct the amount of the returnable container charge when determining the consideration for the supply for GST/HST purposes. A specified beverage retailer may choose this election to avoid having to later add an amount to its net tax under subsection 226(18) in respect of any supplies of the used containers that are left with the specified beverage retailer by the consumers of the beverages.

Special Rules in the Participating Provinces (for Retailers in Nova Scotia, New Brunswick, and Newfoundland and Labrador)

Application of the special rules
(ss 226(8))

Special rules apply in a province where a provincial Act is prescribed for purposes of paragraph 226(2)(b) to determine the value of the consideration for a deemed supply of a service in respect of the returnable container. It is intended that the provincial Acts of Nova Scotia, New Brunswick, and Newfoundland and Labrador will be prescribed for this purpose.

Subject to subsection 226(9) of the Act (see below), where a registrant acquires, in a province in which an Act is prescribed for purposes of paragraph 226(2)(b), a beverage in a returnable container for purposes of making in that province a taxable supply of the beverage in the container in circumstances in which the registrant will charge a returnable container charge and be required to collect tax on the supply, the following rules apply:

- if a supply of a service in respect of the container is deemed under paragraph 226(2)(b) to have been made to the registrant, the tax in respect of the supply of the service shall not be included in determining an ITC of the registrant; and

- if the registrant makes a supply in that province of the beverage in circumstances in which the registrant is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the container, neither the consideration for the supply of that service nor any tax in respect of that supply shall be included in determining the net tax of the registrant.

A supply of a service in respect of the container is deemed under paragraph 226(2)(b) to have been made to a registrant when the returnable container charge exceeds the refund. Where a provincial Act is prescribed, the returnable container charge is a tax-included amount, and the consideration for the deemed supply is the amount by which the non-tax portion of this tax-included returnable container charge exceeds the refund.

A registrant subject to the special rules is not eligible to claim an ITC in respect of the tax in the non-refundable portion of the tax-included returnable container charge it paid to acquire the beverage. This is balanced by the fact that the registrant is concurrently relieved of having to include, in determining its net tax, any amount of tax in respect of the non-refundable portion of the tax-included returnable container charge the registrant collects when the registrant supplies the beverage in the returnable container.

For example, assume a retailer in Nova Scotia is subject to the special rules. The retailer charges a tax-included returnable container charge of $0.10 and the non-refundable amount is $0.05. The non-tax portion of the $0.05 will be the consideration for the deemed supply of a service in respect of the container under paragraph 226(2)(b). The retailer will not have to include the HST component of the $0.05 charged to the consumer in its HST remittances, but will include the HST on the beverage. The retailer will not be entitled to include the HST component of the $0.05 paid to the retailer’s supplier in determining its ITC, but will be eligible to claim an ITC in respect of the HST paid on the beverage.

For registrants using a streamlined accounting method, it is the amount determined under paragraph 226(2)(b) as the consideration for the deemed service, as opposed to the tax component of the non-refundable portion of the tax-included returnable container charge, that is excluded in determining their net tax.

Finally, the special rules do not apply to a taxable supply of a beverage in a returnable container by a registrant normally subject to these rules if the registrant is not required to collect tax on the supply (e.g., in the case of a supply to an Indian). (For more information on how the GST/HST applies to supplies to Indians, refer to Technical Information Bulletin B-039R, *Application of GST to Indians*.) This allows the registrant to claim an ITC for the tax in respect of the supply of a service deemed to have been made to the registrant when the registrant acquired the beverage in the returnable container.

Non-application of the special rules
(ss 226(9))

There are two circumstances in which the special rules in subsection 226(8) do not apply to a deemed supply of a service in respect of a returnable container of a particular class containing a particular beverage made to or by a registrant:

- where the registrant's usual business practice is to charge, when making taxable supplies in the province of the particular beverage in a returnable container of that class, a returnable container charge that is not equal to the returnable container charge that the registrant pays for returnable containers of that class containing the particular beverage when supplies of the beverage are made to the registrant in that province; and

- where the registrant is a specified beverage retailer in respect of the container who has elected under subsection 226(3) not to deduct the amount of the returnable container charge in determining the consideration for the supply of the beverage in the container.

The application of the special rules is determined in respect of supplies of a particular beverage in a returnable container of a particular class. Therefore, a registrant may be subject to the special rules for some supplies of beverages and not for others where the registrant's usual business practice varies with the beverages supplied.

If a registrant normally charges a returnable container charge different from the returnable container charge paid by the registrant, the amount of tax collected by the registrant for the deemed service in respect of a returnable container will not equal the tax the registrant was required to pay for a deemed service in respect of the container. In this case, the registrant is not subject to the special rules.

Paragraph 226(2)(b) does not apply to supplies made by a specified beverage retailer who has elected not to deduct the amount of the returnable container charge from the consideration for the beverage. However, paragraph 226(2)(b) does apply to supplies made to the specified beverage retailer. The specified beverage retailer is required to charge tax on the entire consideration for a supply of the beverage and the container, and to include the full amount of this tax in determining its net tax. In this case, the specified beverage retailer is not subject to the special rules, and may claim an ITC for the tax paid on the deemed supply of a service in respect of the returnable container.

Change in practice – beginning to apply the special rules
(ss 226(10))

Subsection 226(10) applies at the time of the first supply of a particular beverage in a returnable container of a particular class made by a registrant who has changed its usual business practice with respect to supplies of that beverage in returnable containers of that class from a practice not subject to the special rules. Since the special rules did not apply to the registrant prior to the change in practice, the registrant was entitled to claim an ITC in respect of a supply of a service deemed under paragraph 226(2)(b) to have been made to the registrant when the registrant acquired the beverages in the returnable containers, or would have been so entitled if tax would, but for section 156 or 167 of the Act, have been payable in respect of that supply. Since the special rules will apply to the registrant after the change in practice, the registrant will not be required to include tax in respect of a deemed supply of a service in respect of a returnable container made by the registrant in determining its net tax. The registrant is deemed to have made a taxable supply of a service in respect of each filled and sealed returnable container of that class containing the particular beverage that was, immediately before that time, held by the registrant, and to have collected, at that time, tax in respect of each supply equal to the tax paid by the registrant in respect of a service deemed under paragraph 226(2)(b) to have been made to the registrant when the registrant acquired the beverages in the returnable containers. The deeming provision applies to beverages held by the registrant for the purpose of making a taxable supply of the beverage in the province in circumstances in which the registrant would be deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable container.

For example, a registrant starts to charge, when selling a beverage in a province in which an Act is prescribed for purposes of paragraph 226(2)(b), a returnable container charge that is equal to the returnable container charge it pays when acquiring the beverage. The registrant would have previously claimed ITCs for the tax in the non-refundable portion of the tax-included returnable container charge paid on the acquisition of any beverage held in its inventory at the time of the change in practice. However, under the special rules that will apply to the sale of that inventory subsequent to the change in practice, the registrant will not include the non-refundable portion of the returnable container charge charged to customers nor any tax included in that amount in determining its net tax. In these circumstances, the registrant is required to account for tax on each item of that inventory equal to the ITC that was previously claimed, or that the registrant would, but for section 156 or 167 of the Act, have been eligible to claim in respect of each item of that inventory.

Change in practice – ceasing to apply the special rules
(ss 226(11))

Subsection 226(11) applies at the time of the first supply of a particular beverage in a returnable container of a particular class made by a registrant who has changed its usual business practice with respect to supplies of that beverage in returnable containers of that class to a practice not subject to the special rules. Since the special rules applied to the registrant prior to the change in practice, the registrant was not entitled to claim an ITC in respect of a deemed supply of a service deemed under paragraph 226(2)(b) to have been made to the registrant when the registrant acquired the beverages in the returnable containers, or would not have been so entitled if tax would, but for section 156 or 167 of the Act, have been payable in respect of that supply.

Since the special rules will not apply to the registrant after the change in practice, the registrant will be required to include tax in respect of a deemed supply of a service in respect of the returnable container in determining its net tax. The registrant is deemed to have received for use exclusively in a commercial activity a taxable supply of a service in respect of each filled and sealed returnable container of that class containing the particular beverage that was, immediately before that time, held by the registrant, and to have paid, at that time, tax in respect of each supply equal to the tax paid by the registrant in respect of a service deemed under paragraph 226(2)(b) to have been made to the registrant when the registrant acquired the beverages in the returnable containers. The deeming provision applies to beverages held by the registrant for the purpose of making a taxable supply of the beverage in the province in circumstances in which the registrant would be deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable container.

For example, a registrant starts to charge, when selling a beverage in a province in which an Act is prescribed for purposes of paragraph 226(2)(b), a returnable container charge that is not equal to the returnable container charge that the registrant pays when acquiring the beverage. The registrant would not have claimed ITCs for the tax in the non-refundable portion of the tax-included returnable container charge paid on the acquisition of any beverage held in its inventory at the time of the change in practice. However, since the special rules will not apply to the sale of that inventory subsequent to the change in practice, the registrant will have to include the non-refundable portion of the returnable container charge charged to customers, or any tax included in that amount, in determining its net tax. In these circumstances, the registrant is eligible to claim ITCs in respect of each item of that inventory equal to the ITCs that were previously denied or that would have been denied if the tax had been payable but for section 156 or 167 of the Act.

Ceasing to be a registrant while the special rules apply
(ss 226(12))

Subsection 226(12) applies at the time a person who makes supplies of a particular beverage in filled and sealed returnable containers of a particular class in a province in which an Act is prescribed for the purposes of paragraph 226(2)(b), and who is subject to the special rules in subsection 226(8), ceases to be a registrant. Immediately before that time, the person is deemed to have received a supply of a service in respect of each filled and sealed returnable container of that class containing the particular beverage held by the person, and to have paid tax in respect of each supply equal to the tax that was payable or would, but for section 156 or 167 of the Act, have been payable by the person in respect of the supply of a service deemed under paragraph 226(2)(b) to have been made to the person when the person acquired the beverage.

Under subsection 171(3) of the Act, where a person ceases at any time to be a registrant, the person is required to account for tax on all items of inventory then held for sale in the course of a commercial activity. This presumes that the person would have been eligible to claim ITCs for these items. However, in the case of a person’s inventory of beverages in returnable containers, the person would not have been eligible to claim ITCs for the tax in the non-refundable portion of the tax-included returnable container charge if the person had been subject to the special rules under subsection 226(8) immediately before ceasing to be a registrant.

In this situation, the person is deemed to have received, immediately before ceasing to be a registrant, a supply of a service in respect of each item of that inventory and is deemed to have paid tax on each item. This tax is equal to the tax that was, or would, but for section 156 or 167 of the Act, have been included in the non-refundable portion of the returnable container charge. Consequently, the registrant is eligible to claim ITCs for that tax, assuming all other conditions for claiming the ITCs are met.

Elections under Sections 156 And 167 of the Act

Application of section 167 of the Act to a deemed supply of a service
(ss 226(13))

If a registrant makes a taxable supply of a beverage in a filled and sealed returnable container under an agreement for the supply of a business or part of a business in circumstances in which subsection 167(1.1) of the Act applies to the supply and the registrant is deemed under subsection 226(2) to have made a supply of a service in respect of the container, the supply of the service is deemed to have been made under the agreement and not to be a service referred to in subparagraph 167(1.1)(a)(i).

Subsection 167(1.1) of the Act sets out the rules that apply when, under an agreement to supply a business or part of a business, the supplier and recipient jointly elect under subsection 167(1) to treat certain supplies made under the agreement as non-taxable. Generally under subparagraph 167(1.1)(a)(i) the election would not apply to a taxable supply of a service that is to be rendered by the supplier.

Subsection 226(13) ensures that subparagraph 167(1.1)(a)(i) will not apply to a deemed supply of a service in respect of a returnable container under subsection 226(2). Therefore, where subsection 167(1.1) applies, the inventory of filled and sealed returnable containers will be treated essentially in the same manner as other inventory under the agreement for the supply of a business or part of a business.

Recipient is subject to the special rules where section 156 or 167 applies
(ss 226(14))

Subsection 226(14) applies when a supplier who is not subject to the special rules in subsection 226(8) makes a supply in a province of a beverage in a filled and sealed returnable container to a registrant who is subject to the special rules in circumstances in which a supply of a service is deemed under paragraph 226(2)(b) to have been made by the supplier to the registrant, and because of section 156 or 167 of the Act, no tax is payable in respect of the supplies. The registrant is deemed to have made at that time a taxable supply in the province of a service in respect of the container for consideration equal to the amount that would, without reference to section 156, be the value of the consideration for the supply of the service that is deemed under paragraph 226(2)(b) to have been made to the registrant, and to have collected at that time tax in respect of the supply calculated on that consideration.

Under section 156 of the Act, certain closely related persons may jointly elect to have most taxable supplies between them deemed to have been made for no consideration. Where section 156 or 167 applies to a supply of a beverage in a filled and sealed returnable container, the supply is not subject to tax. The supplier, who is not subject to the special rules in subsection 226(8), would have been eligible to claim an ITC in respect of the tax component of the non-refundable portion of the returnable container charge paid when acquiring the beverages but the recipient will not have to account for tax in respect of the non-refundable portion of the returnable container charge when re-supplying the beverage because the recipient is subject to the special rules under subsection 226(8). Subsection 226(14) requires that the recipient include tax calculated on the non-refundable portion of the returnable container charge in determining its net tax for the reporting period in which the beverages are acquired.

Supplier is subject to the special rules where section 156 or 167 applies
(ss 226(15))

Subsection 226(15) applies when a supplier who is subject to the special rules in subsection 226(8) makes a supply of a beverage in a filled and sealed returnable container to a registrant who is not subject to the special rules in circumstances in which a supply of a service is deemed under paragraph 226(2)(b) to have been made by the supplier to the registrant, and because of section 156 or 167 of the Act, no tax is payable in respect of the supplies. The registrant is deemed to have received at that time a taxable supply in the province of a service in respect of the container for consideration equal to the amount that would, without reference to section 156, be the value of the consideration for the supply of the service that is deemed under paragraph 226(2)(b) to have been made to the registrant, to have paid at that time tax in respect of the supply calculated on that consideration, and to have acquired that service for the same purpose as that for which the registrant acquired the beverage.

Where section 156 or 167 applies to a supply of a beverage in a filled and sealed returnable container, the supply is not subject to tax. The supplier, who is subject to the special rules in subsection 226(8), would not have been eligible to claim an ITC in respect of the tax component of the non-refundable portion of the returnable container charge paid when acquiring the beverages, but the recipient will account for tax in respect of the non-refundable portion of the returnable container charge when re-supplying the beverage because the recipient is not subject to the special rules in subsection 226(8). Under subsection 226(15), the recipient is entitled to claim an ITC in respect of the tax component in the non-refundable portion of the returnable container charge.

Other Deeming Provisions for Returnable Containers

Rebates in respect of beverages in returnable containers
(s 263.2)

For the purposes of sections 252, 260 and 261.1 of the Act, if a person is the recipient of a supply of a beverage in a filled and sealed returnable container, or of a used and empty returnable container (or

the material resulting from its compaction), and is deemed under paragraph 226(2)(b) or 226(4)(b) to have received a taxable supply of a service in respect of the container, tax paid in respect of the supply of the service is deemed to have been paid in respect of the supply of the beverage, empty container or material, as the case may be.

Under sections 252, 260 and 261.1 of the Act, rebates are provided in certain circumstances for exported goods and goods removed from the participating provinces.

Under paragraph 226(2)(b), the recipient of a supply of a beverage in a filled and sealed returnable container is deemed to have received a supply of a service in respect of the container when the returnable container charge exceeds the refund. Under paragraph 226(4)(b), the recipient of a supply of a used and empty returnable container (or the material resulting from its compaction) is deemed to have received a supply of a service in respect of the container when the consideration for the supply exceeds the refund.

A person entitled to a rebate in respect of the supply of a beverage or of an empty returnable container (or the material resulting from its compaction) would not be entitled to a rebate for the tax paid in respect of the deemed service under sections 252, 260 and 261.1. Section 263.2 ensures that the tax paid in respect of the deemed supply of a service is treated as tax paid in respect of the supply of the beverage or of the empty returnable container (or the material resulting from its compaction) to allow for the rebate of this tax.

Fair market value of beverages in filled and sealed containers
(ss 226(16))

If a beverage in a filled and sealed returnable container in respect of which there is a returnable container charge is held at any time by a person for consumption, use or supply in a province in the course of commercial activities of the person, the fair market value of the beverage at that time is deemed not to include the amount that would be determined as the refund for the container if the beverage were supplied in the province by the person at that time in the filled and sealed container.

Subsection 226(16) is relevant for the application of section 171 of the Act when a person ceases to be a registrant and must account for tax based on the fair market value of inventory held at that time.

Basic tax content of beverages in filled and sealed containers
(ss 226(17))

The basic tax content at any time of a beverage in a filled and sealed returnable container that is held at that time by a person shall be determined as if the tax payable, if any, in respect of the last supply of a service in respect of the container that was deemed under paragraph 226(2)(b) or subsection 226(15) to have been made to the person, and the tax payable, if any, in respect of the last supply of a service in respect of the container that was deemed under subsection 226(14) to have been made by the person, were additional tax payable by the person in respect of the last acquisition of the beverage by the person.

Subsection 226(17) is relevant for the application of section 171 of the Act when a person becomes at any time a registrant and is eligible to claim ITCs determined based on the basic tax content of property held at that time.

The basic tax content of a beverage in a filled and sealed returnable container would generally be arrived at by:

- totalling all amounts of tax payable at the time the property was last acquired or imported (as noted above, this would include the tax payable on the non-refundable portion of the returnable container charge paid when initially acquiring the containers or when the person was deemed to have made a supply under subsection 226(14) or to have received a supply under subsection 226(15)); and

- deducting all amounts of tax recoverable by way of rebate, refund or remission (other than ITCs).

Other Related Legislation

Acquisition of used returnable containers
(ss 176(1))

Subsection 176(1) of the Act is to be amended to exclude returnable containers, as defined in subsection 226(1) of the Act.

Currently, section 176 deems tax to have been paid by a registrant in certain circumstances where the registrant has acquired used containers from a person not required to charge tax, (e.g., where a consumer returns used containers to a redemption centre in exchange for a refund). The effect is that the registrant may be eligible to claim an ITC for the tax component of the amount refunded. The amendments to section 226 exclude the refund on returnable containers for taxable beverages from the GST/HST tax base. Accordingly, section 176 no longer needs to apply to these containers since the refund will no longer include a tax component.

The amendment to subsection 176(1) applies to supplies of used containers for which consideration becomes due (i.e., refunds are given) after July 15, 2002, or is paid after that day without having become due (which is 75 days after the implementation date of May 1, 2002, for the amendments to section 226). There is therefore a 75-day transition period during which registrants may continue to be eligible to claim ITCs in respect of the acquisition of used containers regardless of whether any tax was originally charged on the returnable container charge. This reflects the fact that the refundable portion of the returnable container charge on returnable containers already in circulation at the time of the implementation of the amendments to section 226 includes an amount of tax. For purposes of applying subsection 176(1) during that 75-day transition period, existing section 226 applies. For example, the definition of returnable container in existing subsection 226(1) continues to apply for purposes of subsection 176(1) throughout the transition period.

Deduction for charities
(repeal of s 226.1)

Section 226.1 applies where a charity operates an authorized bottle return depot in a province in the course of exempt activities and refunds a provincially mandated refundable deposit. The charity is allowed to claim a deduction in determining its net tax equal to 7% or 15% of the refundable deposit if the charity pays the refundable deposit plus an amount equal to the deduction to the person from whom it collects the container. The amendments to section 226 exclude the refund on returnable containers for taxable beverages from the GST/HST tax base. Accordingly, section 226.1 no longer needs to apply to these containers since the refundable deposit will no longer include a tax component.

The repeal of section 226.1 applies to supplies for which consideration becomes due after July 15, 2002, or that is paid after that day without having become due. The delay of 75 days between the coming into force of the amendments to section 226 (May 1, 2002) and the repeal of section 226.1 reflects the fact that the refundable portion of the returnable container charge on returnable containers in circulation at the time of implementation of the amendments to section 226 includes an amount of tax. This 75-day transition period will allow those containers to reach a redemption centre and for the operator to claim the related deduction in respect of them. For the purpose of applying section 226.1 during that 75-day transition period, existing section 226 is to be read as if it had not been replaced by amended section 226.

Net tax calculation for charities
(repeal of paragraph (b.1) of the description of B in ss 225.1(2))

Section 225.1 sets out a streamlined accounting method by which registrants that are charities calculate their net tax. Under element B of the net tax formula in subsection 225.1(2), a charity may claim certain ITCs or deductions from net tax. Paragraph (b.1) of the description of element B enables a charity operating a bottle return depot to claim a net tax deduction in respect of returnable containers for which it pays refunds of deposits. The total amount refunded by the charity includes, where applicable, the provincially mandated refundable deposit and GST/HST calculated on that deposit. Therefore, the charity is entitled to a net tax deduction for the tax component of the amount it refunds in respect of the deposit equal to 7% or 15%. The

circumstances in which the net tax deduction may be claimed and the calculation of the amount of the deduction are set out in section 226.1.

The amendments to section 226 exclude the refund on returnable containers for taxable beverages from the GST/HST tax base. Accordingly, paragraph (b.1) no longer needs to apply to these containers since the refund will no longer include a tax component.

The repeal of paragraph (b.1) applies for reporting periods beginning after the last reporting period of the charity that ends within four years after the reporting period of the charity that includes July 15, 2002, for the purpose of applying section 226.1 of the Act in determining the net tax of a charity.

This reflects the fact that charities have, in effect, four years to claim a deduction under that paragraph to which they have become entitled. The entitlement, based on the application of section 226.1, extends up to and including July 15, 2002. Since the related amendments to section 226 apply as of May 1, 2002, there is a 75-day transition period during which a charity continues to be entitled to claim the deduction in respect of refunds paid on returned containers regardless of whether any tax was originally charged on the returnable container charge, provided all other conditions for claiming the deduction are met. This reflects the fact that the refundable portion of the returnable container charge on returnable containers already in circulation on May 1, 2002, would include an amount of tax. For the purpose of applying paragraph (b.1) of the description of element B of the formula in subsection 225.1(2) during that 75-day transition period, existing section 226 applies.

Goods brought into a participating province
(Schedule X, Part I, s 22)

Section 22 of Part I of Schedule X to the Act is to be amended to delete the reference to returnable containers, as defined in subsection 226(1).

Section 22 of Part I of Schedule X to the Act describes goods that are relieved from the tax imposed under Division IV.1 of Part IX of the Act (i.e., the provincial component of the HST) when brought into a participating province. Generally, relief is provided for goods brought in by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant.

Currently, section 22 excludes returnable containers from relief from the tax payable under Division IV.1. This is because a registrant would not be eligible in all cases to claim an ITC for the tax component of the returnable container charge even if the beverages in the filled and sealed containers were brought in exclusively for supply in the course of commercial activities of the registrant. Under existing section 226, registrants are not eligible to claim these ITCs if the registrants are, in turn, not required to include in their net tax the tax component of the returnable container charge when selling the beverages in the filled and sealed containers.

The existing exclusion in section 22 of Part I of Schedule X for returnable containers is not necessary under the amendments to section 226 since under the special rules in subsection

226(8), it is only when a beverage in a filled and sealed container is purchased in a province and sold in the same province that tax in respect of the supply of a service in respect of the container may not have to be included in determining net tax of a registrant.

Definition of non-creditable tax charged
(ss 259(1) of the Act)

Subparagraph (a)(i) of the definition of non-creditable tax charged in subsection 259(1) of the Act is to be amended to refer to section 226 rather than subsection 226(4).

Section 259 provides for rebates to charities, substantially government-funded non-profit organizations and other public service bodies (i.e., universities, public colleges, school authorities, hospital authorities and municipalities). The term “non-creditable tax charged” refers to amounts that such an entity is, or was, required to pay as GST/HST (net of ITCs or rebates), which are not otherwise recoverable by the entity.

Under the definition of non-creditable tax charged, an amount of tax in respect of a returnable container that the entity would otherwise not be entitled to recover under the special rules for returnable container deposits in section 226 is not eligible to be rebated under section 259. The definition contains a cross-reference to existing subsection 226(4). Under the amendments to section 226, the restrictions on the claiming of ITCs are found under a new subsection. Therefore, the amendment to the definition of non-creditable tax charged replaces the reference to subsection 226(4) with a reference to section 226.

Amendments to the Current Rules for Returnable Containers

The current rules for returnable containers are outlined in existing section 226 of the Act. Under existing subsection 226(3), tax that is collected or that becomes collectible by a registrant in respect of a supply of a returnable container shall not be included in determining the net tax of the registrant. Under existing subsection 226(4), tax that is paid or that becomes payable by a registrant in respect of a supply or the bringing into a participating province of a returnable container shall not be included in determining an input tax credit of the registrant unless the registrant is acquiring the container or bringing it into the province, as the case may be, for the purpose of making a zero-rated supply of the container or a supply of the container outside Canada.

Separate supply of a beverage and container
(ss 226(2))

If a person supplies a beverage in a returnable container in circumstances in which the person typically does not unseal the container, the provision of the container shall be deemed to be a supply separate from, and not incidental to, the provision of the beverage, section 137 of the Act does not apply to deem the container to form part of the beverage, and the consideration for the supply of the container shall be deemed to be equal to that part of the total consideration for the beverage and the container that is reasonably attributable to the container.

Currently, existing subsection 226(2) deems the supply of a beverage in a returnable container to be separate from the supply of the container, and the consideration for the supply of the container to be that part of the total consideration for the container and the beverage that is reasonably attributable to the container. The purpose of this deeming provision is to segregate the container from the beverage so that the current rules in existing subsections 226(3) and 226(4) can be applied to the container only.

The amendment to existing subsection 226(2) specifies that the supply of a beverage in a returnable container is separate from the provision of the container only in circumstances in which the supplier typically does not unseal the container when serving the beverage to the customer. This is in accordance with the policy intent that no part of the charge to the consumer for the beverage should be attributed to the container when the supplier unseals the container because the supplier normally retains the container and receives the refund of the deposit. This is typically the case with eat-in restaurants and bars.

The amendment to existing subsection 226(2) applies to supplies made after 1995 and before May 1, 2002, unless the supplier applied for a rebate of the tax the supplier attributed to the container, which was previously included in determining its net tax, in an application received at a CCRA tax services office before February 8, 2002, or the supplier had determined its net tax by including less than the total amount paid or payable as or on account of tax by the recipient in respect of the beverage and the container, in a return received at a CCRA tax services office before February 8, 2002.

Deduction for charities
(ss 226.1(1))

Existing subsection 226.1(1) is to be amended to add reference to “a subsequent reporting period” in which the charity may claim the deduction. This ensures that a charity has the same amount of time to claim the deduction as the charity would have if the amount were instead claimed as an ITC. This amendment is for greater certainty as subsection 226.1(2) already explicitly provides for a four-year limitation period to claim the deduction.

The amendment to existing subsection 226.1(1) applies to any supply of a container made to a charity after March 1998, the date of the coming into force of section 226.1.

Non-application of the direct cost exemptions
(s 226.01)

Section 5.1 of Part V.1 of Schedule V and section 6 of Part VI of that Schedule do not apply to a supply of a used and empty returnable container (as defined in section 226) or to a supply of the material resulting from its compaction.

Section 5.1 of Part V.1 and section 6 of Part VI of Schedule V to the Act describe a supply made by a charity and public service body respectively that is exempt based on the amount charged for the supply in relation to the direct cost of the supply. The consequence of the exemption is that the supply is not considered to be part of a commercial activity and the supplier, while not having to collect tax on the supply, is not eligible to claim any related ITCs.

These direct cost exemptions do not apply to a supply of a used and empty returnable container (or the material resulting from its compaction). This ensures that, when a recycler is a charity or other public service body, its supplies of used and empty containers (or the material resulting from their compaction) are not treated as exempt supplies solely due to the direct cost exemption provisions. The recycler is then eligible to claim ITCs in the same manner as recyclers that are not charities or public service bodies, provided the recycler's activity is not otherwise exempt and all other conditions for claiming the ITCs are met. In the case of charities, the exemption under section 1 of Part V.1 of Schedule V for a supply of tangible personal property that was used by another person before its acquisition by the charity may still apply.

Section 226.01 applies to supplies of used and empty returnable containers (or the material resulting from their compaction) for which consideration becomes due after 1996 or is paid after 1996 without having become due. This application corresponds to the enactment of section 5.1 of Part V.1 of Schedule V to the Act.

Section 226.01 is repealed with the amendments to section 226. This applies to supplies for which consideration becomes due after July 15, 2002. Section 226.01 is not required following the coming into force of amended subsection 226(4), which deems the value of the consideration for the supply of a used and empty returnable container (or the material resulting from its compaction) to be nil.

Enquiries

If you wish to make a **technical enquiry** on the GST/HST by telephone, please call one of the following toll-free numbers:

1-800-959-8287 (English service)
1-800-959-8296 (French service)

General enquiries about the GST/HST should be directed to Business Enquiries at one of the following toll-free numbers:

1-800-959-5525 (English service)
1-800-959-7775 (French service)

If you are in the Province of Québec, please call the following toll-free number:
1-800-567-4692 (Ministère du Revenu du Québec)

All GST/HST Technical Information Bulletins are available on the Internet at the CCRA site http://www.ccra-adrc.gc.ca/ under the heading “Technical Information” in “Tax”. All other CCRA publications are also available at this site.

Appendix A — Definitions and explanations of significant terms used in this publication

(ss 226(1))

"Applicable legislated amount" *in a province for a returnable container of a particular class means*

(a) except if paragraph (b) applies, the legislated consumers' refund in the province for a returnable container of that class; or

(b) if, under an Act of the legislature of the province in respect of recycling, a legislated consumers' refund for a returnable container of that class is specified and an amount (in this paragraph referred to as the "recycler's reimbursement") is also specified that must be paid, otherwise than specifically in respect of the handling of the container, for a used and empty returnable container of that class when supplied by a person who, on acquiring it used and empty, paid an amount as the legislated consumers" refund for the container, but no amount is specified as the amount, or the minimum amount, that must be charged by a distributor in respect of the supply of a filled and sealed returnable container of that class, the recycler's reimbursement.

In most cases, the applicable legislated amount in a province for a returnable container is the legislated consumers' refund that is provided for under provincial legislation in respect of the recycling of returnable containers.

Paragraph (b) of the definition of applicable legislated amount applies where the provincial legislation specifies the refund that must be paid to a consumer returning a returnable container of a particular class but does not specify a returnable container charge that must be charged on the sale of a beverage in a container of that class. If the provincial legislation also specifies an amount that must be paid to the person who accepted the container from a consumer, otherwise than as any kind of handling charge, that amount would be the applicable legislated amount.

For example, assume provincial legislation stipulates that the refund for a returnable beverage container of a particular class must be at least $0.17, but does not specify any amount of deposit that must be charged in relation to the supply of a beverage in a returnable container of that class. Assume, as well, that provincial legislation stipulates that beverage distributors in the province must pay (aside from any handling charge) $0.20 per container to bottle depots in the province for each returnable container of that class they collect. In this example, the applicable legislated amount would be $0.20.

The term "applicable legislated amount" is used in the definition of refund in subsection 226(1).

"Consumers' recycler"*, in respect of a returnable container of a particular class in a province, means a person who, in the ordinary course of their business, acquires in the province used and empty returnable containers of that class from consumers for consideration.*

Some examples of consumers' recyclers are bottle depots and retailers who accept returns of beverage containers.

The term "consumers' recycler" is used in the definition of refund in subsection 226(1).

"Distributor" *of a returnable container of a particular class in a province means a person who supplies beverages in filled and sealed returnable containers of that class in the province and charges a returnable container charge in respect of the returnable containers.*

Some examples of distributors are bottlers, wholesalers and retailers.

The term "distributor" is used in the definition of applicable legislated amount and returnable container charge in subsection 226(1) and is also used in paragraph 226(8).

"Legislated consumers' refund" *in a province for a returnable container of a particular class means the amount, or the minimum amount, that, under an Act of the legislature of the province in respect of recycling, must be paid in certain circumstances to a person of a class that includes consumers for a used and empty returnable container of that class.*

The legislated consumers' refund is essentially the amount that, under a provincial Act, must be paid to a consumer as a refund for a used and empty returnable container.

The term "legislated consumers' refund" is used in the definition of applicable legislated amount in subsection 226(1).

"Recycler" *of returnable containers of a particular class in a province means*

(a) a person who, in the ordinary course of their business, acquires used and empty returnable containers of that class (or the material resulting from their compaction) in the province for consideration; or

(b) a person who, in the ordinary course of their business, pays consideration to a person referred to in paragraph (a) in compensation for that person acquiring used and empty returnable containers of that class and paying consideration for those containers.

For example, a recycler can be a retailer or a redemption centre operator who accepts empty containers from consumers and pays refunds. A recycler also includes a bottler who buys back used empty refillable beverage containers. An example of a recycler included in paragraph (b) of the definition is a corporation or provincial board that pays amounts to redemption centres or retailers in compensation for those centres or retailers accepting used and empty returnable containers and paying refunds.

The term "recycler" is used in the definition of returnable container charge in subsections 226(1), (6) and (7).

"Recycling" *in respect of a province, means*

(a) the return, redemption, reuse, destruction, or disposal of returnable containers in the province or of returnable containers in the province and other goods; or

(b) the control or prevention of waste or the protection of the environment.

The term "recycling" is used in the definitions of applicable legislated amount, legislated consumers' refund and returnable container charge in subsections 226(1), (6) and (7).

"Refund"*, at any time in a province, means*

(a) in relation to a returnable container of a particular class that is supplied used and empty, or that is filled with a beverage that is supplied, at that time in the province,

(i) the greatest of

(A) if there is an applicable legislated amount in the province for returnable containers of that class, that amount,

(B) if the supplier is a consumers' recycler who, in the ordinary course of their business, sells the beverage in returnable containers of that class in the province and the usual returnable container charge that is charged by the supplier when so selling the beverage is not less than the amount (in this clause referred to as the "usual refund") that is, at that time, the usual consideration that the supplier pays for supplies in the province of used and empty returnable containers of that class from consumers, the usual refund,

(C) if the supplier is a consumers' recycler who does not, in the ordinary course of their business, sell the beverage in returnable containers of that class in the province, the amount that is, at that time, the usual consideration that the supplier pays for supplies in the province of used and empty returnable containers of that class from consumers, and

(D) if, at that time,

(I) in accordance with established industry practice, suppliers charge a common amount as the usual returnable container charge when selling the beverage in returnable containers of that class in the province, and

(II) it is not exceptional for the usual amount paid to consumers by consumers' recyclers as consideration for supplies in the province of used and empty returnable containers of that class to vary among the consumers' recyclers,

the greatest of those usual amounts paid to consumers not exceeding the usual returnable container charge, and

(ii) if none of clauses (i)(A) to (D) applies, the portion of the amount that is, at that time, the consideration paid, in the greatest number of cases, by consumers' recyclers for supplies in the province of used and empty returnable containers of that class from consumers that does not exceed the amount that is, at that time, the returnable container charge charged in the greatest number of cases, by suppliers when selling the beverage in returnable containers of that class in the province; and

(b) in *relation to a returnable container of a particular class in respect of which a supply is made at that time in the province of a service to which subsection (7) applies,*

(i) if the supplier is a consumers' recycler, the amount that is, at that time, the usual consideration that the supplier pays for supplies in the province of used and empty returnable containers of that class from consumers, and

(ii) in any other case, the amount that is, at that time, the consideration paid, in the greatest number of cases, by consumers' recyclers for supplies in the province of used and empty returnable containers of that class from consumers.

Under section 226 of the Act, the refundable portion of a returnable container charge on a returnable container is excluded from the GST/HST base. The refund for a returnable container is defined with reference to a province and to a particular time, since this amount may vary from province to province and over time. This term is also defined in relation to a container of a particular class. For example, the refund for an aluminium can may not be the same as the refund for a plastic bottle.

The term "refund" is also defined for purposes of its application in three different contexts. Under paragraph (a) of the definition of refund, the term "refund" is defined in relation to a returnable container of a particular class that is being supplied used and empty, and in relation to a returnable container of a particular class that contains a beverage that is being supplied. Under paragraph (b) of the definition, the term is defined in relation to a returnable container of a particular class in respect of which a supply of a service in respect of recycling is being made by a recycler to another recycler.

Under subparagraph (a)(i) of the definition of refund, the refund for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the greatest of the amounts described in clauses (a)(i)(A) to (D). The refund is defined as the greatest of these amounts because consumers may receive varying amounts depending on where they return the containers.

In the majority of cases, the refund for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the provincially-mandated amount that is paid in the province to a consumer who returns the used container to a retailer or other redemption centre. This amount is referred to in clause (a)(i)(A) of the definition of refund as the applicable legislated amount and, in most cases, it will be the amount defined in subsection 226(1) as the legislated consumers' refund.

Clause (a)(i)(B) of the definition of refund deals with a case of a supply of the beverage in a container of a particular class where the supplier acquires used containers of that class from consumers and pays refunds. The amount under this clause is the usual refund paid to consumers by this supplier for containers of that class, provided it does not exceed the usual returnable container charge that the supplier charges for containers of that class.

Clause (a)(i)(C) of the definition of refund deals with a case of a supply of a used and empty container by a supplier who accepts used containers of that class from consumers for refunds, but who does not sell the beverage in those containers (e.g., a bottle depot). The amount under this clause is the usual refund that the supplier pays consumers for the used containers.

Clause (a)(i)(D) of the definition of refund could apply in the context of a supply of the beverage in the container or in the context of a supply of the used container. Clause (D) deals with the situation where there is an established industry practice of suppliers charging a common amount as a returnable container charge, but consumers can typically obtain varying amounts of refunds for the used containers depending on where they return them (e.g., to a retailer or a bottle depot). The amount under clause (D) is the greatest of those amounts paid to consumers, not exceeding the usual returnable container charge.

As an example of how clause (D) of the definition of refund applies, assume a regulation under a provincial Act stipulates that the refund for a returnable container must be at least $0.05 and retailers commonly charge $0.10 as a returnable container charge. If bottle depots in the province pay a refund of $0.05 per container, but retailers pay $0.10 per container, the refund for all such containers in that province would be considered to be $0.10 for the purposes of section 226.

The refund for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the amount described in subparagraph (a)(ii) if none of the clauses (a)(i)(A) to (D) applies, that is,

- there is no applicable legislated amount in the province for the returnable container;
- the supplier does not accept used containers of that class from consumers; and
- there is no established industry practice as described in clause (a)(i)(D) with respect to containers of that class.

In this case, the refund is the portion of the consideration paid by most consumers' recyclers in the province, that does not exceed the returnable container charge that most beverage suppliers in the province charge for containers of that class.

As an example of how subparagraph (a)(ii) of the definition of refund applies, assume a retailer who does not accept used containers sells beverages in filled and sealed containers of a particular class in a province in which there is no applicable legislated amount for a returnable container of that class. Also assume that, in this province, most consumers' recyclers pay $0.05 as consideration for used containers of that class and most suppliers charge a deposit of $0.05 when selling the beverage in the containers. The refund, in relation to that retailer's supply of the beverage in the container is $0.05, since it is the amount paid to consumers in most cases and it does not exceed the returnable container charge that is charged by most suppliers in the province.

The term “refund” is also defined, under paragraph (b) of the definition, specifically for purposes of applying subsection 226(7). This subsection applies when a recycler is making a supply of a service in respect of recycling to another recycler. Tax applies to the portion of the consideration for the supply that exceeds the refund. For example, subsection 226(7) applies where a recycling corporation pays a depot consideration for accepting used and empty returnable containers and paying consideration to consumers, but the corporation does not acquire those containers from the depot. In determining the consideration for the depot’s services on which tax applies, the depot can deduct the amount of the refund for the containers where the refund is defined as the usual consideration paid by the depot to consumers.

Subsection 226(7) of the Act also applies to a recycler who does not accept used and empty containers from consumers but who provides services in respect of recycling to another recycler. In this case, the refund amount that is deducted in determining the consideration for the service is taken to be the usual consideration paid in the greatest number of cases by persons in the province who accept used and empty containers from consumers.

The term “refund” is used throughout section 226.

“Returnable container charge” *at any time means*

(a) in relation to a returnable container of a particular class containing a beverage that is supplied at that time in a province, the total of all amounts, each of which is charged by the supplier

(i) as an amount in respect of recycling in the province,

(ii) to recover an amount equivalent to the amount referred to in subparagraph (i) that was charged to the supplier, or

(iii) to recover an amount equivalent to the amount charged to the supplier by another supplier for the purpose referred to in subparagraph (ii) or in this subparagraph;

(b) in relation to a filled and sealed returnable container containing a beverage that is held by a person at that time for consumption, use or supply in a province,

(i) if the beverage is held at that time by the person for the purpose of making a supply in the province of it in the container, the amount that the person can reasonably expect will be determined under paragraph (a) in respect of the container when the beverage is so supplied, and

(ii) in any other case, the amount in respect of the container that would reasonably be expected to be determined under paragraph (a) if the beverage were supplied at that time to the person in the province; and

(c) in relation to a returnable container of a particular class in respect of which a recycler of returnable containers of that class makes at that time a supply in a province of a service in respect of recycling to a distributor, or a recycler, of returnable containers of that class,

(i) if an Act of the legislature of the province in respect of recycling specifies an amount, or a minimum amount, that must be collected from, or paid by, a recipient in certain circumstances for the supply of a beverage in a returnable container of that class, that amount, and

(ii) in any other case, the amount in respect of the container that would reasonably be expected to be determined under paragraph (a) if the container were filled and sealed and contained a beverage that were supplied at that time in the province.

The term "returnable container charge" is defined in relation to a returnable container containing a beverage that is being supplied or held as inventory by a person. The term is also defined in relation to a returnable container in respect of which a recycler is making a supply of a recycling service to a distributor or to another recycler.

With respect to a returnable container of a particular class that contains a beverage that is being supplied in a province, the returnable container charge is the total of all amounts charged by the supplier in respect of the recycling of returnable containers of that class, or to recover an equivalent amount charged to the supplier for the same purpose. Accordingly, the returnable container charge would include any provincially mandated amount such as a refundable deposit, a non-refundable portion of a deposit, or an environmental levy or handling charge. If there is no provincially mandated amount, the returnable container charge includes any amount in respect of the recycling of the containers that is charged in a particular industry or by a particular supplier (including both refundable and non-refundable amounts).

The returnable container charge would also include any amounts charged by a supplier to recover amounts previously charged to that supplier in respect of the containers. For example, a provincially mandated amount in respect of recycling could be required to be charged only on supplies of a beverage by bottlers who are the first vendors of the beverage in the province. Subsequently, a wholesaler will charge the equivalent amount to a retailer to recover the amount paid by the wholesaler to a bottler. This latter amount is referred to in subparagraph (a)(ii) of the definition of returnable container charge. In turn, the retailer will charge the equivalent amount to a consumer to recover the amount paid by the retailer to the wholesaler. This latter amount is referred to in subparagraph (a)(iii) of the definition of returnable container charge.

With respect to a filled and sealed returnable container containing a beverage that is held by a person in inventory at any time in a province for the purpose of making a supply of the beverage in that province, the term "returnable container charge" refers to the amount that the person can reasonably expect will be determined to be the returnable container charge in respect of the container when the beverage is so supplied (i.e., the total amount in respect of recycling that will be charged by the supplier).

With respect to a filled and sealed returnable container containing a beverage that is held by a person at any time in a province for a purpose other than the sale of the beverage in the container, the term "returnable container charge" means the amount in respect of the container

that could reasonably be expected to be paid by the person if they were acquiring the beverage in the container at that time in the province.

Finally, paragraph (c) of the definition of returnable container charge defines this term in relation to a returnable container of a particular class in respect of which a recycler of returnable containers of that class is supplying a service in respect of recycling in a province to a distributor or to another recycler of returnable containers of that class. These are the situations dealt with in subsections 226(6) and (7) of the Act.

In this case, the returnable container charge is the amount, or minimum amount, that is required, under an Act of the legislature of the province in respect of recycling, to be paid in respect of the supply of a beverage in a returnable container of that class. In some provinces, there is no such legislated amount for particular classes of containers but there is instead an industry-established container charge for those containers. In this case, the returnable container charge is that amount in respect of the container that would reasonably be expected to be charged by a supplier in the province when selling a beverage in a container of that class.

The term “returnable container charge” is used throughout section 226.

“Specified beverage retailer”*, in respect of a returnable container of a particular class, means a registrant*

> *(a) who, in the ordinary course of the registrant’s business, makes supplies (in this definition referred to as “specified supplies”) of beverages in returnable containers of that class to consumers in circumstances in which the registrant typically does not unseal the containers; and*
>
> *(b) who does not meet the circumstance that all or substantially all of the supplies of used and empty returnable containers of that class that are gathered by the registrant at establishments at which the registrant makes specified supplies, are of containers that the registrant acquired used and empty for consideration.*

For example, an operator of a restaurant that is a combination eat-in, take-out establishment, might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the operator gathers at the restaurant are those that are left behind by customers who have chosen to consume the beverages on the premises. The operator would be a specified beverage retailer in relation to returnable containers of that class.

In contrast, the operator of a grocery store at which the operator sells beverages in filled and sealed returnable containers of a particular class and also pays refunds for used containers of that class from consumers would not be a specified beverage retailer in respect of those containers, if all or substantially all of the used containers that the operator gathers at the grocery store have been acquired from consumers for consideration.

The term “specified beverage retailer” is used in subsections 226(3), (9) and (18).

Appendix B — Examples of the application of section 226

The following examples and accompanying flowcharts illustrate how the amendments to section 226 of the Act will apply to the supplies in respect of a returnable container from the initial supply of a beverage in a returnable container by a distributor to the final supply of the used and empty returnable container back to the distributor, or the material resulting from its compaction to a processor who will recycle the material.

Example 1: Fully refundable deposit

Scenario

All transactions occur in a non-participating province in which a provincial Act is not prescribed for the purposes of paragraph 226(2)(b). The returnable container charge for a returnable container in the province is $0.10, and the refund for a returnable container in the province is $0.10. The distributor charges the returnable container charge when it sells beverages in filled and sealed returnable containers to retailers. The retailer charges the returnable container charge when it sells beverages in filled and sealed returnable containers to consumers. The consumer takes the used and empty returnable container to a depot for the refund. The distributor collects the returnable containers from the depot and pays the depot the refunds.

Transaction 1 – Supply of 100 beverages in returnable containers from distributor to retailer

The distributor charges the returnable container charge of $0.10 for each returnable container, for a total of $10.00. Subsection 226(2) applies to this supply of beverages in filled and sealed returnable containers. Under paragraph 226(2)(a), the consideration for the beverages is deemed to be equal to the total consideration less the returnable container charges. Since the returnable container charges equal the refunds for the returnable containers, the distributor is not deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable containers to the retailer.

The distributor collects from the retailer 7% GST on the consideration for the beverages only, and includes this amount in determining its net tax. The distributor does not collect GST on the returnable container charges. The retailer may claim an ITC for the GST on the consideration for the beverages.

Transaction 2 – Supply of a beverage in a returnable container from retailer to consumer

The retailer charges the returnable container charge of $0.10 for the returnable container. Subsection 226(2) also applies to this supply of a beverage in a filled and sealed returnable container. Under paragraph 226(2)(a), the consideration for the beverage is deemed to be equal to the total consideration less the returnable container charge. Since the returnable container charge equals the refund for the returnable container, the retailer is not deemed under paragraph

226(2)(b) to have made a supply of a service in respect of the returnable container to the consumer.

The retailer collects from the consumer 7% GST on the consideration for the beverage only, and includes this amount in determining its net tax. The retailer does not collect GST on the returnable container charge.

Transaction 3 – Supply of a used and empty returnable container from consumer to depot

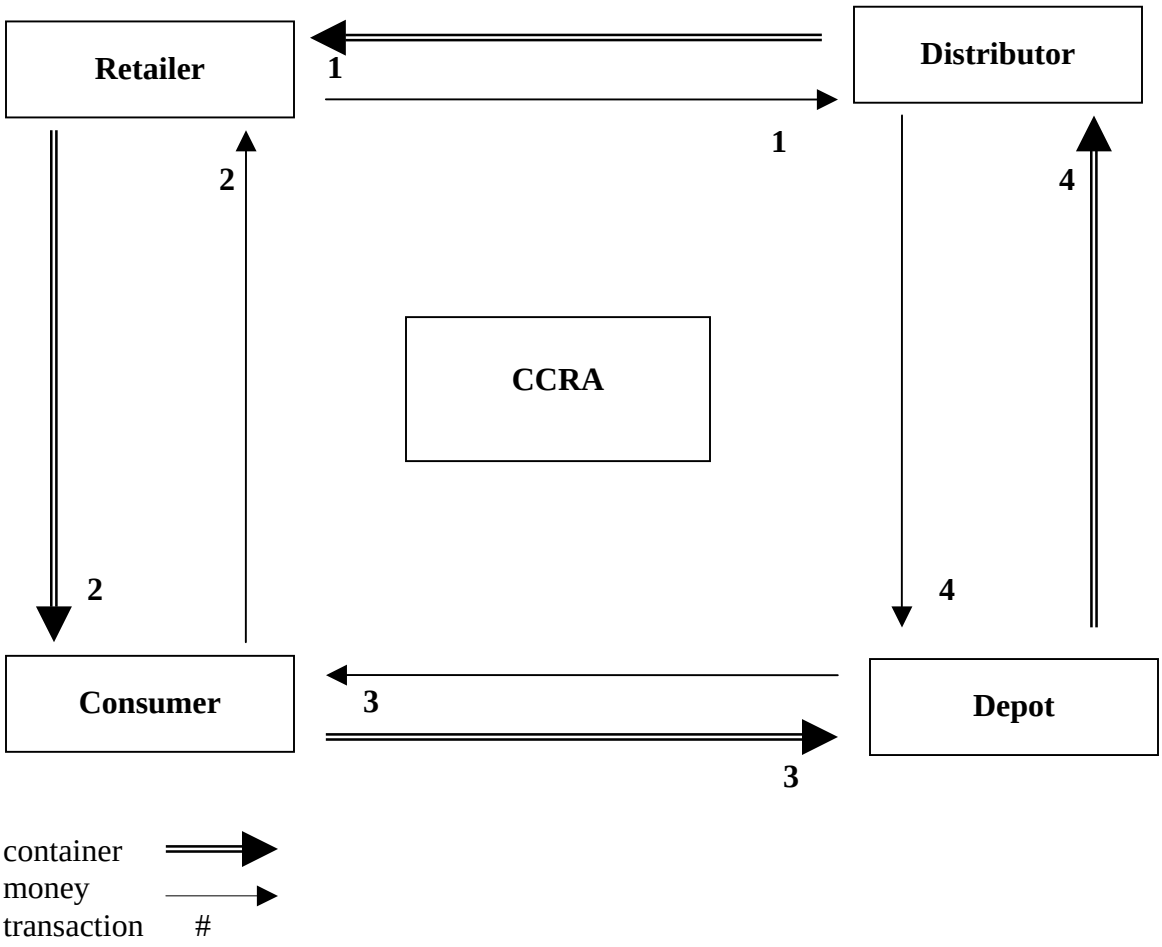
The depot pays the consumer the refund amount for the returnable container. Subsection 226(4) applies to this supply of the used and empty returnable container. The consideration for the returnable container is deemed to be nil. Since the consideration paid for the returnable container does not exceed the refund, there is no deemed service in respect of the returnable container.

The depot does not pay, and is not deemed to have paid, GST on the supply of the used and empty container.

Transaction 4 – Supply of 100 used and empty returnable containers from depot to distributor

The distributor pays the depot the refund for each returnable container, for a total of $10.00. Subsection 226(4) also applies to this supply of used and empty returnable containers. The consideration for the returnable containers is deemed to be nil. Since the consideration paid for the returnable containers does not exceed the refunds, there is no deemed service in respect of the returnable containers.

Example 1 — Fully refundable deposit



Example 2: Non-participating province

Scenario

All transactions occur in a non-participating province in which a provincial Act is not prescribed for the purposes of paragraph 226(2)(b). The returnable container charge for a returnable container in the province is $0.20, and the refund for a returnable container in the province is $0.10. The distributor charges the returnable container charge when it sells beverages in filled and sealed returnable containers to retailers. The retailer charges the returnable container charge when it sells beverages in filled and sealed returnable containers to consumers. The consumer takes the used and empty returnable container to a depot for the refund. The distributor is required to recycle the returnable containers it uses to supply beverages in the province, and it has contracted with a recycling entity to recycle the returnable containers for the distributor. The distributor agrees to forward the returnable container charges it collects each month as consideration for the recycling entity's services. The recycling entity collects the returnable containers from the depot and pays the depot the refund plus $0.02 per container. The recycling entity compacts the returnable containers and sells the material resulting from the compaction to a processor, who uses the material to make new returnable containers or other products. The usual business practice of the processor is to pay consideration based on the value of the material from which the containers are made.

Transaction 1 – Supply of 100 beverages in returnable containers from distributor to retailer

The distributor charges the returnable container charge of $0.20 for each returnable container, for a total of $20.00. Subsection 226(2) applies to this supply of beverages in filled and sealed returnable containers. Under paragraph 226(2)(a), the consideration for the beverages is deemed to be equal to the total consideration less the returnable container charges. Since the returnable container charges exceed the refunds for the returnable containers, the distributor is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable containers to the retailer. The consideration for this service is deemed to be equal to the amount by which the returnable container charges exceed the refunds, $0.10 for each container, or $10.00 in total.

The distributor collects from the retailer 7% GST on the consideration for the beverages, and GST of $0.70 (7% of $10.00) on the non-refundable portion of the returnable container charges, and includes both amounts in determining its net tax. The retailer may claim an input tax credit for the GST on the consideration for the beverages, and the $0.70 GST on the non-refundable portion of the returnable container charges.

Transaction 2 – Supply of a beverage in a returnable container from retailer to consumer

The retailer charges the returnable container charge of $0.20 for the returnable container. Subsection 226(2) also applies to this supply of a beverage in a filled and sealed returnable container. Under paragraph 226(2)(a), the consideration for the beverage is deemed to be equal to the total consideration less the returnable container charge. Since the returnable container

charge exceeds the refund for the returnable container, the retailer is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable container to the consumer. The consideration for this service is deemed to be equal to the amount by which the returnable container charge exceeds the refund, or $0.10.

The retailer collects from the consumer 7% GST on the consideration for the beverage, and GST of $0.01 (7% of $0.10 = $0.007, rounded) on the non-refundable portion of the returnable container charge, and includes both amounts in determining its net tax.

Transaction 3 – Supply of recycling services from recycling entity to distributor

The distributor forwards the returnable container charges collected in respect of its returnable containers to the recycling entity as consideration for the supply of recycling services. Subsection 226(6) applies to this supply of recycling services from the recycling entity to the distributor. When the consideration for the supply of recycling services is based on the returnable container charges, the value of the consideration for the supply is deemed to be equal to the difference between the consideration and the sum of returnable container charges. The consideration for the recycling services is equal to the total returnable container charges in respect of those returnable containers. The value of the consideration on which GST is calculated, equal to the difference, is zero.

The recycling entity does not charge the distributor GST on this recycling service.

Transaction 4 – Supply of a used and empty returnable container from consumer to depot

The depot pays the consumer the refund amount for the returnable container. Subsection 226(4) applies to this supply of the used and empty returnable container. The consideration for the returnable container is deemed to be nil. Since the consideration paid for the returnable container does not exceed the refund, there is no deemed service in respect of the returnable container.

The depot does not pay, and is not deemed to have paid, GST on the supply of the used and empty container.

Transaction 5 – Supply of 100 used and empty returnable containers from depot to recycling entity

The recycling entity pays the depot the refund plus $0.02 for each returnable container, for a total of $12.00. Subsection 226(4) also applies to this supply of used and empty returnable containers. The consideration for the returnable containers is deemed to be nil. Since the consideration paid for the returnable containers exceeds the refunds, the depot is deemed under paragraph 226(4)(b) to have made a supply of a service in respect of the returnable containers to the recycling entity. The consideration for this service is deemed to be equal to the amount by which the consideration exceeds the refunds, or $2.00.

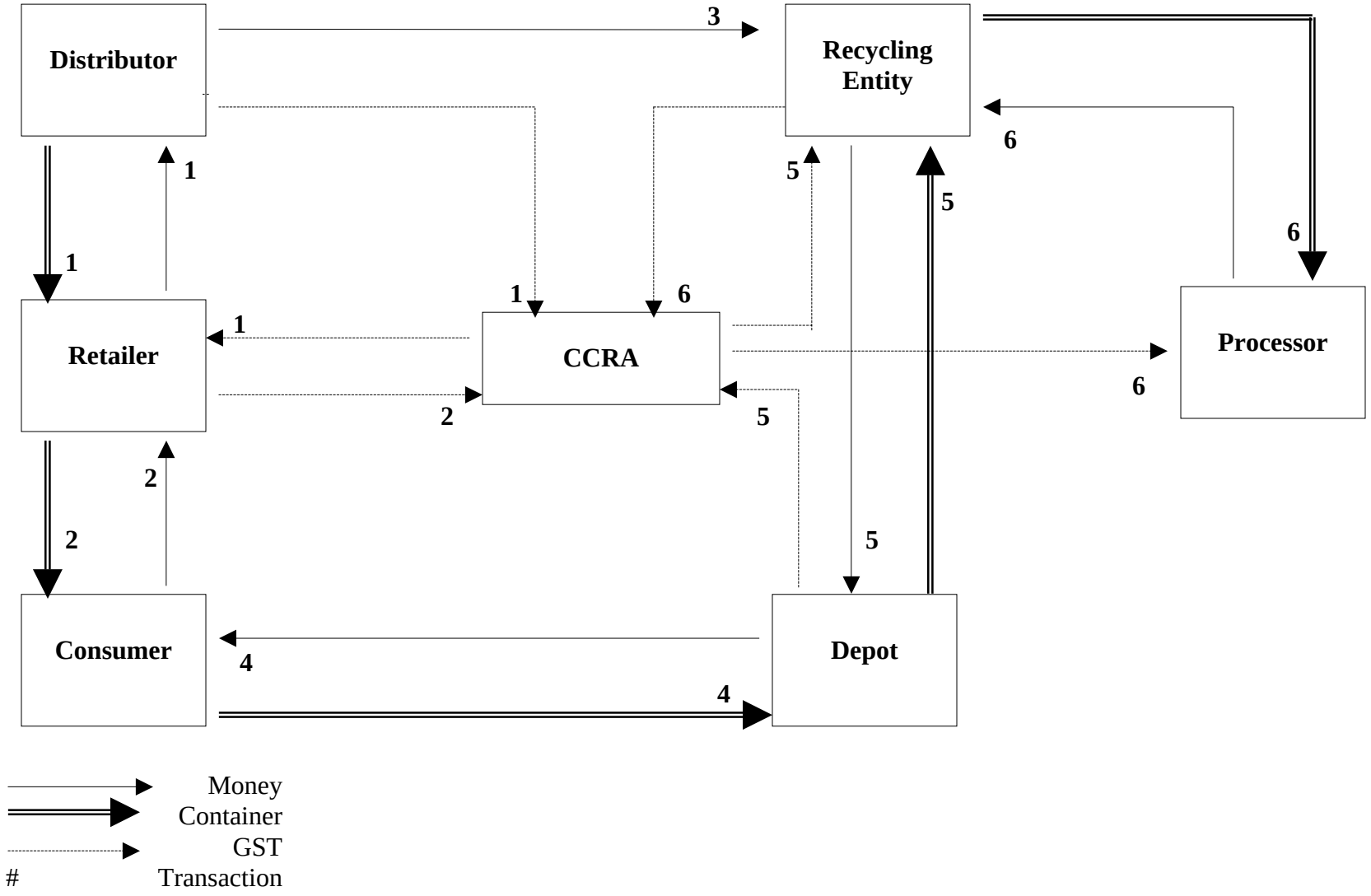
The depot collects from the recycling entity GST of $0.14 (7% of $2.00) on the portion of the consideration that exceeds the refunds, and includes this amount in determining its net tax. The recycling entity may claim an input tax credit for the GST paid.

Transaction 6 – Supply of material resulting from the compaction of returnable containers from recycling entity to processor

The processor pays consideration to the recycling entity based on the value of the material from which the containers are made. Subsection 226(5) states that subsection 226(4) does not apply to a supply of a returnable container or the material resulting from its compaction when the usual business practice of the recipient is to pay consideration for such supplies that is based on the value of the material from which the containers are made, or when the consideration is not based on the refund or returnable container charge for the returnable container. Therefore, subsection 226(4) does not apply to deem the consideration for the supply to be nil.

The recycling entity collects from the processor 7% GST on the consideration for the supply of material resulting from the compaction of the returnable containers, and includes this amount in determining its net tax. The processor may claim an input tax credit for the 7% GST on the consideration for the material resulting from the compaction of the returnable containers.

Example 2 — Non-Participating Province



Example 3: Participating province

Scenario:

All transactions occur in a participating province in which a provincial Act is prescribed for the purposes of paragraph 226(2)(b). The returnable container charge for a returnable container in the province is $0.10 and is a tax-included amount. The refund for the returnable container in the province is $0.05. The distributor charges the returnable container charge when it sells beverages in filled and sealed returnable containers to retailers. The retailer charges the returnable container charge when it sells beverages in filled and sealed returnable containers to consumers. The consumer takes the used and empty returnable container to a depot for the refund. The distributor is required to recycle the returnable containers it uses to supply beverages in the province, and it has contracted with a recycling entity to recycle the returnable containers for the distributor. The distributor agrees to forward the returnable container charges it collects each month as consideration for the recycling entity's services. The recycling entity collects the returnable containers from the depot and pays the depot the refund plus $0.02 per container. The recycling entity compacts the returnable containers and sells the material resulting from the compaction to a processor, who uses the material to make new returnable containers or other products. The usual business practice of the processor is to pay consideration based on the value of the material from which the containers are made.

Transaction 1 – Supply of 100 beverages in returnable containers from distributor to retailer

The distributor charges the returnable container charge of $0.10 for each returnable container, for a total of $10.00. Subsection 226(2) applies to this supply of beverages in filled and sealed returnable containers. Under paragraph 226(2)(a), the consideration for the beverage is deemed to be equal to the total consideration less the returnable container charges. Since the returnable container charges exceed the refunds for the returnable containers, the distributor is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable container to the retailer. A provincial Act of the participating province is prescribed for purposes of paragraph 226(2)(b). Therefore, the consideration for this service is deemed to be equal to the tax-excluded amount by which the returnable container charges exceed the refunds, 100/115^{ths} of $0.05 for each container, 100/115 of $5.00, or $4.35.

The distributor collects from the retailer 15% HST on the consideration for the beverages, and HST of $0.65 included in the non-refundable portion of the returnable container charges. The retailer usually charges a returnable container charge equal to the returnable container charge the retailer pays, and the special rules in subsection 226(8) apply to the retailer. The retailer does not include the tax paid in respect of the deemed service in respect of the returnable containers when determining its input tax credits. The retailer claims an input tax credit for the 15% HST paid on the consideration for the beverages, but the retailer does not claim the HST of $0.65 included in the non-refundable portion of the returnable container charges.

Transaction 2 – Supply of a beverage in returnable container from retailer to consumer

The retailer charges the returnable container charge of $0.10 for each returnable container. Subsection 226(2) also applies to this supply of a beverage in a returnable container. Under paragraph 226(2)(a), the consideration for the beverage is deemed to be equal to the total consideration less the returnable container charge. Since the returnable container charge exceeds the refund for the returnable container, the retailer is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable container to the consumer. Since a provincial Act of the participating province is prescribed for purposes of subsection 226(2)(b), the consideration for this service is deemed to be equal to the tax-excluded amount by which the returnable container charge exceeds the refund, 100/115 of $0.05, or $0.0435.

The retailer collects from the consumer 15% HST on the consideration for the beverage, and HST of $0.0065 included in the non-refundable portion of the returnable container charge. Since the retailer usually charges a returnable container charge equal to the returnable container charge the retailer pays, the special rules in subsection 226(8) apply to the retailer. The retailer does not include the tax charged in respect of the deemed service in respect of the returnable container when determining its net tax. The retailer includes the 15% HST paid on the consideration for the beverage in its net tax, but the retailer does not include the HST of $0.0065 included in the non-refundable portion of the returnable container charge.

Transaction 3 – Supply of recycling services from recycling entity to distributor

The distributor forwards the returnable container charges collected in respect of its returnable containers to the recycling entity as consideration for the supply of recycling services. Subsection 226(6) applies to this supply of recycling services from the recycling entity to the distributor. When the consideration for the supply of recycling services is based on the returnable container charge, the value of the consideration for the supply is deemed to be equal to the difference between the consideration and the sum of returnable container charges. The consideration for the recycling services is equal to the total returnable container charges in respect of those returnable containers. The value of the consideration on which HST is calculated, equal to the difference, is zero.

The recycling entity does not charge the distributor HST on this recycling service.

Transaction 4 – Supply of a used and empty returnable container from consumer to depot

The depot pays the consumer the refund amount for the returnable container. Subsection 226(4) applies to this supply of a used and empty returnable container. The consideration for the returnable container is deemed to be nil. Since the consideration paid for the returnable container does not exceed the refund, there is no deemed service in respect of the returnable container.

The depot does not pay, and is not deemed to have paid, HST on the supply of the used and empty container.

Transaction 5 – Supply of 100 used and empty returnable containers from depot to recycling entity

The recycling entity pays the depot the refund plus $0.02 for each returnable container, for a total of $7.00. Subsection 226(4) also applies to this supply of used and empty returnable containers. The consideration for the returnable containers is deemed to be nil. Since the consideration paid for the returnable containers exceeds the refunds, the depot is deemed under paragraph 226(4)(b) to have made a supply of a service in respect of the returnable container to the recycling entity. The consideration for this service is deemed to be equal to the amount by which the total consideration exceeds the refunds, or $2.00.

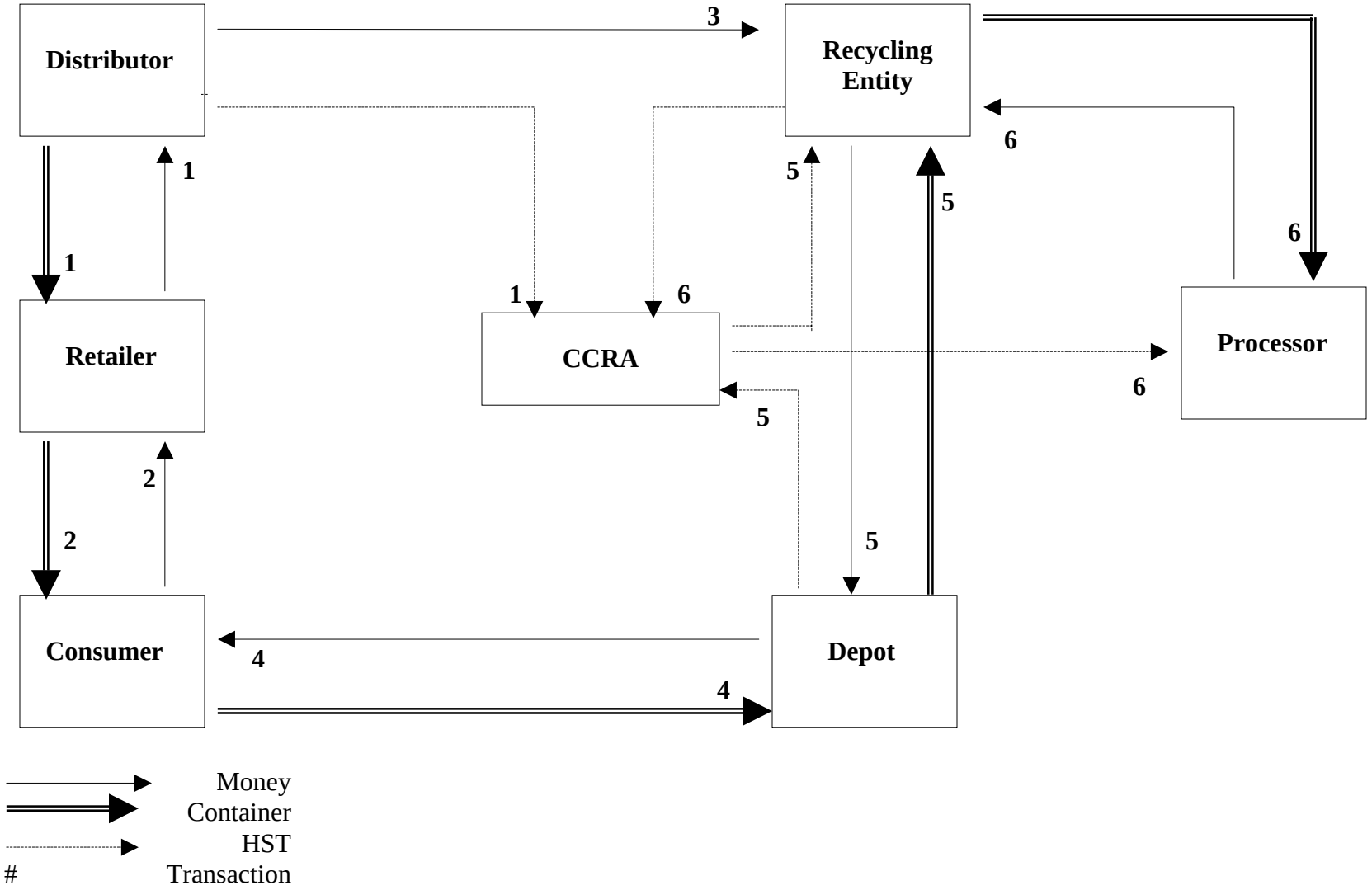
The depot collects from the recycling entity HST of $0.30 (15% of $2.00) on the portion of the consideration that exceeds the refunds, and includes this amount in determining its net tax. The recycling entity may claim an input tax credit for the HST paid.

Transaction 6 – Supply of material resulting from the compaction of returnable containers from a recycling entity

The processor pays consideration to the recycling entity based on the value of the material from which the containers are made. Subsection 226(5) states that subsection 226(4) does not apply to a supply of a returnable container or the material resulting from its compaction when the usual business practice of the recipient is to pay consideration for such supplies that is based on the value of the material from which the containers are made, or when the consideration is not based on the refund or returnable container charge for the returnable container. Therefore, subsection 226(4) does not apply to deem the consideration for the supply to be nil.

The recycling entity collects from the processor 15% HST on the consideration for the supply of material resulting from the compaction of the returnable containers.

Example 3 — Participating Province



Example 4: Specified beverage retailer in a non-participating province

NOTE: A specified beverage retailer can elect under subsection 226(3) not to deduct the returnable container charge from the consideration for the beverage. This example does not apply to a specified beverage retailer who has elected under subsection 226(3).

Scenario:

All transactions occur in a non-participating province in which a provincial Act is not prescribed for the purposes of paragraph 226(2)(b). The returnable container charge for a returnable container in the province is $0.20 and the refund for the returnable container in the province is $0.10. A distributor sells beverages in filled and sealed returnable containers to a specified beverage retailer and charges the returnable container charge for the container. The specified beverage retailer charges the returnable container charge when it sells beverages in filled and sealed returnable containers to consumers who leave the used and empty containers at the specified beverage retailer's establishment. The specified beverage retailer sells the used and empty returnable containers to a depot for the refund. The distributor is required to recycle the returnable containers it uses to supply beverages in the province, and it has contracted with a recycling entity to recycle the returnable containers for the distributor. The distributor agrees to forward the returnable container charges it collects each month as consideration for the recycling entity's services. The recycling entity collects the returnable containers from a depot and pays the depot the refund plus $0.02 per container. The recycling entity compacts the returnable containers and sells the material resulting from the compaction to a processor, who uses the material to make new returnable containers or other products. The usual business practice of the processor is to pay consideration based on the value of the material from which the containers are made.

Transaction 1 – Supply of 100 beverages in returnable containers from distributor to specified beverage retailer

The distributor charges the returnable container charge of $0.20 for each returnable container, for a total of $20.00. Subsection 226(2) applies to this supply of beverages in filled and sealed returnable containers. Under paragraph 226(2)(a), the consideration for the beverages is deemed to be equal to the total consideration less the returnable container charges. Since the returnable container charges exceed the refunds for the returnable containers, the distributor is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable containers to the specified beverage retailer. The consideration for this service is deemed to be equal to the amount by which the returnable container charges exceed the refunds, $0.10 for each container, or $10.00 in total.

The distributor collects from the specified beverage retailer 7% GST on the consideration for the beverage, and GST of $0.70 (7% of $10.00) on the non-refundable portion of the returnable container charge, and includes both amounts in determining its net tax. The specified beverage retailer may claim an input tax credit for the GST on the consideration for the beverages, and the $0.70 GST on the non-refundable portion of the returnable container charges.

Transaction 2 – Supply of a beverage in a returnable container from specified beverage retailer to consumer

The specified beverage retailer supplies the beverage in the filled and sealed returnable container and typically does not unseal the container. The specified beverage retailer charges the returnable container charge of $0.20 for each returnable container. Subsection 226(2) also applies to this supply of a beverage in a returnable container. Under paragraph 226(2)(a), the consideration for the beverage is deemed to be equal to the total consideration less the returnable container charge. Since the returnable container charge exceeds the refund for the returnable container, the specified beverage retailer is deemed under paragraph 226(2)(b) to have made a supply of a service in respect of the returnable container to the consumer. The consideration for this service is deemed to be equal to the amount by which the returnable container charge exceeds the refund, or $0.10.

The specified beverage retailer collects from the consumer 7% GST on the consideration for the beverage, and GST of $0.01 (7% of $0.10 = $0.007, rounded) on the non-refundable portion of the returnable container charge, and includes both amounts in determining its net tax.

Transaction 3 – Supply of recycling services from recycling entity to distributor

The distributor forwards the returnable container charges collected in respect of its returnable containers to the recycling entity as consideration for the supply of recycling services. Subsection 226(6) applies to supplies of recycling services from recyclers to distributors. When the consideration for the supply of recycling services is based on the returnable container charge, the value of the consideration is deemed to be equal to the difference between the consideration and the sum of returnable container charges. The consideration for the recycling services is equal to the total returnable container charges in respect of those returnable containers. The value of the consideration on which GST is calculated, equal to the difference, is zero.

The recycling entity does not charge the distributor GST on this recycling service.

Transaction 4 – Used and empty returnable container left by consumer at specified beverage retailer’s establishment

The consumer consumes the beverage and leaves the used and empty container at the specified beverage retailer’s establishment. The consumer has not collected a refund from the specified beverage retailer for the returnable container.

The specified beverage retailer does not pay, and is not deemed to have paid, GST in respect of the used and empty returnable container.

Transaction 5 – Supply of 100 used and empty returnable containers from specified beverage retailer to depot

The depot pays the specified beverage retailer the refund amount for each returnable container, or $10.00 in total. Subsection 226(4) applies to supplies of used and empty returnable containers. The consideration for the returnable containers is deemed to be nil. Since the consideration paid for the returnable containers does not exceed the refunds, there is no deemed service in respect of the returnable containers.

The specified beverage retailer does not charge the depot GST on the supply of the used and empty containers.

Subsection 226(18) applies to the specified beverage retailer at the time of this supply. The specified beverage retailer supplied used and empty returnable containers that it previously supplied to consumers filled and sealed, and did not acquire used and empty for consideration. The specified beverage retailer must therefore add an amount to its net tax. The amount is equal to the applicable tax rate multiplied by the refunds for the returnable containers.

The specified beverage retailer would add $0.70 (7% of $10.00) when determining its net tax.

Transaction 6 – Supply of 100 used and empty returnable containers from depot to recycling entity

The recycling entity pays the depot the refund plus $0.02 for each returnable container, for a total of $12.00. Subsection 226(4) also applies to this supply of used and empty returnable containers. The consideration for the returnable containers is deemed to be nil. Since the consideration paid for the returnable containers exceeds the refund, the depot is deemed under paragraph 226(4)(b) to have made a supply of a service in respect of the returnable containers to the recycling entity. The consideration for this service is deemed to be equal to the amount by which the total consideration exceeds the refunds, or $2.00.

The depot collects from the recycling entity GST of $0.14 (7% of $2.00) on the portion of the consideration that exceeds the refunds, and includes this amount in determining its net tax. The recycling entity may claim an input tax credit for the GST paid.

Transaction 7 – Supply of material resulting from the compaction of returnable containers from recycling entity to processor

The processor pays consideration to the recycling entity based on the value of the material from which the containers are made. Subsection 226(5) states that subsection 226(4) does not apply to a supply of a returnable container or the material resulting from its compaction when the usual business practice of the recipient is to pay consideration for such supplies that is based on the value of the material from which the containers are made, or when the consideration is not based on the refund or returnable container charge for the returnable container. Therefore, subsection 226(4) does not apply to deem the consideration for the supply to be nil.

The recycling entity collects from the processor 7% GST on the consideration for the supply of material resulting from the compaction of the returnable containers.

Example 4 — Specified Beverage Retailer