

**Treasurer's report from Howard Kaplan, part 2 of 2,
For the Karma Board meeting of Monday, 7 June 2010**

Report sent Monday, 31 May 2010

9. Membership fees – tax status

I'm just catching up on HST transition issues, and there may be an important one that we've missed. I've done research that suggests that our membership fees should be (and should have been) taxable. On the other hand, Denise has done enough research to convince me that we can reasonably consider treating them as non-taxable until we get a formal ruling from the tax authorities, something that might take another six months or so.

Below, if you're interested, you can find an account of what I've been able to find on the web, followed by a brief account of Denise's follow-up. On the other hand, since no Board action is required, you can skip this if you have other priorities.

As I interpret what I've seen, for the next fiscal year, 11 of the 12 months of the membership fee are subject to the HST (regardless of when the fee is actually paid), while June is subject only to the GST (which we should have been charging in past years). In the future, all 12 months will be taxable.

My understanding is based on the following evidence:

The Ontario government's web site at <http://www.rev.gov.on.ca/en/notices/hst/03.html#ipp-memberships> says this:

Memberships

A supply of a membership in a club, organization or association would be deemed to be a supply of a service for purposes of the transitional rules. The general rules described in the Services section of this Notice would apply, with appropriate modifications, to a supply of such a membership (i.e., to the extent that the membership period occurs on or after July 1, 2010).

Example 14: In June 2010, a person purchases a four-month membership in a fitness club for the months of June through September 2010. The HST would be payable with respect to three of the four months of the membership (i.e., on 75 per cent of the total consideration).

The Federal government's web site at <http://www.cra-arc.gc.ca/E/pub/gi/gi-057/gi-057-e.html> says this:

Memberships

A membership includes a right granted by a club, organization or association that entitles its members to services provided by the club, organization or association, or to the use of its facilities, that are not available, or are not available to the same extent or for the same fee to other persons. It also includes a right that is conditional on the acquisition or ownership of a share, bond, debenture or other security.

The Carters law firm posted an extensive article about a 2007 ruling on the taxability of membership fees in non-profit organizations, found on their web site at <http://www.carters.ca/pub/bulletin/charity/2007/chylb111.htm>. The article also refers the reader to a relevant CRA web page at http://www.cra-arc.gc.ca/E/pub/gp/rc4081/rc4081-06-e.html#P317_28282. I won't reprint the text of either one here, but these are the key points:

If the non-exempt benefits available to a member exceeds 30% of the membership fee, then the membership fee is subject to GST/HST.

The right to purchase goods or services at a fair market price is not a benefit, but the right to purchase goods or services at a discount is a benefit.

Now, the CRA web page discusses some benefits which specifically are exempt from consideration under the 30% rule, benefits such as the right to attend an AGM and the right to receive a publication about the organization's activities. It also says, in general, that discounts on purchases are not exempt. The web page does not specifically say that discounts on non-taxable goods are exempt (unlike, say, discounts on theatre tickets, which are not exempt). Nonetheless, that possibility was suggested by Jerry Berman, our auditor.

Here are my own calculations: In Karma's case, the average member spends \$1600 per year but is entitled to spend much more than that. The taxability of the membership fee depends on the benefit available, not on the benefit actually consumed. On those rare occasions when we sell to non-members, the surcharge is 15%, while the non-working member surcharge is 10%. Therefore, as I figure it, membership entitles an average member to save about 5% of \$1600, or about \$80, per year, by this method of calculation, but the available savings for a high-spending member are considerably greater. (My argument assumes that what we charge to non-members is fair market value rather than a penalty above fair market value.) One might argue that the right to work saves members even more, though it's hard to come up with an appropriate accounting value for the work and the savings. Our membership fee is \$36 per year, and 30% of that is \$10.80, well below the minimal \$80 savings. For that reason, if the entire discount needs to be taken into account, then I believe our fees should be considered taxable. On the other hand, if only the discount on taxable goods needs to be taken into account, we might be very close to the 30% limit and therefore not need to charge tax on the fees.

At Jerry's urging, I asked our bookkeeper, Denise Stapleton, to phone for a clarification, and this is what she reported back via email:

The rules have not changed for HST on this matter. However, it is took speaking to several people in the GST ruling department to understand whether the membership fee is exempt of GST.

Speaking to them their thoughts were that the membership fee is exempt of tax because members are entitled to so little from that fee and the co-operative is a not for profit business.

However, as the government does, they suggested that we send in a written request to the GST Ruling department so that we would have something written on file noting the exemption. In the request, if you choose to follow this advice they requested that the letter include:

- how the business is set up-eg. non-profit, mandate of business, do members get coupons, special discounts, etc

- what the membership fee entitles a member too. eg. voting at AGM, newsletter, committee participation, etc.

- number of members

Let me know if you want any other information or would like to inquire further to my conversation.

Denise's note doesn't say so, but her conversation was actually quite lengthy, and the people on the other end of the line were apparently doing some actual calculations before giving their tentative opinion. They also said that, since our annual statements have been professionally audited, we have a good defense for not paying any back taxes, even if we need to pay them in the future. Having heard that additional detail from Denise, I am satisfied to not do anything about charging tax at the moment, provided we don't delay too long in requesting a formal, written ruling.

For comparison, I also tried to see what other co-ops are doing. I didn't find much of interest. However, since other co-operatives may still be catching up with the same tax changes (or catching up with complying, even if nothing has changed), this list does not provide definitive guidance:

The London Co-op Store has no explicit membership fee, but the service fee (a weekly fee paid by non-working members) is currently subject to GST.

The Ottawa Valley Food Co-operative in Eganville (south of Pembroke) has only a lifetime membership fee, not an annual one. The web site says nothing about its taxability.

The By the Bushel Community Food Co-operative in Peterborough mentions only a lifetime fee (and a nominal \$1 share) on the website, and it is not described as taxable. This is an example of the kind of co-op Justin was mentioning recently, joining consumers and producers in the same organization.

The Eastern Ontario Local Food Co-operative in Vanleek Hill (east of Ottawa), another producer-consumer co-op, charges a \$50 lifetime membership fee and says nothing about its taxability.

The Ebytown Food Co-operative in Kitchener-Waterloo requires a \$30 annual membership fee, and nothing is said about its being taxable.

The Sandy Hill Eco-Grocery Co-op in Ottawa has annual (plus shorter and longer) membership fees and does not mention their tax status on the web site.

The \$5 paid to join MEC is considered a share purchase, not a membership fee, and therefore its tax status is not relevant to us. Similarly, to join the East End Food Co-op, the Vancouver Food Co-operative, or the NOWBC Co-op in Vancouver, one buys a share; one does not pay an annual membership fee.

The Organiko Food Co-op in Vancouver has an annual membership fee, and the web site does not say anything about its being subject to tax.

I could not find the terms "GST" or "HST" on the web site for the Fredericton Direct Charge Co-op.

I have written to the London Co-op Store to ask how they came to the decision their fee was taxable, also sharing what I have gleaned from my scanning of the web.

10. Other HST transition issues

The Board should note something I realized only recently: some goods, such as feminine hygiene products and some prepared foods, are subject to only 5% HST, not 13% HST. This will automatically be programmed into the new cash registers.

The process of changing over the cash registers from PST and GST to HST should take me less than an hour, and I'll plan to do it at the close of business on June 30 or before we open on July 2.