Revenue Canada – Friend or Foe?
A Success Story From The Municipality of Clarington

Typically when we think of Revenue Canada, or any other level of government for that matter (excluding local government of course) we think of bureaucracy and red tape. The municipality of Clarington’s recent experience has definitely changed my opinion of the matter.

The Excise Tax Act is a complex piece of legislation. The extent to which a municipality must submit the Goods and Services Tax (GST) and subsequently whether a rebate (54 - 14 per cent) or input tax credit (100 per cent) is refundable is dependent upon the taxable activities taking place.

In 1997 the Municipality of Clarington opened its 38,000 square foot new facility housing a library, fitness room, community hall and pool. Reduced funding and changes in the early construction period resulted in Council approval to lease out approximately 5,600 square feet of space to a private daycare in order to help reduce the operating costs of the complex.

Typically a new swimming pool is treated as an exempt activity for GST purposes. Therefore, throughout the design and construction period, the municipality had been claiming the recovery of the GST as a rebate of 57.14 per cent.

At the same time, however, it was also collecting and remitting GST on the 31.28 per cent of the total square footage of the building which included the daycare lease, hall rental and fitness room.

It seemed logical that if it could be proven that the taxable activities taking place in the pool were primarily for those over 14 years of age, an input tax credit, or 100 per cent refund, might be applicable.

An article appearing in Municipal World in July 1997 confirmed our suspicion that there was an opportunity for a Community Recreation Complex to be treated as a taxable commercial activity, depending upon the actual activities taking place.

A thorough study of all activities taking place revealed that 54.49 per cent of the available pool hours being used were indeed taxable. This equated to 60.4 per cent of the total square footage as being used for taxable purposes.

A written request was submitted to Revenue Canada to determine its concurrence with our calculations and interpretations. We were also requesting authorization to apply for the difference in the refund from the commencement of the actual construction period.

After several months, many pieces of correspondence and the assistance of the Technical Interpretation Services Branch of Revenue Canada, it was determined that the municipality would need to change its status with respect to real property.

The supply of real property by a Municipality is exempt when supplied by way of lease, license or similar arrangement on a long-term basis. It is only taxable when supplied on a short-term basis for a period of less than 30 days at a time. However, by filing a form GST26, (An Election by a Public Service Body to have an Exempt Property Treated as a Taxable Supply) this status could be changed.

The outcome of this process has resulted in the municipality being entitled to an approximately $200,000 refund. In addition, all expenditures related to the taxable activities now qualify for an input tax credit or 100 per cent refund of the GST paid.

Without the persistence of municipal staff in pursuing this matter and the cooperation and assistance of the Revenue Canada staff this refund may never have materialized.

Definitely FRIEND!