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BARRISTERS AND SOLICITORS

Business Bulletin, October 2005
Mixed-use Property and GST
by Gary Black

That downtown building looks ideal for your business. Nice ground floor storefront with two apartments upstairs, lots of parking at the rear for your customers and for the tenants.

You wish to make an offer but the issue of GST has you stumped. The vendor says he didn't pay it when he bought three years ago so you should be okay. Are you safe to present an offer that reads GST is 'in addition to' the purchase price. Can you rely on the vendor's statement?

The simple answer is "No!"

In each case it is necessary to examine the property's historic use.

Normally, when dealing with a mixed-use property, GST must be paid on that portion of the purchase price that relates to the commercial use. For example, if the vendor is supplying a property where one-half the value is attributable to commercial use and the other one-half to residential use, GST would be paid on the "commercial" half of the purchase price.

Why then did the vendor not pay any GST on his purchase? The answer lies in the property's use when the vendor bought. At that time his seller occupied the whole upstairs for his own principal residential use and ran his business out of the ground floor store. That scenario qualified the property for a used residential property exemption for GST purposes.

Further examination discloses that shortly after your vendor bought, he converted the upstairs apartment into two apartments and he has never occupied either unit for his own residential use. Although the mixed-use ratio remains the same, for GST purposes, the property he is now supplying to you differs from the property he bought. GST now applies and is payable on the commercial portion of the property's value.

Tricky isn't it?

Lancaster, Brooks & Welch has been solving clients' tricky problems since the 1800s.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

Should you prefer to receive our Bulletins by email, contact Jennifer (jjnye@lbwlawyers.com).

Rodger Gordon	rgordon@lbwlawyers.com	Robert Welch	rwelch@lbwlawyers.com
Harry Thorsteinson	hthorsteinson@lbwlawyers.com	R. Bruce Smith	bsmith@lbwlawyers.com
Gary Black	gblack@lbwlawyers.com	Del C. Daignault	ddaignault@lbwlawyers.com
David L. Edwards	dedwards@lbwlawyers.com	Michael A. Mann	mmann@lbwlawyers.com

Lancaster, Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1 Tel. 905.641.1551, Fax 905.641.1830
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9 Tel. 905.735.5684, Fax 905.735.3340
www.lbwlawyers.com