

THE GST INVESTOR REBATE

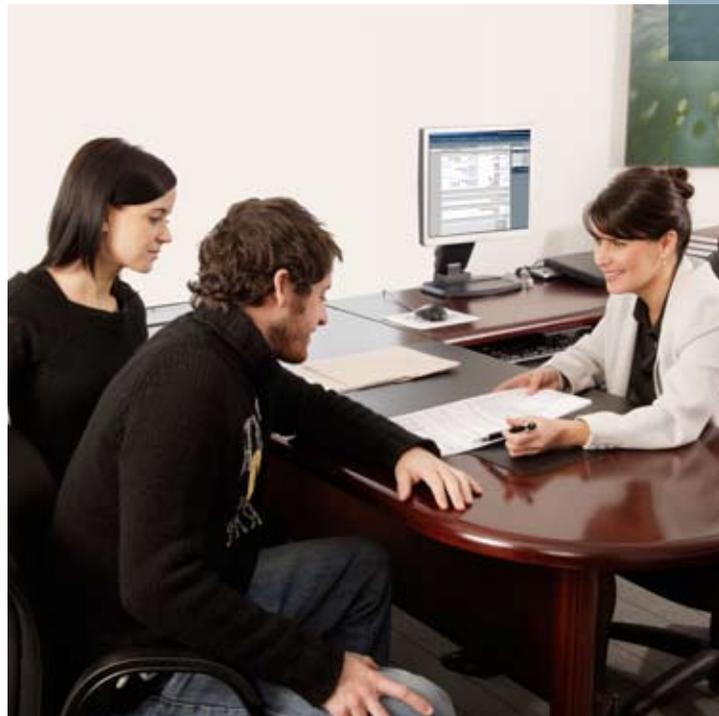
By Alan G. Silverstein

It remains one of the best kept secrets in Canada—a GST rebate for people buying new homes and condominiums as an investment.

Don't confuse this GST investor rebate with the GST New Housing Rebate. A GST fundamental since Day 1, the New Housing Rebate was introduced to keep the net tax burden on new homes and condos "revenue neutral" around 4%, the Federal Sales Tax rate pre-GST.

The New Housing Rebate today rolls-back the GST from 6% to 3.84% on new homes and condos (plus substantially renovated residential properties) priced below \$350,000 (excluding GST). (Technically the rebate is 36% of the 6% GST paid, to a maximum of \$7,560). It's phased-out on prices between \$350,000 and \$450,000 excluding GST, and eliminated over \$450,000 (higher limits may apply in Nova Scotia).

Larger numbers apply to new homes and condos sold for one "all-inclusive" price, a common practice in many parts of Canada today. Here, the GST is included in the purchase price, buyers transfer the rebate to which they are entitled to their builder, and the builder pays the net GST from the sale proceeds. Now the top "tax-included" price qualifying for the full rebate is \$363,440, with the reduced rebate range being \$363,440 to \$477,000. Above \$477,000, no rebate.

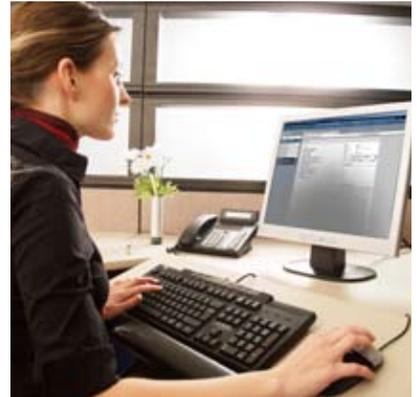


So on a \$325,000 "tax included" new home or condo purchase, the builder nets \$312,981.51 while Ottawa's net GST take is \$12,018.49 (\$18,778.89 GST less the \$6,760.40 rebate).

Unfortunately, not everyone qualified for the GST New Housing Rebate. Despite the name, it really was an "owner-occupant" rebate, limited to individuals buying a new home or condo as their primary place of residence, or that of a relation, right after closing. Investors were clearly shut-out. But they had already transferred the rebate to the builder in the purchase agreement. That forced investors to pay the "lost" rebate to the builder as a closing adjustment, jacking-up the price (by \$6,760.40 in that example).

In the February 2000 Federal Budget, years of investor lobbying for a level playing field finally paid off, when the GST investor rebate was introduced (officially it's the GST New Residential Rental Property Rebate). The price thresholds for the two rebates may mirror each other, but key differences do exist:

- The unit must be a “self-contained residence” with private kitchen facilities, private bath and private living area. Alternatively, it can be a suite or room in a hotel, motel, inn, boarding house, or residence for students, seniors, or the disabled
- The first tenant is “reasonably expected” to occupy the unit continuously as their primary place of residence for at least a year. To satisfy this condition, investors should insist on a written lease with an initial minimum term of one year, instead of a month-to-month arrangement
- Construction, substantial renovation or conversion of the building must have begun on or after February 28, 2000
- GST must have been paid on the purchase, without the buyer receiving the New Housing Rebate
- As in the past, the amount of the “lost” rebate must be paid to the builder as a closing adjustment.
- Investors then have 2 years after closing (occupancy for new condos) to recoup it through the investor rebate program
- Both individuals and corporations can apply for the rebate (each claimant, though, must file a separate rebate application)
- Quick flips are a no-no. The rebate (plus interest) must be repaid if the property is resold within a year after occupancy by the first tenant, unless the new buyer (or a relation) becomes an owner-occupant. Effectively this means there are two separate one-year hurdles to qualify for the GST investor rebate: (a) own the property for a year and (b) rent it for a year.



To claim the GST investor rebate, investors must file form GST524E with the Canada Revenue Agency. Required attachments include copies of the Agreement of Purchase and Sale; the Statement of Adjustments, and the lease with the first tenant.

For more information, see Section 256.2 of the Excise Tax Act (available at www.canlii.org), and the GST/HST New Residential Rental Property Rebate Guide, Form RC4231(E) (on the Internet at www.cra-arc.gc.ca/E/pub/gp/rc4231/rc4231-e.pdf)



Alan G. Silverstein is the Director, National Legal Engagements for Emergis Inc. After 29 years in private practice in the Toronto area, Alan joined Emergis in 2006 to head up the adoption of Assyst Real Estate by real estate lawyers.

Assyst Real Estate is a web-based application that electronically links lenders and lawyers, simplifying the way mortgage transactions are instructed, funded and reported. By streamlining the way mortgage files are processed, it increases staff efficiency, saving valuable time and money. Assyst Real Estate is not designed to handle paper; it's designed to eliminate it. Assyst Real Estate is now available in BC and will be available later this summer in Ontario. It will be available in the rest of Canada throughout 2008.

Emergis is a Canadian information technology leader focusing on the health and financial services sectors. We develop and manage solutions that automate transactions and the secure exchange of information to increase the process efficiency and quality of service of our customers.

The purpose of this newsletter is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute a legal opinion.

© Emergis Inc., 2007. All rights reserved.

The Assystant logo and name are trademarks of Emergis Inc.