



RESIDENTIAL & COMMERCIAL · GUIDE

The HST rebate you don't qualify for can still raise your land transfer tax

Why the rebate amount a builder charges back to an ineligible new-home buyer counts as part of the price for land transfer tax.

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Here is a wrinkle in new-build purchases that catches buyers, and sometimes their lawyers, off guard. You sign an agreement with a builder at a price that is quoted "net of HST rebate." You later learn you do not qualify for that rebate. The builder's standard clause then requires you to pay the rebate amount back to the builder on closing. And then your land transfer tax comes in higher than you expected, calculated on a number larger than the price on the front page of your agreement.

That is not an error. The amount you paid the builder in place of the rebate is part of what you paid for the property, and land transfer tax is calculated on it.

The short answer

HST itself is not part of the value of the consideration for land transfer tax. But a rebate amount that ends up in the builder's pocket rather than being passed through to you is not HST. It is price. So where you are not entitled to the rebate and you pay the builder an amount equal to it, that amount is added to the consideration and land transfer tax applies to the higher figure. If the property is in Toronto, the municipal land transfer tax applies to the same higher figure. If you are a foreign buyer, so does the Non-Resident Speculation Tax, and that is the number that really hurts.

Why: the pass-through versus the retained rebate

The Ministry of Finance draws the line based on where the rebate money actually ends up.

The pass-through case. You genuinely qualify for the rebate. You assign it to the builder and you pay the builder the HST net of the rebate. The builder remits the net HST along with your assigned rebate to the federal government. Here the builder is essentially a conduit: it hands you the benefit of a rebate you were truly entitled to, and keeps nothing. In this situation the rebate amount is not part of the value of the consideration, and no land transfer tax is calculated on it.

The retained-rebate case. You pay the builder the full 13% HST and assign the rebate. The builder remits only the net HST and keeps the difference, an amount equal to the rebate. Because the builder collected that money from you and did not remit it, the Ministry treats it as part of what you paid for the property. It forms part of the value of the consideration, and land transfer tax applies to it.

Your case, if you are ineligible. This is a third situation and it is the cleanest of the three. If you do not qualify, there is no rebate to pass through at all. The builder's clause simply requires you to pay it the rebate amount as an adjustment on closing. The builder keeps it. Nothing is being remitted to anyone on your behalf. That amount is straightforwardly part of the price of the land, and it is consideration for land transfer tax purposes.

The underlying logic is the same across all three: HST is excluded from the consideration, but money the builder keeps is not HST, it is price.

What this actually costs

The land transfer tax on the rebate amount is real but modest. On a rebate amount in the range of \$24,000, at the marginal Ontario rate applying to residential consideration in the mid brackets, you are looking at a few hundred dollars of additional provincial land transfer tax, roughly doubling if the property is in the City of Toronto and the municipal land transfer tax also applies. Confirm the current rates and brackets rather than relying on that description.

It is not a large number in isolation. But it has to be declared correctly in the land transfer tax statements on registration, and mis-stating the consideration is a compliance problem, not a rounding error.

The number that matters more. If the reason you are ineligible is that you are a foreign buyer, the Non-Resident Speculation Tax applies to the value of the consideration as well, at a materially higher rate than land transfer tax. On the same rebate amount, the NRST consequence dwarfs the land transfer tax consequence. Rebate-ineligibility and non-residency travel together often enough that this is worth confirming at the front of any file, not at the end.

Are you actually ineligible? This changed in 2026

Before assuming you are outside the rebate, check the current rules, because the eligible population expanded significantly and the change is in force now.

For agreements of purchase and sale signed with a builder between April 1, 2026 and March 31, 2027, Ontario introduced a temporary enhanced HST rebate, delivered through Bill 114, with federal cooperation to rebate the federal portion as well. Two features matter for the question of who is ineligible:

- It is not limited to first-time buyers. The enhancement applies to eligible buyers generally.
- It is not limited to owner-occupiers. The regulations extend the enhancement to new purpose-built rental housing through the New Residential Rental Property Rebate, so investors and landlords buying qualifying long-term rental housing in the window may be able to access it, subject to their own construction-timing conditions.

So a buyer who would have been plainly ineligible under the old framework, an investor, for instance, may now qualify. The window is narrow, the construction and completion timing conditions are real, and assignments have to clear the dates on both the original builder agreement and the assignment.

This is genuinely complex, it is new, and it is temporary. Do not assume your eligibility either way. Have it confirmed for your specific agreement and your specific use of the property.

A note on where this stands. Ontario's enabling legislation received Royal Assent in May 2026, the supporting federal and provincial regulations were made in June 2026, and the CRA opened applications in June 2026. This is live law, not a proposal. But it is recent law, and the guidance and forms have been catching up. Confirm the current position for your file rather than relying on any summary, including this one.

What to do

- Read the HST clause in your builder agreement before you sign. The clause that requires an ineligible purchaser to pay the rebate amount to the builder is standard, and it is where this whole issue lives. Know whether it applies to you.
- Establish your eligibility early, with advice. Whether you qualify depends on your intended use of the home, your status, the date of your agreement, and the construction timing. Get it confirmed rather than assumed, especially given the 2026 changes.
- If you are a foreign buyer, deal with NRST at the outset. It is the dominant number, and it applies to the same grossed-up consideration.
- Budget for the land transfer tax on the true consideration, not on the net-of-rebate sticker price, if you are ineligible.
- Tell your lawyer early so the consideration is declared correctly on registration.

Bottom line

HST is not part of the consideration for land transfer tax, but a rebate amount the builder keeps is. If you do not qualify for the new housing rebate and your builder's agreement makes you pay that amount back on closing, it is part of the price, and land transfer tax, Toronto municipal land transfer tax, and the Non-Resident Speculation Tax where applicable are all calculated on the higher figure. Before you accept that you are ineligible, check the 2026 enhanced rebate, because it is in force, it runs only for agreements signed in a one-year window, and it covers a much wider group of buyers than the old rules did, including many investors. This is technical, it is moving, and the amounts at stake, particularly NRST, are large enough that it is worth getting right before you sign. Talk to us and to a tax advisor early.

This is general information about land transfer tax and HST on new homes in Ontario. It is not legal or tax advice, not a title opinion, and not a substitute for retaining counsel and a tax advisor for your transaction. Rebate eligibility, rates, thresholds, and the 2026 enhanced rebate rules are technical, recent, and subject to change, and the wording of your specific builder agreement governs. Confirm the current position for your file before relying on any of this.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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