

THE RETAIL SALES TAX ACT

CORPORATIONS, PARTNERSHIPS, JOINT VENTURES AND TRUSTS

This bulletin summarizes the Manitoba retail sales tax (RST) application on taxable tangible personal property (TPP) purchased or sold by a corporation, partnership, joint venture or trust.

PART A – CORPORATIONS AND PARTNERSHIPS (Sections 1 to 6)

Section 1 – DEFINITIONS

- Closely related parties**
- Parties are closely related to each other when all of the following conditions are satisfied:
 - All of the parties are either only corporations or only partnerships (i.e. corporations can't be closely related to partnerships or vice versa);
 - One of the parties controls, owns and retains for at least 6 months 95% or more of the other party's shares or partnership interests;
 - The fair market value of the shares or partnership interests is at least 95% of all its issued and outstanding shares or partnership interests; and
 - There is no right or option that, if exercised, would result in the two parties ceasing to be closely related.
 - Two corporations are closely related to each other if they are subsidiaries of the same corporation and the parent corporation controls, owns and retains for at least 6 months at least 95% of the shares as described above in each of the subsidiary corporations. Two partnerships may also be closely related through a third partnership on the same basis.
- Corporation**
- A corporation includes any body corporate incorporated under *The Corporations Act* or under an act of the Legislature (or under equivalent provisions of Canada or of another province) such as share corporations, cooperatives and credit unions.
- Newly incorporated corporation or newly formed partnership**
- Corporations and partnerships are considered to be newly incorporated or newly formed up to the date that they commence their business activities.
 - For TPP to be considered received by a newly incorporated corporation or newly formed partnership, it must be recorded in the books of account of the business with an effective date no later than the start date of their business activities.
- Partnership**
- A partnership is defined as a person under *The Retail Sales Tax Act* and includes, as described in *The Partnership Act*, a general partnership, a limited partnership or a limited liability partnership.

- The sale or lease of TPP to or from a partnership is treated the same for a general partnership, limited partnership or a limited liability partnership.

Partnership interest

- A partnership interest includes partnership units of a limited partnership or a limited liability partnership.

Section 2 – GENERAL INFORMATION**General information**

- Tax applies on the sale of TPP to and from a corporation or partnership except in the situations described in this bulletin.
- RST applies on the sale of taxable services, even when these services are performed by a closely related party.

See Bulletin 030 – *Summary of Taxable and Exempt Goods and Services* for more information on which goods and services are subject to tax.

- No RST applies on the purchase of shares or partnership interests.
- The RST exempt transactions described in this bulletin are subject to the general anti-avoidance rules in *The Tax Administration and Miscellaneous Taxes Act*.

Retention of shares or partnership interests

- Shares or partnership interests must be retained for at least 6 months following the sale for an exemption to apply in the following situations:
 - When received in exchange for TPP sold to a newly incorporated corporation or newly formed partnership; or
 - When TPP is sold to a closely related party.
- If all of the shares or the partnership interests are not retained for at least 6 months after the sale, RST applies on the fair market value of the TPP at the time of the sale. (An exclusion exists for corporate amalgamations or partnership mergers – see Section 5).

Please Note: Shares or partnership interests transferred by a person to their spouse, common-law partner, or to a spousal/common-law partner trust within 6 months after the sale are considered retained for RST purposes provided that no further transfer takes place outside the spouse/common-law relationship within the 6 month retention period. A spousal/common-law partner trust usually only has the transferring person's spouse/common-law partner as a beneficiary but it may also include the transferring person as a beneficiary. Transfers of shares or partnership interest to any other family member (i.e. parents, children or siblings) or other family trusts are not considered retained.

Leases

- When TPP is leased between closely related parties, no RST applies if the party leasing the TPP has previously paid the tax and the parties remain closely related. However, RST applies on taxable services performed by closely related parties on leased TPP.
- If this relationship changes prior to the end of the lease term, resulting in the parties no longer being closely related, all subsequent lease payments are taxable.

Please Note: If the closely related relationship ends within 6 months following the start of the lease, or from when the parties become closely related, RST applies on all subsequent lease payments and on all lease payments made while the parties were closely related.

First Nation partnerships and corporations

- In addition to the exemptions described in this bulletin for partnerships, when TPP is purchased by a partnership where Status Indians or Indian Bands hold 95% or more of the partnership interests, the exemption provided under the *Indian Act (Canada)* applies.
- In partnerships where Status Indians or Indian Bands hold less than 95% of the partnership interests, RST applies on purchases of TPP by the partnership in the proportion of the partnership interests not owned by the parties that are Status Indians or Indian Bands.
- See Information Notice – *Notice to Retailers – Clarification of Manitoba Sales Tax Exemption for Status Indians and Indian Bands*, for additional information on the exemption and its documentation requirements.
- Exemptions from tax do not apply to corporations or corporate partners that are owned by Status Indians or Indian Bands. However, the exemptions available for transfers between corporations described in this bulletin apply.

Section 3 – SALES OF TPP TO A NEWLY INCORPORATED CORPORATION OR TO A NEWLY FORMED PARTNERSHIP

Parties that are not closely related

- A newly incorporated corporation or a newly formed partnership may acquire TPP tax exempt if the seller has paid the applicable RST on the TPP and the form of payment is exclusively shares or partnership interest equal to the full fair market value of the TPP. The seller doesn't have to be closely related but the shares or partnership interest received must be retained for at least 6 months and no amount may be payable as a return of capital in respect of the shares during this period.
- If the fair market value of the TPP exceeds the value of the shares or partnership interest received or if the seller receives shares or partnership interest and other forms of payment (such as cash or notes receivable) as consideration, tax applies to the fair market value of the TPP that exceeds the fair market value of the shares or partnership interest.

Please Note: When taxable and exempt goods are sold, the shares or partnership interest received must be prorated between these goods based on their respective percentage of the total fair market value. RST applies on the fair market value of the taxable goods that exceeds the fair market value of the prorated shares or prorated partnership interest.

Closely related parties

- TPP may be sold or leased (as described in section 2) RST exempt from a closely related party to a newly incorporated corporation or newly formed partnership if the party making the sale or lease has paid the RST on the fair market value of the TPP and remains closely related for at least 6 months following the transaction.
- Individuals may sell or lease TPP RST exempt to a newly incorporated corporation or newly formed partnership as if they were a corporation or a partnership if they meet the ownership and retention requirements of

closely related parties.

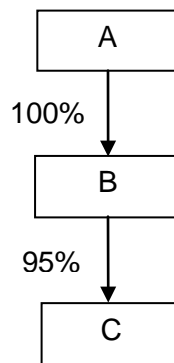
Section 4 – SALES OF TPP AFTER INCORPORATION OR PARTNERSHIP FORMATION

Parties that are not closely related

- RST applies when TPP is sold to a corporation or a partnership after its incorporation or formation if the parties are not closely related.

Closely related parties

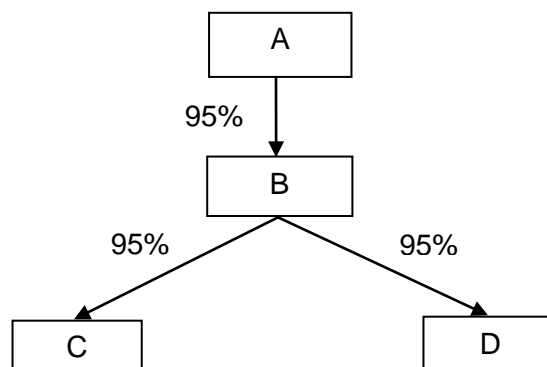
- TPP may be sold or leased (as described in section 2) RST exempt between closely related parties after incorporation or partnership formation if all of the following applies:
 - The party selling or leasing the TPP has paid the RST; and
 - The parties remain closely related to each other for at least 6 months following the sale or start of the lease.
- In the following example, A, B and C are all closely related parties:



Party A can sell TPP tax exempt to either B or C since party A is closely related to both B and C - it controls and owns 100% of B and B controls and owns 95% of C.

Please Note: RST must have been paid by the party selling or leasing the TPP. If RST has not been paid, tax applies. For example, party A can sell TPP tax exempt to B but if B then sells this same TPP to C, RST applies because B never paid RST on the TPP. However, if B sells this same TPP back to A, no RST applies (as described in section 6).

- In the following example, parties A, B, C and D are not all closely related to each other:



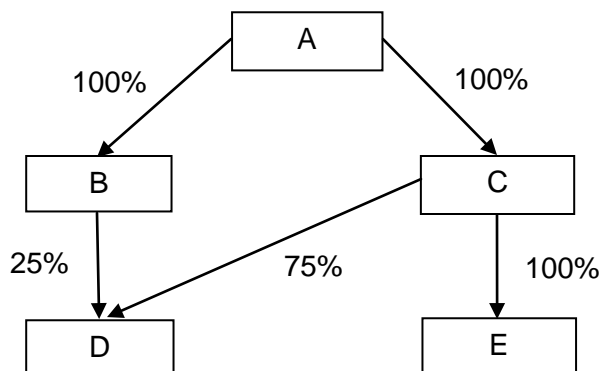
Party A can sell TPP tax exempt to B and vice versa since B is closely related to party A. However, party A cannot sell TPP tax exempt to C or D or vice versa because they are not closely related - party A effectively only owns 90% of C and D (95% of B x 95% of C or D).

Party B is closely related to C and D and can sell TPP tax exempt to C or D and vice versa.

Please Note: RST must have been paid by the party selling or leasing the TPP. If RST has not been paid, tax applies. For example, C can sell TPP tax exempt to B but if B then sells this same TPP to D, RST applies because B never paid RST on this TPP.

Parties that are closely related to the same party

- Parties may sell or lease (as described in section 2) TPP tax exempt to another party if:
 - RST has been paid by the party selling or leasing the TPP; and
 - The parties remain closely related to the same party for at least 6 months following the sale or start of the lease.
- In the following example, parties B, C, D and E are all closely related to party A:



B may sell TPP tax exempt to E, since B and E are closely related to party A. B is closely related to party A and E is closely related to C which is closely related to party A.

Please Note: RST must have been paid by the party selling or leasing the TPP. If RST has not been paid, tax applies. For example, C can sell tax paid TPP exempt to E but if E sells this same TPP to D, RST applies because E never paid RST on this TPP. However, if E resells the TPP to C, no RST applies (as described in section 6).

Section 5 – CORPORATE AMALGAMATIONS AND PARTNERSHIP MERGERS

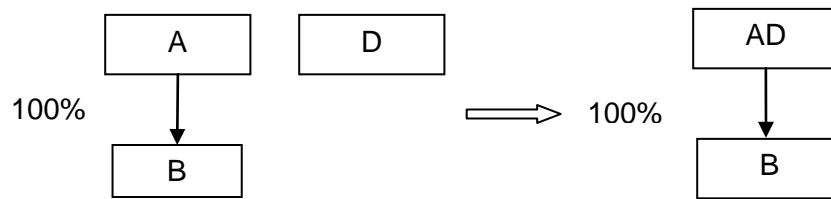
General information on amalgamations and mergers

- When two or more corporations amalgamate as described by *The Corporations Act* (or under equivalent provisions of an enactment of Canada or of another province) or existing partnerships merge, a sale does not occur and no RST applies on TPP located in Manitoba if the property, rights, interests and obligations of the predecessor corporations or partnerships are continued in the new amalgamated corporation or merged partnership.

- **Please Note:** If the amalgamation or merger results in TPP being brought into the province, RST applies on its fair market value.

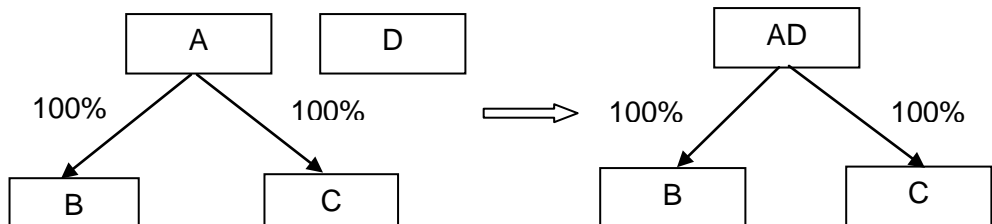
Closely related parties amalgamations and mergers

- TPP that becomes part of an amalgamated corporation or merged partnership may be sold or leased (as described in section 2) tax exempt to a closely related party if RST has been paid by one of the amalgamating or merging parties.
- In the following example, parties A and B are closely related and party A purchases and pays RST on TPP prior to amalgamating or merging with non-closely related party D to become AD:



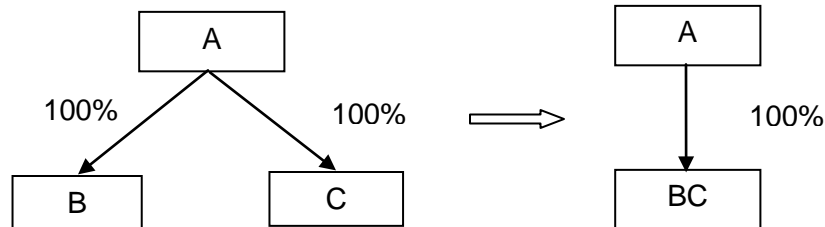
After the amalgamation and merger, AD can still sell TPP to B RST exempt as long as AD and B remain closely related for 6 months following the transfer.

- TPP transferred tax exempt by closely related parties as described in this bulletin, remains tax exempt when an amalgamation or merger occurs if the closely related status of the parties continues after the amalgamation or merger for the balance of the 6 month retention period. However, if the closely related status of the parties ends as a result of an amalgamation or merger prior to the end of the 6 month retention period, RST applies on the fair market value of the TPP at the time it was sold.
- In the following example, parties A, B and C are closely related and A sells TPP RST exempt to B and C at their time of incorporation or partnership formation for an equivalent value in shares or partnership interests. Party A subsequently amalgamates or merges with non-closely related party D to become AD:



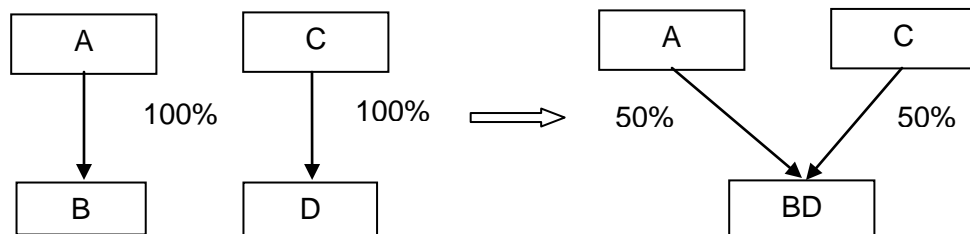
The TPP received by B and C does not lose its exempt status when the amalgamation or merger of A and D into AD occurs as long as AD continues to retain the shares or partnership interests originally received by party A from B and C for the balance of the 6 month retention period. If the shares or partnership interests are not retained, RST applies on the fair market value of the TPP at the time it was sold.

- In the following example, parties A, B and C are closely related and A sells TPP RST exempt to B and C after their incorporation or formation and following the sale of TPP, B and C merge or amalgamate into party BC:



The TPP received by B and C does not lose its exempt status when B and C amalgamate or merge into BC as long as BC remains closely related to A for the balance of the 6 month retention period. If the closely related status ends prior to the end of 6 months, RST applies on the fair market value of the TPP at the time it was sold.

- In the following example, A and B are closely related and C and D are closely related (but A and B are not closely related to C and D) and A and C sell TPP RST exempt to B and D. Following the sale, B and D amalgamate or merge into BD:



The TPP received by B and D is taxable at the fair market value of the TPP at the time of the sale if the amalgamation or merger of B and D occurs within 6 months of the exempt purchase of the TPP from A and C because B and D are no longer closely related to A and C. If the amalgamation or merger occurs more than 6 months after the exempt purchase of the TPP from A and C, no RST applies.

Section 6 – SALES OF TPP TO SHAREHOLDERS OR PARTNERS

Wind-up or dissolution

- The transfer of TPP from a corporation or partnership to the shareholder(s) or partners as part of a wind-up or dissolution is a sale. However, an exemption is provided if all of the following are met:
 - The wind-up or dissolution is as described by *The Corporations Act* or *The Partnership Act* (or under equivalent provisions of an enactment of Canada or of another province);
 - RST has been paid on the TPP by the corporation or partnership that is winding up or dissolving;
 - The shareholder(s) or partners did not acquire shares or interest in contemplation of such a transfer of TPP; and

- In the case of a corporation, the only consideration involved in the transfer of the TPP is the surrender and cancellation of all of the shares held by the shareholder(s) or in the case of a partnership that the TPP is distributed to each partner in satisfaction of all or part of their equity in the partnership.

- If a shareholder or partner receives TPP greater than the fair market value of their shares or partnership interest, RST applies on the value of the TPP that exceeds the value of the shares or partnership interest.

Share redemption or withdrawal of a partner

- When a shareholder redeems their shares from a corporation that is not winding-up or a partner withdraws from a partnership that is not dissolving and doesn't receive any TPP as consideration for the value of their shares or partnership interest, no RST applies.
- If a shareholder redeems all or part of their shares or a withdrawing partner exchanges all or part of its partnership interest for TPP, tax applies on the TPP's full fair market value, or proportionally as described below in this section if the TPP is reacquired by the previous owner.

Dividend in kind and return of capital

- When TPP is transferred to a shareholder as a dividend in kind or as a return of capital from a corporation that is not winding down, RST applies. However, if the TPP is transferred to shareholder that previously owned the TPP, RST applies proportionally as described below.

TPP reacquired by previous owner

- When TPP previously owned by a shareholder or partner is reacquired and the shareholder or partner has previously paid RST, tax applies on the fair market value of the TPP when it is reacquired based on the proportion of the fair market value of the shares or partnership interest not owned by the shareholder or partner prior to the sale in relation to the fair market value of all shares or partnership interests that existed immediately prior to the sale of the TPP.

Example 1: If shareholder X owns 100% of Corporation Z and sold tax paid TPP to Corporation Z, shareholder X may reacquire this same TPP RST exempt from Corporation Z.

Example 2: If partner A has a 25% interest in a partnership and sold tax paid TPP to the partnership when it was newly formed and subsequently reacquires this same TPP from the partnership, RST applies on the proportion of the partnership interest that is not owned by partner A. As partner A has a 25% interest in the partnership, RST applies on 75% of the fair market value of the TPP at the time it is reacquired by partner A.

- If TPP previously owned by a shareholder or partner is reacquired as part of a wind-up or dissolution, no RST applies if the shareholder or partner has previously paid the tax.

PART B – JOINT VENTURES AND TRUSTS

Section 7 – JOINT VENTURES

What is a joint venture?

- A joint venture is an undertaking entered into by two or more parties in which the parties agree to use their own TPP to mutually perform a

specified project. A joint venture is not a person and is intended to be terminated upon completion of the project.

Purchases and transfers of TPP

- When a joint venture purchases TPP on behalf of all the venturers, RST applies. Each venturer will own a portion of this TPP based on their participating percentage in the joint venture.
- When TPP is owned by a venturer and contributed to a joint venture, no RST applies if tax has been paid by the venturer and they continue to be the sole owner of the TPP when it is used in the joint venture. However, if the venturer contributing TPP to a joint venture sells part of the TPP to the other venturers, RST applies on the fair market value of the portion of the TPP acquired by the other venturers.

Please Note: No RST applies when TPP is sold to a closely related party that is participating in a joint venture if tax has been paid by the venturer making the sale.

Ending of a joint venture

- Upon ending a joint venture, TPP that was purchased by a joint venture on behalf of all the venturers may be sold to one of the venturers and the portion owned by the venturer is RST exempt. Tax applies on the remaining portion at its fair market value.
- TPP contributed by a venturer may be returned to the venturer RST exempt if it is the sole owner of the TPP and tax has been paid. If the TPP was sold by a venturer to all the other venturers (i.e. it is owned by all the venturers), only the portion of the TPP owned by the venturer receiving it is RST exempt if they have previously paid the applicable tax. Tax applies on the remaining portion at its fair market value.

Please Note: RST applies when TPP owned by all the venturers is sold to a closely related party upon ending a joint venture. Tax applies on the portion not currently owned by the party buying the TPP at its fair market value.

Section 8 – TRUSTS

What is a trust?

- A trust is a legal relationship where a trustee holds assets for the beneficiaries and includes testamentary trusts, spousal or common-law partner trusts, employee trusts and income trusts.

General information regarding trusts

- When TPP is contributed to a trust, no RST applies if the contributor has paid the applicable tax.
- RST applies if a trust purchases TPP or sells TPP.
- When a beneficiary of a trust receives otherwise taxable goods from the trust and no consideration whatsoever is paid by the beneficiary, no RST applies if the contributor of the TPP or the trust has paid the applicable tax.
- See section 3 in Part A of this bulletin regarding spousal and family trusts receiving as a gift or purchasing shares or partnership interest in a newly incorporated corporation or newly formed partnerships.

- Change in trustee**
- When the existing trustee of a trust is replaced with a new trustee, no RST applies as the change in trustee does not give rise to a retail sale.

PART C – DOCUMENTATION

- Documentation requirements**
- Documentation must be maintained in addition to the normal books of accounts to verify the relationship between the parties involved and any applicable RST was paid.
 - Documentation to be maintained include the following:
 - Share register;
 - Capital accounts for each class or series of shares;
 - Articles of incorporation (and any amendments);
 - Partnership agreement and dissolution documentation;
 - Joint venture agreement;
 - Documentation pertaining to the creation of a trust and its beneficiaries;
 - Agreements or contracts between the parties verifying the fair market value of the TPP;
 - Amalgamation agreement; and
 - Certificate of amalgamation.

See Bulletin 016 – *Record Keeping and Retention Requirements* for more information.

FURTHER INFORMATION

This bulletin is intended to serve as a guideline and is not all-inclusive. For the specific wording of the law, please refer to the *Retail Sales Tax Act* and *Regulations*. Further information may be obtained from:

Winnipeg Office

Manitoba Finance
Taxation Division
101 - 401 York Avenue
Winnipeg, Manitoba R3C 0P8
Telephone (204) 945-5603
Manitoba Toll Free 1-800-782-0318
Fax (204) 948-2087

Westman Regional Office

Manitoba Finance
Taxation Division
314, 340 - 9th Street
Brandon, Manitoba R7A 6C2
Fax (204) 726-6763

E-mail: MBTax@gov.mb.ca

ONLINE SERVICES

Our Web site at manitoba.ca/finance/taxation provides tax forms and publications about taxes administered by Taxation Division, and a link to Manitoba's laws and regulations. Forms and publications can also be obtained by contacting the Taxation Division.

Our online service at manitoba.ca/TAXcess provides a simple, secure way to apply for, and to file, pay and view your Taxation Division tax accounts.