

THE TAX ADMINISTRATION AND MISCELLANEOUS TAXES ACT

BULK SALES - BUYING AND SELLING BUSINESS ASSETS

This bulletin explains the seller's and buyer's requirements when business assets are sold in a Bulk Sale, including the requirement for the seller to obtain a Bulk Sales Clearance Certificate and the requirement for the buyer to pay retail sales tax (RST) on their purchase of taxable assets.

SECTION 1 – BULK SALES

Definition of Bulk Sale A Bulk Sale is the sale of business assets (includes a barter or exchange) in connection with the seller ceasing to carry on business in Manitoba. Business assets commonly sold in a Bulk Sale include land, buildings, machinery, equipment, furniture, fixtures, leasehold improvements, inventory, goodwill and accounts receivable.

Ceasing to carry on business in Manitoba Ceasing to carry on business in the context of a Bulk Sale generally means closing a business entirely and selling the business assets.

Ceasing to carry on business also includes closing a business location (operating division) located in Manitoba, selling the assets of the closed location, while continuing to operate at other locations. The sale of assets from a business location is not a Bulk Sale if the business continues to operate at that same location.

Examples of Bulk Sales A company operates three restaurants in Manitoba, sells the assets of one restaurant and ceases to carry on business at that location.

A company operates five clothing stores across Canada including one store in Manitoba. The company sells the assets of the store in Manitoba and ceases to carry on business at that location.

A convenience store operates in a leased facility with the only assets owned by the store operator being their inventory of goods for resale. The store operator sells their inventory of goods for resale and ceases to carry on business at that location.

A trucking company operates a repair facility at their warehouse in Manitoba. The repair facility assets are sold to an outside buyer who continues to operate the repair facility at the warehouse.

Examples that are not a Bulk Sale A company operates a retail hardware store with an on-site restaurant. The restaurant is closed and the assets are sold and removed. The hardware store is expanded into the space previously occupied by the restaurant.

A company operates a restaurant and completely renovates their restaurant including selling all their old assets and replacing them with new assets.

Sale of shares, partnership interests, amalgamations and mergers are not a Bulk Sale A sale of shares or partnership interests is not considered to be a sale of business assets that comprises a Bulk Sale.

Corporate amalgamations under *The Corporations Act* and partnership mergers are not considered to be the sale of assets and are not a Bulk Sale.

SECTION 2 – BULK SALES CLEARANCE CERTIFICATE

Bulk Sale Clearance Certificate A Bulk Sale Clearance Certificate issued under section 45 of *The Tax Administration and Miscellaneous Taxes Act* (TAMTA) will be issued to the seller (in duplicate) by the Taxation Division subject to the following:

- a) all tax returns required under the 7 tax statutes noted below have been filed and paid,
- b) being satisfied that the seller has no tax debt; or
- c) the seller has a tax debt but satisfactory payment arrangements have been made with the Taxation Division.

A Bulk Sale Clearance Certificate indicates that the Taxation Division has no security interest in the business assets being sold at the date of the sale.

Tax debt A tax debt includes any tax, penalties, interest, fees or other charges owing to the Minister of Finance under the following tax statutes:

- *The Retail Sales Tax Act,*
- *The Health and Post Secondary Education Tax Levy Act,*
- *The Corporation Capital Tax Act,*
- *The Fuel Tax Act,*
- *The Tobacco Tax Act,*
- *The Mining Tax Act,*
- *The Credit Unions and Caisses Populaires Profits Tax Act, and*
- *The Emissions Tax on Coal and Petroleum Coke Act.*

Account status letter is not a Bulk Sale Clearance Certificate Upon request, the Taxation Division will issue an “account status letter” confirming that a registrant has (or has not) filed and remitted tax returns up to the date of the account status letter. There is no fee for an account status letter. These letters do not confirm the status of a seller’s tax debt and are not a Bulk Sale Clearance Certificate.

Contractor clearance letter is not a Bulk Sale Clearance Certificate Upon request, the Taxation Division’s contractor desk audit section will review and verify the correct application of provincial tax on a contract and issue a “contractor clearance letter” advising the principal that the Taxation Division is satisfied all provincial taxes have been properly paid regarding the contract. There is no fee for a contractor clearance letter. These letters are not a Bulk Sale Clearance Certificate.

Processing fee There is a \$50 fee for processing each Application for a Bulk Sale Clearance Certificate.

SECTION 3 – SELLER TO OBTAIN A BULK SALE CLEARANCE CERTIFICATE

Definition of seller A seller is a person, including a proprietor, partnership, corporation, or trust, that ceases to carry on business in Manitoba and sells their business assets through a Bulk Sale.

Seller can include a receiver or trustee A receiver, trustee or other person who takes control of a business's assets (when acting in connection with a security interest in the assets) and operates the business for a period before they subsequently sell the assets, must apply for a Bulk Sale Clearance Certificate for the period that they operated the business.

A receiver, trustee or other person who takes control of a business's assets (when acting in connection with a security interest in the assets) and does not operate the business but solely sells the assets does not require a Bulk Sale Clearance Certificate.

Note: Taxes collected by a tax collector are deemed to be held in trust. A receiver, trustee or other like person that wishes to distribute money or other property of a tax collector may also require a Certificate under section 73 of TAMTA regarding any taxes that are deemed to be held in trust. Please contact the Taxation Division for further information on the deemed trust provisions.

Seller must apply for a Bulk Sale Clearance Certificate The seller in a Bulk Sale must apply for a Bulk Sale Clearance Certificate for the period up to the date on which the sale takes place. A Bulk Sale Clearance Certificate is required for all Bulk Sales, including the sale of business assets where a business was not registered with the Taxation Division.

Examples of businesses that may not be registered with the Taxation Division include construction companies, trucking companies, warehouse operations, apartment buildings and dental or medical offices. For unregistered businesses, the seller was required to have paid RST on all taxable purchases up to the date of the Bulk Sale and the buyer is required to pay RST on their purchase of taxable assets.

With written authorization, a seller's legal representative (e.g. lawyer, accountant) can apply for the Bulk Sale Clearance Certificate on the seller's behalf.

How to apply for a Bulk Sale Clearance Certificate A seller must complete an *Application for Bulk Sale Clearance Certificate* form (available at the Taxation Division offices or website listed at the end of this bulletin), and submit the completed form to the Taxation Division together with the following:

- \$50 processing fee, payable to the Minister of Finance,
- all unfiled tax returns up to the date of the Bulk Sale, along with applicable payment,
- tax authorization forms which are no longer required or valid, and
- a copy of sale/purchase agreement with a breakdown of total selling price by asset class (land, buildings, machinery, inventory, etc.).

SECTION 4 – SELLER MUST PROVIDE DUPLICATE COPY OF BULK SALE CLEARANCE CERTIFICATE TO BUYER**Seller must provide copy of Bulk Sale Clearance Certificate to buyer**

The seller must provide a duplicate copy of the Bulk Sale Clearance Certificate, issued by the Taxation Division, to the buyer. A Bulk Sale Clearance Certificate confirms to the buyer that the seller has no tax debt for which the buyer may become liable and that the Taxation Division has no security interest in relation to the assets acquired.

In cases where a business ceases and the assets are sold to more than one buyer, the seller obtains one Bulk Sale Clearance Certificate and must provide one copy to each buyer.

Buyer liable for seller's tax debts without a Bulk Sale Clearance Certificate

A buyer of assets in a Bulk Sale who fails to obtain a copy of the Bulk Sale Clearance Certificate from the seller can be held liable for the seller's tax debts with the Taxation Division up to the date of the Bulk Sale. To ensure that a buyer is not liable for a seller's tax debts, it is in the buyer's interest not to release the final sale proceeds to the seller until a copy of the Bulk Sale Clearance Certificate has been received.

Once a buyer obtains a copy of the Bulk Sale Clearance Certificate, the buyer cannot be held liable for the seller's tax debt, even if the seller's tax debts are discovered by an audit (or other means) after the Bulk Sale Clearance Certificate is issued.

SECTION 5 - BUYER TO PAY RETAIL SALES TAX ON PURCHASE OF TAXABLE ASSETS**Payment of RST by buyer**

The buyer of assets in a Bulk Sale is required to pay RST on their purchase of taxable assets.

In a Bulk Sale, as the seller is ceasing to carry on business in Manitoba, they will not collect RST on their sale of taxable assets. The buyer is required to pay RST on their purchase of taxable assets by completing a Casual Purchaser's Return (available at the Taxation Division's offices or website listed at the end of this bulletin) and returning it with payment of the RST due (payable to Minister of Finance, Manitoba) to the Taxation Division at the address noted below.

Payment of the RST payable is due by the 20th day of the month following the month of the Bulk Sale. Late payments are subject to a 10% late filing penalty plus interest.

Bulk Sale Officer

The Taxation Division's Bulk Sale Officer is responsible for verifying, approving and issuing all Bulk Sale Clearance Certificates. This includes verification that all taxes have been reported and paid by the seller and that RST has been paid by the buyer on their purchase of taxable assets. All matters related to a Bulk Sale including correspondence, Bulk Sale Clearance Certificates, Casual Purchaser's Returns and the payment of RST by the purchaser should be directed to the Bulk Sale Officer as follows:

Bulk Sale Officer
Manitoba Taxation Division
Room 101 – 401 York Avenue
Winnipeg MB R3C 0P8
Telephone: (204) 945-6444
Manitoba Toll Free 1-800-782-0318
Fax (204) 945-0896
MBTax@gov.mb.ca

Taxable assets

Under *The Retail Sales Tax Act*, assets falling within the definition of tangible personal property are subject to RST. Taxable assets commonly sold in a Bulk Sale include:

- machinery and equipment (except fixed equipment in a manufacturing plant as noted below),
- maintenance equipment and supplies,
- storage structures and containers,
- shelves, racking, display cases and signs,
- construction and other mobile equipment including forklifts,
- office furnishings, equipment, supplies,
- cash registers and computer equipment.

See Bulletin No. 030 – *Summary of Taxable and Exempt Goods and Services* for more information.

Non-taxable assets

Non-taxable assets commonly sold in a Bulk Sale include:

- real property (land, buildings, permanent fences, parking lots),
- intangible assets (goodwill, franchise rights, trademarks),
- inventory for resale or for use in manufacturing goods for sale,
- accounts receivable.

Leasehold improvements

Leasehold improvements are often a combination of taxable and non-taxable assets. When a Bulk Sale includes the sale of leasehold improvements, a breakdown of the assets categorized as leasehold improvements is required. Many assets categorized as leasehold improvements are improvements to real property (walls, doors, ceilings, flooring, windows, wall covering), which are not subject to RST.

However, if assets categorized as leasehold improvements include shelving, display cases, cabinets, work stations, storage racks/containers or other assets that remain tangible personal property, the portion of the selling price of the leasehold improvements that relates to these assets is subject to RST.

Motor vehicles

RST is payable on motor vehicles (automobiles and trucks) included in a Bulk Sale. However, for vehicles requiring registration under *The Drivers and Vehicles Act*, the applicable RST will be collected by Manitoba Public Insurance at the time the vehicle registration is transferred to the buyer. Accordingly, the buyer of vehicles in a Bulk Sales is not required to pay the RST on the vehicles on their Casual Purchaser's Return.

Exemption for manufacturing equipment Manufacturing machinery and equipment that are attached to land or buildings are exempt from RST, when sold as a manufacturing plant and the buyer continues to use the machinery and equipment in the manufacturing plant for at least six months after the sale and RST was previously paid on the fair value of the assets.

Buyer to register for Manitoba taxes The pamphlet *Do I Need to Register*, available at the Taxation Division offices or website listed below, will assist businesses in determining if they are required to register for any of the taxes administered by the Taxation Division.

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 *Tax Administration and Miscellaneous Taxes 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.