



## INFORMATION BULLETIN – TAMTA 002

# BULK SALES – BUYING AND SELLING BUSINESS ASSETS

## THE TAX ADMINISTRATION AND MISCELLEANOUS TAXES ACT

**Issued: October 2010**

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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.

**Latest Revision:** The revision bar (I) identifies changes to the October 2010 version of this bulletin. For a summary of the changes, refer to the Revision Summary section.

### SECTION 1 - BULK SALES:

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 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.

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:**

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 Taxation Division subject to the following:

- a) all tax returns required under the 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 Taxation Division.

A Bulk Sale Clearance Certificate indicates that Taxation Division has no security interest in the business assets being sold at the date of the sale. There is no fee for a bulk sales clearance certificate.

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, and
- The Emissions Tax on Coal and Petroleum Coke Act.

Upon request, 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.

Upon request, 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 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.

### **SECTION 3 - SELLER TO OBTAIN A BULK SALE CLEARANCE CERTIFICATE:**

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.

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.

Please 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 Taxation Division for further information on the deemed trust provisions.

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 Taxation Division.

Examples of businesses that may not be registered with 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, for example a lawyer or an accountant, can apply for the Bulk Sale Clearance Certificate on the seller's behalf.

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

- 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:**

The seller must provide a duplicate copy of the Bulk Sale Clearance Certificate, issued by 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 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.

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 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:**

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 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 20<sup>th</sup> day of the month following the month of the Bulk Sale. Late payments are subject to a 10% late filing penalty plus interest.

## **Taxable and Non-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.

Refer to Bulletin No. 030 – Summary of Taxable and Exempt Goods and Services for more information.

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

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

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, for example, 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, workstations, 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.

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.

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.

## **SECTION 6 – REVISION SUMMARY:**

- Removing the fee for a bulk sales clearance certificate
- Minor revisions

## **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 Regulation. Further information may be obtained from:

Manitoba Finance  
101 - 401 York Avenue  
Winnipeg, Manitoba R3C 0P8  
Telephone: 204-945-5603  
Manitoba Toll-Free: 1-800-782-0318  
Fax: 204-945-0896  
E-mail: [MBTax@gov.mb.ca](mailto:MBTax@gov.mb.ca)  
Web Site: <https://www.manitoba.ca/finance/taxation/>

## **ONLINE SERVICES:**

Our Web site [here](#) provides tax forms and publications about taxes administered by Manitoba Finance, and a link to Manitoba's laws and regulations. Forms and publications can also be obtained by contacting Manitoba Finance.

TAXcess, our online service [here](#) provides a simple, secure way to apply for, and to file, pay and view your Manitoba tax accounts.