



## Exemption for Certain Transfers of Land to Family Business Corporations

- This bulletin highlights the requirements to qualify for, and the procedures to apply for, the land transfer tax exemption on certain transfers of land from an individual or related individuals to a family business corporation, as provided for in Regulation 697, R.R.O. 1990 (Regulation 697).
- Effective **October 10, 2008**, certain criteria to qualify for the exemption, including the definition of “active business”, have been changed. The former regulatory requirements will still apply for transfers prior to October 10, 2008.
- This bulletin replaces Land Transfer Tax Information Bulletin 6-79 (August 1979).
- This bulletin provides general information and is not a substitute for the *Land Transfer Tax Act* (Act) and its regulations.

### General

#### Introduction

Ordinarily, a transfer of land to a family business corporation is subject to land transfer tax. However, an exemption from tax may apply where:

- an individual or a related individual(s) carried on an active business on land
- the individual transfers that land and the business to a family business corporation
- the shareholders of the family business corporation are members of the family of the individual who transferred the land
- the family business corporation will continue to carry on such active business on that land.

For the purposes of this bulletin, “related individuals” are individuals who are members of the same family.

This exemption applies to both registered and unregistered transfers of land.

The details of the exemption, and the procedures for claiming it, are explained in this bulletin.

### Requirements to Qualify for Exemption

#### Principal Purpose

To qualify, the principal purpose of the transfer must be to enable the transferee corporation to continue the operation of the active business on the land being transferred.

#### Definition of “active business”

**Effective October 10, 2008**, “active business” means a business that is not,  
(a) farming,  
(b) the leasing of real property, or  
(c) a business that, within the meaning of the *Income Tax Act* (Canada), is a personal services business or a specified investment business.

Depending on when the transfer was made, transfers to certain types of professional corporations that had previously been excluded as “active businesses” may now be eligible.

**Prior to Conveyance or Disposition**

To qualify, the following conditions must exist prior to the transfer of the land to the family business corporation:

- the land was owned by an individual, or related individuals
- the land was used predominantly in the operation of an active business
- the active business was operated on the land exclusively by the individual or related individuals.

**At Time of Conveyance or Disposition**

The following conditions must exist at the time of the transfer of land to the family business corporation:

- all the issued shares (excluding directors' qualifying shares) of the transferee family business corporation are owned by members of the family of each transferor
- the land is being transferred for the principal purpose of enabling the family business corporation to continue the operation of the active business on the land under the direction of a person(s) who is a member of the family of each transferor.

**After Conveyance or Disposition**

**Effective October 10, 2008**, the following conditions must exist after the transfer of land to the family business corporation:

- the transferee family business corporation derives at least 75 per cent of its gross income from an active business during the taxation year in which the transfer occurs
- the transferee family business corporation has taxable income, as determined under the *Income Tax Act* (Canada), of less than \$1.5 million for the taxation year in which the transfer occurs
- if any shareholder of the transferee family business corporation is a corporation, the shareholder corporation also:
  - derives at least 75 per cent of its gross income from an active business during the taxation year in which the transfer occurs
  - has taxable income, as determined under the *Income Tax Act* (Canada), of less than \$1.5 million for the taxation year in which the transfer occurs.

## Applying for the Exemption – Stage One

Since not all of the required conditions can be met until after the end of the taxation year in which the transfer occurs, the application procedures are set out in two stages.

The first stage, applying for the exemption, occurs at the time of the transfer of land. The exemption must be claimed directly at the Land and Resources Taxes Section of the ministry; it cannot be claimed at registration.

Forms may be obtained online at [ontario.ca/revenue](http://ontario.ca/revenue) or by contacting the Land and Resources Taxes Section of the ministry at the address at the end of this bulletin.

**Electronic Registrations**

Where the transfer to the family business corporation is to be tendered for registration electronically, the following documentation must first be submitted to the Land and Resources Taxes Section:

1. a properly completed [Initial Family Business Affidavit](#) form. Included in the form is an undertaking that serves as security for land transfer tax should the conditions of the exemption not be met. The Minister of Revenue (Minister) reserves the right to require additional security

**Electronic Registrations (cont'd)**

2. a copy of the agreement of purchase and sale and other agreements related to the transfer
3. a copy of the statement of adjustments
4. two hard copies of Teranet's Transfer "In preparation" document, with land transfer tax statements completed. The statement number for claiming the family business exemption is 9090:

'Ministry of Finance has endorsed documents as follows: "No Land Transfer Tax Payable" (evidence needs to be submitted)'

When the ministry has reviewed the documentation, one hard copy of the Transfer "In preparation" document will be endorsed by the ministry and returned to the taxpayer or their representative.

After registration, a copy of the registered instrument must be submitted to the ministry.

**Paper Registrations**

Where the transfer to the family business corporation is to be tendered for registration by paper Transfer/Deed of Land, the following documentation must first be submitted to the Land and Resources Taxes Section:

1. a properly completed [Initial Family Business Affidavit](#) form. Included in the form is an undertaking that serves as security for land transfer tax should the conditions of the exemption not be met. The Minister reserves the right to require additional security
2. a copy of the agreement of purchase and sale and other agreements related to the transfer
3. a copy of the statement of adjustments
4. three properly completed [Land Transfer Tax Affidavit](#) forms
5. one original and two duplicate copies of the Transfer/Deed of Land to be registered.

When the ministry has reviewed the documentation, the original and one duplicate copy of the Transfer/Deed of Land will be endorsed by the ministry, with a direction to the Land Registrar that no land transfer tax is payable on registration, and returned to the taxpayer or their representative.

After registration, a copy of the registered instrument must be submitted to the ministry.

**No Registration Within 30 Days of Transfer**

If no registration of the transfer is contemplated or completed, the following documentation must be submitted to the Land and Resources Taxes Section within 30 days of the transfer:

1. a properly completed [Initial Family Business Affidavit](#) form. Included in the form is an undertaking that serves as security for land transfer tax should the conditions of the exemption not be met. The Minister reserves the right to require additional security
2. a copy of the agreement of purchase and sale and other agreements related to the transfer
3. a copy of the statement of adjustments
4. a completed [Return on the Acquisition of a Beneficial Interest in Land](#) form.

If a return is not filed within 30 days, a request for an extension to file the return containing an explanation for the delay is also required.

Failure to file a return may result in an assessment of tax, penalty and interest.

## Completing the Exemption Procedure – Stage Two

### Both Registered and Unregistered Transfers

The second stage completes the exemption procedure and occurs after the transferee family business corporation's taxation year end in which the transfer occurred.

The following documentation must be submitted to the Land and Resources Taxes Section within nine months of the transferee corporation's taxation year end in which the transfer occurred:

1. a properly completed [Affidavit Re: Conveyance to Family Business Corporation](#) form
2. a copy of the financial statements of the transferee corporation (and any corporation that was a shareholder of the transferee corporation at the time of the transfer) for the taxation year in which the transfer occurred.

The Minister may require further documentation to be provided.

If the Minister is satisfied the conditions of the exemption have been met, the transferee family business corporation will be released from the undertaking it gave as security.

If the conditions of the exemption have not been met, tax plus applicable interest will be payable.

## Procedures for Claiming Tax Refunds

### Application for Refund

If land transfer tax has been paid on a conveyance to a family business corporation, a request for an exemption and a land transfer tax refund may be made within four years from the date the tax was paid.

To apply for a refund, the following documentation must be sent to the Land and Resources Taxes Section:

1. a copy of the registered instrument upon which land transfer tax was paid (in the case of electronic registration, please include a copy of the docket summary which relates to the transaction)
2. a copy of the agreement of purchase and sale and other agreements related to the transfer
3. a copy of the statement of adjustments
4. a properly completed [Initial Family Business Affidavit](#) form
5. any other documentation which the ministry may request.

If nine months have already elapsed after the transferee corporation's taxation year in which the transfer occurred, the following documentation must also be provided at the time the refund application is made:

6. a properly completed [Affidavit Re Conveyance to Family Business Corporation](#) form
7. a copy of the financial statements of the transferee corporation (and any corporation that was a shareholder of the transferee corporation at the time of the transfer) for the taxation year in which the transfer occurred.

The Minister may require further documentation to be provided.

## Important Points to Consider

### Common Reasons for Unsuccessful Applications

Historically, applications for this exemption most often fail for one of the following reasons:

- **One or all of the transferors is a corporation**

To qualify for the exemption, each of the transferors must be an individual. While under Regulation 697 a corporation may be considered a member of the family, it is not an individual.

- **Prior to the conveyance, an individual acting for the corporation operated the active business, and therefore was not acting in his or her personal capacity**

Prior to the conveyance, the active business must have been operated exclusively by an individual or individuals, each of whom is a member of the family of each transferor. If a corporation is carrying on the business, the individual acting for the corporation is not acting in his or her individual capacity.

- **The activity conducted on the land does not meet the definition of “active business”**

“Active business” does not include leasing of real property in any form. It also does not include personal services business or a specified investment business, as those terms are defined in the *Income Tax Act* (Canada).

If the activity is “farming,” consider whether the exemption for transfers of farmed land under section 2 of Regulation 697 would apply.

- **The transferee does not continue the active business, and instead acts as a holding company, renting the land to an operating company**

The transferee corporation must be the corporation which operates an active business on the land. Leasing the land is not an active business.

- **The transfer is part of an arrangement to sell the shares of the transferee corporation to third parties**

To qualify for the exemption, the principal purpose of the transfer must be to enable the transferee corporation to continue the operation of the active business on the land that was transferred under the direction of a person or persons, each of whom is a member of the family of each transferor.

### Subject to Audit

All exemptions of land transfer tax are subject to audit. The Minister may assess or reassess any person for any tax payable under the Act within four years from the day the tax became payable.

The four-year time limit for assessment or reassessment does not apply where a person has made a misrepresentation or committed fraud, whether by commission or by omission, or has failed to deliver any return required by the Act.

## Definitions within the Act and Regulation 697

<b>Active Business</b>	<p><b>Active Business</b>, means a business that is not,</p> <ul style="list-style-type: none"> <li>(a) farming,</li> <li>(b) the leasing of real property, or</li> <li>(c) a business that, within the meaning of the <i>Income Tax Act</i> (Canada), is a personal services business or a specified investment business.</li> </ul>
<b>Family Business Corporation</b>	<p><b>Family Business Corporation</b> means a corporation that is a Canadian-controlled private corporation, within the meaning of the <i>Income Tax Act</i> (Canada), all of whose issued shares other than directors' qualifying shares are owned by members of the family of an individual.</p>
<b>Members of the Family</b>	<p><b>Members of the Family</b> means, with respect to an individual,</p> <ul style="list-style-type: none"> <li>(a) the individual,</li> <li>(b) the individual's spouse,</li> <li>(c) the individual's child,</li> <li>(d) the individual's father, mother, brother or sister or any spouse or descendant of such brother or sister,</li> <li>(e) the brother or sister of the individual's father or mother or any descendant of any such brother or sister,</li> <li>(f) the father, mother or any brother or sister of the individual's spouse or any descendant of any such brother or sister,</li> <li>(g) the individual's son-in-law or daughter-in-law,</li> <li>(h) the individual's grandfather or grandmother,</li> <li>(i) the individual's grandchild or great-grandchild or the spouse of any such grandchild or great-grandchild, or</li> <li>(j) a corporation all of the issued shares of which except for directors' qualifying shares are owned by an individual or individuals, each of whom is related to the individual to whom the expression is being applied in the manner described in any of clauses (a) to (i).</li> </ul>
<b>Spouse</b>	<p><b>Spouse</b> means spouse as defined in section 29 of the <i>Family Law Act</i>.</p> <p>This means either of two persons who are married to each other, or who are not married to each other and who have cohabited,</p> <ul style="list-style-type: none"> <li>(a) continuously for a period of not less than three years, or</li> <li>(b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.</li> </ul>

## Additional Information

If this bulletin does not completely address your particular situation, refer to the Act and related regulations, or contact the:

Ministry of Revenue	Tel.: 1 866 ONT-TAXS (1 866 668-8297)
Tax Compliance Branch	Fax: 905 433-5770
Land and Resources Taxes Section	Teletypewriter (TTY): 1 800 263-7776
33 King Street West	
PO Box 625	
Oshawa ON L1H 8H9	

This bulletin and various other English and French tax materials published by the Ministry of Revenue are available online at [ontario.ca/revenue](http://ontario.ca/revenue).

The *Land Transfer Tax Act* and Ontario's other public statutes and regulations are available online at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

*Ce bulletin est disponible en français.*

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