



Land Transfer Tax Exemption For Certain Conveyances of Mineral Lands *Land Transfer Tax Act*

This bulletin was revised June 2008 to incorporate formatting changes and changes in ministry name and contact information only.

- This bulletin outlines the procedures on how to obtain a land transfer tax exemption on certain conveyances of mineral lands.
- This bulletin replaces land transfer tax Information Bulletin 1/80 issued April, 1980.
- The information in this bulletin does not replace the law found in the *Land Transfer Tax Act* and related Regulations.
- This bulletin provides general information. It is not exhaustive and should not be considered as a substitute for the *Land Transfer Tax Act* and its regulations.

General

Exemptions from land transfer tax on the registration of certain conveyances of mineral lands are provided under Regulation 703, R.R.O. 1990 (the Regulation).

Definitions

"minerals" includes gold, silver, ore, coal, gas, oil, salt, rare and precious metals and other like materials found in, upon or under the surface but does not include sand, gravel or stone.

"mineral rights" means the right to enter upon or use lands for the sole purpose of exploring, drilling for, winning, taking, removing or raising the minerals situate therein and includes such easements, rights of way or other similar rights of access as are incidental to winning, taking, removing or raising the minerals situate therein.

"surface rights" means every right in land other than the mineral rights.

"surface rights option" means any right to acquire the surface rights to land, the mineral rights to which have been acquired by the optionee either prior to the granting of the surface rights option or by the conveyance that itself contains the grant of the surface rights option.

Requirements to Qualify for Exemption - Types of Conveyances

Introduction The Regulation exempts from tax that portion of the consideration which is attributable to the minerals or mineral rights in the land. The portion of the consideration which is attributable to the surface rights in land will remain taxable.

Various types of conveyances are dealt with in the Regulation and are outlined below. In some cases, the conveyance must be forwarded to the Ministry for determination of the tax exemption or the taxable value of the consideration, before the conveyances are registered.

Conveyance of Mineral Rights - Exempt	If it is a conveyance that conveys only the mineral rights to the land for a consideration that is dependent <i>wholly</i> upon the quantity or value of the minerals that are won, taken, removed or raised then the conveyance <i>is exempt from land transfer tax</i> . (Refer to section 2 of the Regulation).
Conveyance of Mineral Rights - Taxable	Where the consideration for such a conveyance is <i>not wholly dependant</i> upon the quantity or value of the minerals that are won, taken, removed or raised, then the conveyance <i>may or may not be exempt from land transfer tax</i> . The Regulation provides that in such cases land transfer tax will be exigible upon that part of the consideration paid for the conveyance that, in the opinion of the Minister, is reasonably attributable to the surface rights to the land described in the conveyance. (Refer to paragraph 3(1)3 and clause 3(2)(c) of the Regulation). These types of conveyances must be submitted to the Ministry of Revenue for endorsement.
Options - Exempt	A conveyance that is a grant, sale, transfer or assignment of a surface rights option is exempt from land transfer tax at the time of registration of the conveyance. Careful consideration should be given to the definition of a surface rights option (defined on page 1 of this Bulletin). It is not simply an option to acquire surface rights as its name may suggest. (Refer to paragraph 2 of section 2 of the Regulation).

An instrument which is a **combination** of a grant, sale, transfer or assignment of a surface rights option together with a conveyance of only the mineral rights to the land for a consideration that is wholly dependent upon the quantity or value of the minerals, won, taken, removed or raised is exempt from land transfer tax upon registration of the conveyance. (Refer to paragraph 3 of section 2 of the Regulation).

Options - Taxable	A conveyance which is the exercise of a surface rights option is taxable when the conveyance is registered. Land transfer tax will be calculated on the higher of the following amounts: <ul style="list-style-type: none"> i) the consideration paid by the person exercising the surface rights option to acquire it plus any consideration paid to exercise it; <li style="text-align: center;">OR ii) the consideration which in the opinion of the Minister is reasonably attributable to the acquisition of the surface rights.
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These types of conveyances must be submitted to the Ministry of Revenue for endorsement.

Leases	A conveyance of the mineral rights to land together with a <i>lease of the surface rights</i> , to the land (where the lease can exceed fifty years, including renewals or extensions) is taxable. These types of conveyances must be submitted to the Ministry of Revenue for endorsement.
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The consideration upon which the tax is exigible will be the higher of the fair market value of the surface rights to which the lease extends, or the consideration, which in the opinion of the Minister is reasonably attributable to the surface rights.

This determination of the taxable value of the consideration also applies to the registration of a conveyance of the mineral rights to the land together with a notice of such a lease or together with a grant or assignment of such a lease by a lessee. (Refer to paragraph 3(1)1 and clause 3(2)(a) of the Regulation).

Other Conveyances A conveyance of the mineral rights to the land where the *consideration is not wholly dependent* on the quantity or value of the minerals won, taken, removed or raised, which is not a conveyance as outlined above and which is **not** a lease, grant or assignment of sublease or notice of lease of surface rights (having a term of more than fifty years including renewals) also requires a determination of the taxable value. In this case the taxable consideration will be the same as is described in [Conveyance of Mineral Rights - Taxable](#) above. (Refer to paragraph 3(1)3 and clause 3(2)(c) of the Regulation.)

These types of conveyances must be submitted to the Ministry of Revenue for endorsement.

Procedures for Claiming Land Transfer Tax Exemption

Exempt Conveyance of Mineral Rights Only - Endorsement by Ministry Not Required A conveyance which is tax exempt on the basis that it is a conveyance of only the mineral rights to land and the consideration given is wholly dependent upon the quantity or value of the minerals that are won, taken, removed or raised, does not require endorsement by the Ministry of Finance. For example, what is normally referred to as an oil and gas lease, would meet this criteria. This type of lease cannot include any conveyance of surface rights

For electronic registrations, in these cases, the exemption may be claimed by selecting Statement 9075 under the Exemption tab on the system.

For paper registrations, the following phrase should be inserted in section 5 of the [Land Transfer Tax Affidavit](#):

“The attached instrument is a conveyance of only the mineral rights to the land, the consideration for the conveyance is wholly dependent upon the quantity or value of the minerals that are won, taken, removed or raised and exemption from land transfer tax is claimed pursuant to section 2 of Ontario Regulation 703 R.R.O. 1990.”

Exempt Options - Endorsement by Ministry Not Required A conveyance which is tax exempt on the basis that it is a grant, sale, transfer, or assignment of a “surface rights option”, does not require endorsement by the Ministry of Revenue.

For electronic registrations, in these cases, the exemption may be claimed by selecting Statement 9075 under the Exemption tab on the system.

For paper registrations, the following phrase should be inserted in section 5 of the [Land Transfer Tax Affidavit](#):

“The attached conveyance is a grant, sale, transfer or assignment of a surface rights option but is not the exercise of a surface rights option as defined in Ontario Regulation 703 R.R.O. 1990”

Where the Endorsement of the Ministry Is Required As noted in the [Requirements to Qualify for Exemption - Types of Conveyances](#) section on pages two and three of this bulletin, some conveyances must be submitted to the Ministry of Finance for prior review and approval to determine if the conveyance is exempt from or subject to land transfer tax. An endorsement from the Ministry is required in these instances.

In these cases, the following documentation must be submitted to the Ministry:

1. Photocopy of all agreements between the parties for the transaction plus any supporting documentation to confirm the value of the consideration, and

2. Undertaking to the Ministry of Revenue re Tentative Value of the Consideration (required where section 3 of the Regulation), and
3. A cheque for the applicable land transfer tax made payable to the Minister of Revenue (required where section 3 of the Regulation applies), and
 - a) In the case of an electronic registration, two copies of the document, with land transfer tax statements completed, to be submitted for registration, or
 - b) (b) In the case of a paper registration, the original and duplicate copy of the conveyance for the transaction, plus a third copy for retention by the Ministry along with three completed original [Land Transfer Tax Affidavits](#).

Unregistered Dispositions

An unregistered disposition of a beneficial interest in land is exempt from the tax imposed under section 3 of the Act, if the disposition is of a “surface rights option”, mineral rights only to land or both, and if any person who tendered for registration a conveyance evidencing the disposition would be exempt from tax by reason of section 2 of the Regulation. In these situations a return must be filed and the exemption claimed.

In other cases of unregistered dispositions of mineral lands which require a determination of the value of the consideration under the provisions of the Regulation, please contact Ministry for further information.

If land transfer tax has been paid and the transfer meets the qualifying criteria for an exemption under the Regulation, an application for a land transfer tax refund may be made directly to the Ministry of Finance at the address found at the end of this bulletin. Any application for a refund must be made within four years from the date on which the tax was paid.

Procedures for Claiming Land Transfer Tax Exemption

If land transfer tax has been paid and the transfer meets the qualifying criteria for an exemption under the Regulation, an application for a land transfer tax refund may be made directly to the Ministry of Revenue at the address found at the end of this bulletin. Any application for a refund must be made within four years from the date on which the tax was paid.

Documentation Required for Refund

The documentation required for the Ministry to consider a refund of land transfer tax is as follows:

1. [Land Transfer Tax Affidavit](#) signed by the transferee(s) setting out what provisions of the Regulation have been met;
2. photocopy of all agreements between the parties; and
 - (a) in the case of a registered conveyance, a copy of the registered instrument upon which land transfer tax was paid; or
 - (b) in the case of electronic registration, a copy of the docket summary which relates to the transaction; or
 - (c) in the case of an unregistered disposition, details of the payment made.

Please contact the Ministry for further information on applying for a refund.

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
Land Transfer Tax Program
33 King Street West
Oshawa, ON L1H 8H9

Tel.: 1 866 ONT-TAXS (1 866 668-8297)
Fax: 905 436-4511
Teletypewriter (TTY): 1 800 263-7776

This bulletin and various other English and French tax materials published by the Ministry of Revenue may be obtained online at ontario.ca/revenue.

The *Land Transfer Tax Act* and Ontario's other public statutes and regulations may be obtained online at www.e-laws.gov.on.ca.

Ce bulletin est disponible en français.

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