



Exemption for Certain Transfers of Farmed Land

under the *Land Transfer Tax Act*

- This bulletin provides highlights of the requirements to qualify for and procedures to apply for the land transfer tax exemption on certain transfers of farmed land, as provided for in Regulation 697, R.R.O. 1990 (Regulation 697).
- Effective **March 26, 2008**, this exemption has been expanded to apply to certain transfers of farmed land from a family farm corporation to individual members of the family.
- This bulletin replaces Tax Bulletin LTT 1-2007 (January 2007) and Tax Bulletin LTT 2-2004 (April 2004).
- This bulletin provides general information and does not replace the law found in the *Land Transfer Tax Act* (Act) and its regulations.

General

Introduction

Ordinarily, a transfer of farmed land is subject to land transfer tax. However, an exemption from tax may apply to certain transfers of farmed land involving certain related individuals.

For the purposes of this bulletin, “related individuals” means individuals who are members of the same family. The terms “family farm corporation,” “farming,” “farming assets,” “members of the family” and “spouse” are defined in the Act and Regulation 697. These definitions are reproduced at the end of this bulletin.

Individual to Corporation

An exemption from tax may apply where:

- an individual, or related individuals, transfer farmed land to a family farm corporation
- the farmed land continues to be farmed by the family farm corporation under the direction of the transferor(s) or individual(s) related to the transferor(s)
- each of the shareholders of the family farm corporation and the individual(s) transferring the land are related individuals.

Individual to Individual

Effective **March 28, 2003**, an exemption from tax may apply where:

- an individual, or related individuals, transfer farmed land to an individual or individuals
- the farmed land continues to be farmed by one or more individuals, each of whom is related to the transferor(s)
- each of the transferees and the individual(s) transferring the land are related individuals.

- Estate to Individual** Effective **March 28, 2003**, an exemption from tax may apply where:
- the personal representative(s) of the estate of a deceased individual transfer farmed land to an individual or individuals
 - the transfer would have qualified for the individual-to-individual exemption above had it been made by the deceased individual immediately before his or her death.

- Corporation to Individual** Effective **March 26, 2008**, an exemption from tax may apply where:
- a family farm corporation transfers the farmed land to an individual, or related individuals
 - the farmed land continues to be farmed by one or more individuals
 - each of the shareholders of the family farm corporation and the individual(s) continuing the farming on the land and transferees are related individuals.
- The details of the exemptions, and the procedures for claiming them, are explained in this bulletin. The exemptions apply to both registered and unregistered transfers.

Requirements to Qualify for Exemption

- Conditions Required Prior to Conveyance or Disposition**
- For transfers from an individual or related individuals to qualify, the following conditions must exist prior to the conveyance of the land:
- the land is used predominantly in farming
 - farming was carried on exclusively by an individual or individuals, each of whom is related to each transferor of the land being transferred.
- For transfers from a family farm corporation to qualify, the following conditions must exist prior to the conveyance of the land:
- the land is used predominantly in farming
 - farming was carried on exclusively under the direction of a person or persons, each of whom is related to each transferee of the land being transferred.
- Principal Purpose-Transfers Involving Only Individuals (or Personal Representative(s))**
- Whenever land is transferred to an individual(s), the principal purpose of the transfer must be to enable individual(s) related to the transferors (or to the deceased individual if the transferor(s) is a personal representative(s) of the estate of a deceased) to continue farming on the land.
- Principal Purpose-Transfers Involving Family Farm Corporations**
- Where the transfer of farmed land is **to** a family farm corporation from an individual(s), the land must be transferred for the principal purpose of enabling the transferee corporation to continue farming on the land under the direction of a person or persons, each of whom is related to each transferor of the land being transferred.
- Where the transfer of farmed land is **from** a family farm corporation, the land must be transferred to an individual(s) for the principal purpose of enabling one or more individuals, each of whom is related to the shareholders of the family farm corporation, to continue farming on the land.

Additional Conditions re Family Farm Corporations

All of the issued shares (except for directors' qualifying shares) of the family farm corporation must be owned by a person or persons, each of whom is related to each:

- transferor of the land being transferred, in the case of transfers to a family farm corporation
- transferee of the land being transferred, the case of transfers from a family farm corporation.

Ninety-five per cent of the assets of the family farm corporation must be farming assets. Where a corporation owns shares in the family farm corporation, 95 per cent of that corporation's assets must be farming assets.

When determining the 95 per cent ratio of farming assets to total assets, the value of the interest in the land being conveyed is included as an asset of the corporation.

Procedures for Claiming Land Transfer Tax Exemption - Electronic Registration

The full electronic land registration statements for this exemption are reproduced near the end of this bulletin.

Conveyance from Individual(s) to Family Farm Corporation

Where the conveyance is to a family farm corporation, the exemption may be claimed by selecting electronic statements 9123 and 9080 located on the exemption tab. Note that selecting these statements will require information to be entered in the applicable text boxes of each statement.

Conveyance from Individual(s) to Individual(s)

Where the conveyance is from an individual to individual(s), the exemption may be claimed by selecting electronic statements 9123 and 9078 located on the exemption tab. Note that selecting statement 9123 will require information to be entered in the applicable text boxes.

Conveyance from the Personal Representative(s) of an Estate to Individual(s)

Where the conveyance is from the personal representative(s) of the estate of a deceased individual to one or more individuals related to the deceased, the exemption may be claimed by selecting electronic statements 9123 and 9079 located on the exemption tab. Note that selecting statement 9123 will require information to be entered in the applicable text boxes.

Conveyance from Family Farm Corporation to Individual(s)

Where the conveyance is from a family farm corporation, the exemption may be claimed by selecting electronic statements 9123 and 9078 located on the exemption tab. Note that selecting statement 9123 will require information to be entered in the applicable text boxes.

Affidavit

A completed [Affidavit Regarding the Exemption for the Conveyance or Disposition of Farmed Land](#) form is not required to be submitted when the exemption is claimed electronically.

Procedures for Claiming Land Transfer Tax Exemption - Paper Registration

Paper Registration In addition to the usual [Land Transfer Tax Affidavit](#), one [Affidavit Regarding the Exemption for the Conveyance or Disposition of Farmed Land](#) form, properly completed by all the transferees, must be attached to the conveyance to be registered. This form may be obtained online at ontario.ca/revenue or by contacting the Land and Resources Taxes Section of the ministry at the address at the end of this bulletin.

One of the following explanations should be included on the [Land Transfer Tax Affidavit](#) which is attached to the conveyance:

Conveyance from Individual(s) to Family Farm Corporation For a conveyance from individual(s) to a family farm corporation:

“This is a conveyance of farmed land from an individual (individuals) to a family farm corporation and is exempt from tax pursuant to subsection 2(1) of Regulation 697, R.R.O. 1990 under the *Land Transfer Tax Act*.”

Conveyance from Individual(s) to Individual(s) For a conveyance from individual(s) to individual(s):

“This is a conveyance of farmed land from an individual (individuals) to a related individual (individuals) and is exempt from tax pursuant to subsection 2.1(1) of Regulation 697, R.R.O. 1990 under the *Land Transfer Tax Act*.”

Conveyance from the Personal Representative(s) of an estate to Individual(s) For a conveyance from the personal representative(s) of the estate of a deceased individual to individual(s):

“This is a conveyance of farmed land from the personal representative(s) of the estate of a deceased individual to one or more individuals and is exempt from tax pursuant to subsection 2.1(1.1) of Regulation 697, R.R.O. 1990 under the *Land Transfer Tax Act*.”

Conveyance from Family Farm Corporation to Individual(s) For a conveyance from a family farm corporation to individual(s):

“This is a conveyance of farmed land from a family farm corporation to an individual (individuals) and is exempt from tax pursuant to subsection 2.2(1) of Regulation 697, R.R.O. 1990 under the *Land Transfer Tax Act*.”

Once the Land Registrar is satisfied with the tendered documents, the conveyance may be registered without the payment of land transfer tax.

Procedures for Claiming Land Transfer Tax Exemption - Unregistered Disposition

Transfers to either Family Farm Corporation or to Individual(s) Where the transfer of land is not registered, the exemption is still available. In these cases, the following documents must be submitted to the Land and Resources Taxes Section within 30 days of the date of the disposition:

1. a completed [Return on the Acquisition of a Beneficial Interest in Land](#) form
2. a **copy of the agreement of purchase and sale** and other agreements related to the transfer
3. an [Affidavit Regarding the Exemption for the Conveyance or Disposition of Farmed Land](#) form, properly completed by all the transferees
4. any other documentation which the ministry may request.

Transfers to either Family Farm Corporation or to Individual(s) (cont'd)

In addition, where the transfer involves a family farm corporation, the Land and Resources Taxes Section may require a copy of the shareholder registers of the family farm corporation and any of its corporate shareholder(s), along with a copy of the financial statements for all corporations involved.

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.

Procedures for Claiming Tax Refunds

Application for Refund

If land transfer tax has been paid on a conveyance of farmed land, and the transfer meets the qualification criteria for the land transfer tax exemption, 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. an [Affidavit Regarding the Exemption for the Conveyance or Disposition of Farmed Land](#) form, properly completed by all the transferees
4. any other documentation which the ministry may request.

In addition, where the transfer involves a family farm corporation, the Land and Resources Taxes Section may require a copy of the shareholder registers of the family farm corporation and any of its corporate shareholder(s), along with a copy of financial statements for all corporations involved.

Important Points to Consider

Common Reasons for Unsuccessful Exemption Applications

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

- ***The activity conducted on the land does not meet the definition of “farming”***
 Refer to the definition of “farming”. If the activity does not fall within the definition, consider whether the exemption for transfers to family business corporations under section 3 of Regulation 697 would apply.
- ***The transfer is part of an arrangement to sell the shares of the transferee corporation to a third party***
 To qualify for the exemption on a transfer to a family farm corporation, the principal purpose of the transfer must be to enable the transferee corporation to continue farming on the land under the direction of a person or persons, each of whom is related to each transferor.

- ***The transferee corporation does not continue the farming operation, but instead acts as a holding corporation, renting the land to the operating company***

The transferee corporation must be the corporation which actually farms the land.

Subject to Audit

All exemptions of land transfer tax are subject to audit. The Minister of Revenue 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 misrepresentations or committed fraud, whether by commission or by omission, or has failed to deliver any return required by the Act.

Relevant Electronic Land Registration Statements Under the Exemption Tab

- 9123** I/We have read and considered Regulation 697, R.R.O 1990, including the definitions of “family farm corporation”, “farming”, “farming assets” and “members of the family” as defined by the Regulation.
- Each transferor or (if applicable) each shareholder of the transferor corporation, and each transferee or (if applicable) each shareholder of the transferee corporation are members of the same family, and where the transferor(s) is/are the personal representative(s) of the estate of a deceased individual, the deceased individual was also one of the members of the family immediately prior to his/her death.
- Prior to the conveyance, the lands were used predominantly in farming carried on by [NAME(S)] during the period(s) [TEXT].
- 9078** The land is being conveyed for the principal purpose of enabling one or more individuals, each of whom is a member of the family of each transferor, or (if the transferor is a family farm corporation) of each shareholder of the transferor, to continue farming on the land.
- 9079** The conveyance is from the personal representative(s) of the estate of a deceased individual to one or more individuals for the principal purpose of enabling that individual or individuals (each of whom was a member of the family of the deceased individual immediately prior to the deceased individual’s death) to continue farming on the land, and the conveyance qualifies for the exemption under subsection 2.1(1.1) of Regulation 697, R.R.O. 1990 or clause 3(1)(c) of Ontario Regulation 70/91.
- 9080** The land is being conveyed for the principal purpose of enabling the transferee corporation to continue farming on the land being conveyed under the direction of [NAME(S)], each of whom is a member of the family of each transferor.

Definitions

Family Farm Corporation

For the purpose of this Regulation, a corporation is a **family farm corporation** at the time of a conveyance of land to or from the corporation if all of the following conditions are satisfied:

1. All of the issued shares of the corporation at the time of the conveyance, other than directors' qualifying shares, are owned by one or more persons, each of whom is,
 - i. a member of the family of each transferor, if the conveyance of land is to the corporation, or
 - ii. a member of the family of each transferee, if the conveyance is from the corporation to one or more transferees.
2. At least 95 per cent of the value of the corporation's assets at the time of the conveyance, including the land being conveyed, is attributable to farming assets.
3. If a member of the family of a transferor referred to in subparagraph 1 i or a transferee referred to in subparagraph 1 ii is a corporation, at least 95 per cent of the value of the total assets of that member of the family is attributable to farming assets.

Farming

"farming" includes tillage of the soil, the breeding, raising or grazing of livestock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of livestock and the keeping of bees, but does not include the leasing out of land where the lessor is not entitled to share in the crops, livestock or other commodities raised or produced on the land or the proceeds of the sale of such crops, livestock or other commodities so raised or produced.

Farming Assets

"farming assets", of a family farm corporation, means,

- (a) land, buildings, equipment, machinery and livestock that are used chiefly in farming by the corporation,
- (b) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,
- (c) the building in which a shareholder or one or more members of his or her family reside who are engaged in farming if that building is on land that is used or is contiguous to land used in farming by that shareholder or those members of his or her family,
- (d) shares in another family farm corporation, and
- (e) trade accounts receivable, supplies and inventory of commodities or things produced, raised or grown through farming.

Members of the Family

"members of the family" means, with respect to an individual,

- (a) the individual,
- (b) the individual's spouse,
- (c) the individual's child,
- (d) the individual's father, mother, brother or sister or any spouse or descendant of such brother or sister,
- (e) the brother or sister of the individual's father or mother or any descendant of any such brother or sister,

- (f) the father, mother or any brother or sister of the individual's spouse or any descendant of any such brother or sister,
- (g) the individual's son-in-law or daughter-in-law,
- (h) the individual's grandfather or grandmother,
- (i) the individual's grandchild or great-grandchild or the spouse of any such grandchild or great-grandchild, or
- (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).

Spouse

"spouse" means spouse as defined in section 29 of the *Family Law Act*.

This means either of two persons who are married to each other, or who are not married to each other and who have cohabited,

- (a) continuously for a period of not less than three years, or
- (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

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
Tax Compliance Branch
Land and Resources Taxes Section
33 King Street West
PO Box 625
Oshawa ON L1H 8H9

Tel.: 1 866 ONT-TAXS (1 866 668-8297)
Fax: 905-433-5770
Teletypewriter (TTY): 1 800 263-7776

This bulletin and various other English and French tax materials published by the Ministry of Revenue are available online at 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.

Ce bulletin est disponible en français.

ISBN: 978-1-4249-8245-5 (Print)
ISBN: 978-1-4249-8246-2 (HTML)
ISBN: 978-1-4249-8247-9 (PDF)

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