

Details about changes to the Family Business Exemption under the *Land Transfer Tax Act*

General Regulation 697, R.R.O. 1990, (Regulation 697) provides an exemption from land transfer tax on certain transfers of land from an individual to his or her Family Business Corporation.

Ontario Regulation (350/08), containing amendments to Regulation 697, has been approved by the Lieutenant Governor in Council and was filed on October 10, 2008 with the Registrar of Regulations, making the amendments law. Included in the regulation are revisions to certain aspects of the Family Business Exemption, details of which are described below.

This notice provides general information. It is not exhaustive and should not be considered as a substitute for the legislation or regulations.

Background Previously, parts of Regulation 697 relied on specific sections of the *Income Tax Act* (Canada). For example, both the definition of active business and the taxable income requirements were based on Section 125 of the *Income Tax Act*. While not all of the references to the *Income Tax Act* have been eliminated, the changes are expected to make the exemption easier to apply for and understand.

Effective Date The changes apply to transfers of land that occur on or after October 10, 2008, the date the regulation was filed. For transfers that occurred before October 10, 2008, the former regulatory requirements will still apply.

Changes and How they Affect the Exemption Some definitions relating to the Family Business Exemption have been changed including:

Active Business:

Active business now means a business that is **not**,

- farming,
- the leasing of real property or
- a business that, within the meaning of the *Income Tax Act* (Canada) is a personal service business or a specified investment business;

Corporations operating personal services businesses or specified investments businesses are expressly **not** eligible.

Family Business Corporation:

A family business corporation now means a corporation:

- which is a Canadian-controlled private corporation within the meaning of the *Income Tax Act*, and
- all of whose issued shares other than directors' qualifying shares are owned by members of the family of an individual.

This change clarifies that in order to qualify; the family business corporation must be a Canadian-controlled private corporation.

Changes to Regulation 697 have also simplified the second stage requirements of the exemption. As before, the transferee corporation must derive at least 75 per cent of its gross revenue from an active business. The amendments remove the reference to Section 125 of the *Income Tax Act* and add that the transferee corporation's taxable income, for the taxation year in which the transfer occurred, must be less than \$1.5 million.

What has Not Changed

The procedures for claiming the exemption have not changed. To register land transfers without the payment of tax, you must apply to the ministry prior to registration to receive the exemption.

What to Expect

A tax bulletin on the Family Business Exemption incorporating the changes will be posted shortly.

For More Information**Telephone enquiries**

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