

Retail Sales Tax Funded and Unfunded Benefits Plans

About this Notice

Bill 151, *Budget Measures Act, 2006 (No.2)* was passed in the Legislature and received Royal Assent on December 20, 2006. The bill contains legislative amendments to the *Retail Sales Tax (RST) Act* in respect of funded and unfunded benefits plans.

Context

The definition of 'premium' in respect of a funded benefits plan has been amended to ensure consistency in the tax treatment of benefits paid out under a funded benefits plan and those paid out under an unfunded benefits plan that are included in the total Ontario remuneration of the planholder under the *Employer Health Tax (EHT) Act*.

The amendments also specify that planholders of new and existing benefits plans are required to designate whether their plans are funded or unfunded.

Definition of Premium

The amended definition of 'premium' for a funded benefits plan includes any amounts paid into the plan by the planholder. This includes amounts paid to an administrator, but excludes amounts that, when paid out to employees (i.e., as disability benefits), would be included in the total Ontario remuneration of the planholder under the EHT Act. This new provision went into effect on December 20, 2006.

As a result of the amendment, disability benefits included in the total Ontario remuneration subject to EHT under both types of benefits plans are now exempt from RST. However, premiums paid by employees who are members of a disability plan remain subject to RST as "amounts paid by members in order to receive benefits under the plan".

Designation of Benefits Plan

A planholder who establishes a new benefits plan is required to designate in writing whether the benefits plan is intended to be a funded benefits plan or an unfunded benefits plan. This designation applies until the planholder advises the Minister of Revenue (Minister) of a change to the status of the plan. This new provision allows for a proper determination of the timing of the RST liability on benefits plans. It replaces the previous provision whereby a benefits plan could fluctuate between funded and unfunded status depending on the funding levels of the plan.

Filing of Designation

There is no prescribed form for designating a new benefits plan as a funded plan or an unfunded plan. The designation must be filed with the administrator (includes self-administered plans) at the time the plan is set up or within 30 days of the first payment by the planholder to the administrator. Where a benefits plan employs multiple administrators for various types of benefits under the plan, the designation must be filed with each administrator. Each class of benefits administered separately by an administrator will have a specific designation. A designation by the planholder that is filed with the administrator will be acceptable to the Ministry of Revenue (ministry).

Transitional Provisions

A planholder of a benefits plan that was established before the legislative amendments came into force (i.e., December 20, 2006) shall notify the Minister whether the benefits plan was established as a funded plan or an unfunded plan. For the purposes of the RST Act, the notification shall apply from the day the plan was established until the planholder advises the Minister of any change to the status of the benefits plan.

Filing of notification

The notification to the Minister by the planholder as to whether an existing benefits plan was established as a funded plan or an unfunded plan shall be maintained by the administrator (includes self-administered plans) and can be in a form acceptable to the administrator. The notification should be made within 90 days from the date of this Information Notice. Where a benefits plan employs multiple administrators for various types of benefits under the plan, the notification must be filed with each administrator. The planholder shall file a new notification if a new designation is provided to the administrator.

Differences between funded and unfunded plans

There are some differences between a funded benefits plan and an unfunded benefits plan which determine the timing of the RST liability.

A funded benefits plan is a plan that comes into existence when the amounts paid into a fund out of which benefits will be paid exceeds amounts required for payment of benefits foreseeable and payable within 30 days after the payment of such amounts into the fund. The amounts paid into the fund, other than amounts that are included in the total Ontario remuneration subject to EHT when paid out of the fund as benefits to members, are considered taxable premiums. RST is collected at the time the planholder pays amounts into the plan.

For unfunded benefit plans, RST applies to the claims paid by the planholder other than amounts subject to EHT. For example, where there is an Administrative Services Only (ASO) agreement, the taxable premiums are the amounts paid by the planholder to the administrator upon the occurrence of a risk. The payments are made to cover actual benefit claims from members. RST is collected at the time that the payments, other than amounts that would be included in the total Ontario remuneration of the planholder subject to EHT, are made to the administrator.

As previously noted, a planholder will determine and document the intended funding of a benefits plan. The status of the benefits plan will be confirmed by a designation in writing from the planholder to the administrator (if the plan is self-administered, the planholder will retain the designation). The status of the benefits plan will not change unless the planholder provides a new designation to the administrator. In accordance with the planholder's designation, every administrator is responsible for collecting and remitting the applicable RST for the service(s) it administers. The administrator can rely on the planholder's election of funded or unfunded status to determine how to charge, collect and remit RST on the premiums.

Where a planholder self-administers a plan or a third-party administrator has no responsibilities under the plan for the payment of benefits or the collection of amounts used to pay benefits (e.g. benefit adjudication services only), then the liability for the remittance of the applicable RST remains with the planholder.

Refund claims

Prior to December 20, 2006, the ministry received a number of claims from planholders for a refund of RST paid on disability benefit plans on the basis that these plans were intended to be unfunded plans and therefore eligible for the RST exemption on disability benefits subject to EHT. The ministry will directly contact each planholder that has submitted a refund claim and will require certification by the planholder of the intended funding basis of the plan during the period to which the refund claim relates. Once a properly completed Certification Form is received from the planholder which certifies whether the benefits plan was a funded plan or an unfunded plan, the refund claim will be reviewed.

Planholder's liability

If a planholder's designation of funded or unfunded status of a plan conflicts with their actual funding practices, the planholder will be solely liable for any shortcomings in tax reporting and remittance. If a planholder fails to make a designation of the funding status, the plan will be considered funded or unfunded based on the actions of the parties.

The administrator can only rely on the designation filed with it. If the planholder fails to provide such designation and the administrator or service provider has taken reasonable steps to determine the funding status, the administrator or service provider will not be held liable for an incorrect or absent declaration of funding status.

For more information

For more information, please contact the nearest Ontario Ministry of Revenue Tax Office listed under Taxes - Provincial (Retail) Sales Tax in the blue pages of your telephone directory, call our TAX FAX Service at 1-877-4-TAX-FAX (1-877-482-9329), or visit our website at www.rev.gov.on.ca.

