INFORMATION Service

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THE HEALTH AND POST SECONDARY EDUCATION TAX LEVY ACT

INFORMATION FOR EMPLOYERS

This bulletin provides general information that will help employers understand their obligations under The Health and Post Secondary Education Tax Levy Act (also known as Payroll Tax).

Section 1 – DEFINITIONS OF TERMS USED IN THIS BULLETIN

Year

- Year means a calendar year.

Permanent establishment

- A permanent establishment of an employer is generally any fixed place of business of the employer in Manitoba including a branch, a mine, an oil well, a farm, timberland, a factory, a workshop, a warehouse, an office, and an agency.
- The use by an employer of substantial machinery or equipment any time in a month in Manitoba constitutes a permanent establishment for the month.
- Land or premises owned or leased by a corporation in Manitoba is a permanent establishment of the corporation.
- For a complete list of where a person has a permanent establishment in Manitoba, please refer to subsection 2(2) of the Act, or contact a Taxation Division office listed at the end of this bulletin.

Employer

- A person paying remuneration to an employee including:
  - The Government of Manitoba, the Government of Canada,
  - A partnership,
  - A trust paying remuneration to an employee,
  - A proprietorship, corporation, municipality, university, school board, hospital, non-profit organization, charitable institution,
  - Any other entity with employees.

Employee

- Any individual employed by or in the service of an employer, including an officer of the employer, who receives remuneration in respect of the performance of the duties of the employment or the office.

Remuneration

- Generally includes payments, benefits or allowances that, before any deductions, are required to be included in an employee's income under subsection 5(1) or section 6 or 7 of the Income Tax Act (Canada), and includes:
  - Salaries and wages
  - Bonuses

Note: Revisions to contents of previous Bulletin (July 2004) have been identified by shading (   ).

- Gratuities/tips disbursed by the employer
- Honorariums
- Commissions or other similar payments
- Other taxable allowances or benefits paid to or on behalf of the employee or officer
- Contributions to employee trusts and employee profit sharing plans,

but not pensions, annuities or superannuation benefits paid by employers to former employees after retirement of that employee.

- See Bulletin No. HE 002 – Remuneration, for examples of allowances and benefits that are subject to Payroll Tax and those that are not.

Associated corporations

- Two or more corporations are associated with one another if they are, **at any time in a year**, associated within the meaning of section 256 of the Income Tax Act (Canada). A group of associated corporations is deemed to be a **single employer** for purposes of the Payroll Tax.

- **Please note:** Please contact the Taxation Division for further information on associated corporations and for the tax application for the following situations:

  - A corporation becomes associated in a year, and has not been previously associated with any other corporation(s) in that year.
  - A corporation becomes disassociated with one group of corporations in a year and becomes associated with another group of corporations in that year.

Corporate partnerships

- A corporate partnership is a partnership with one or more corporations as partners.

  Please note: For purposes of applying the associated rules, subsection 2(4) and 2(4.1) of the Act treats corporate partnerships as though they were corporations. As a result, the corporate partnership, the corporate partner(s) and its associated corporation(s), and other partnerships of the corporate partner may be deemed to be a single employer in respect of all the employees in the year of those corporations and partnerships.

Section 2 – GENERAL INFORMATION

What is Payroll Tax

- The Payroll Tax is a tax imposed on remuneration that is paid to employees.

Who must pay the tax

- Employers that have a permanent establishment in Manitoba and pay remuneration to:

  a) Employees who report for work at a permanent establishment of the employer in Manitoba; and/or

  b) Employees who are not required to report to work at any permanent establishment of the employer (either inside or outside of Manitoba) but who are paid from or through a permanent establishment of the employer in Manitoba.

For example: A salesperson would not be reporting for work at any permanent establishment of the employer if he/she normally goes from home directly to the premises of prospective customers to sell goods or services. However, the remuneration paid to the salesperson is subject to Manitoba Payroll Tax if it is paid from the employer's Manitoba office, or is expensed through an operating statement of its Manitoba office(s).

Exemption from Payroll Tax

- Employers with total remuneration in a year of $1 million or less are exempted from the Payroll Tax.

  Please note: The exemption does not apply to entities that are part of an associated group (including corporate partnerships) whose total remuneration exceeds $1 million annually.

- Remuneration paid by common carriers to an employee operating a commercial truck on behalf of the employer for services rendered by an employee on his or her trip that is both inside and outside Manitoba is exempt from the Payroll Tax. See Bulletin No. HE-005 – Remuneration Paid by a Common Carrier, for additional information.

  Please note: For purposes of this exemption a commercial truck must be designed and used for the transportation of goods of members of the public for compensation.

- Remuneration paid to employees who report for work at a permanent establishment of the employer outside Manitoba.

Notch tax rate

- Employers with total remuneration between $1 million and $2 million in a year pay tax only on the amount exceeding $1 million at the notch tax rate of 4.3 per cent.

  For example: On remuneration of $1.9 million, the tax payable is ($1,900,000 - $1,000,000= $900,000) X 4.3% = $38,700.

  Please note: Entities that are part of an associated group (including corporate partnerships) are deemed to be a single employer. Therefore, if Corp. A paid remuneration of $1,000,000 and Corp. B paid remuneration of $900,000 in the year, the total remuneration paid by the associated group is $1.9 million, and the tax is payable per the above example.

Exemption prorated for part-year

- Employers that do not maintain a permanent establishment in Manitoba during an entire year are required to prorate the amount of the exemption or notch provision (as the case may be) for that year. The prorated exemption/notch provision is proportional to the number of days the employer maintained a permanent establishment in Manitoba for that year.

  For example : The prorated exemption for an employer operating in Manitoba for 100 days is:

  100/365 x $1,000,000 = $273,972,
  and the notch range is between $273,972 and $547,944.

  Therefore, the amount of tax that would be payable in that year in respect of the

Manitoba operations is indicated by the following scenarios:

- if remuneration paid is $200,000 – no tax is payable as this amount is less than the prorated exemption;
- if remuneration paid is $400,000 – the tax payable is in the notch range i.e., ($400,000 - $273,972 = $126,028) x 4.3% = $5,419;
- if remuneration paid is $600,000 – this exceeds the prorated notch range and the tax is payable on the total amount, i.e., $600,000 x 2.15% = $12,900.

- This provision generally applies to any employer that had a permanent establishment for only part of a year in Manitoba, such as out-of-province contractors, businesses that commenced or closed operations in Manitoba during a year, or had a change of entity (e.g., a sole proprietor incorporates during the year).

Basic tax rate

- Employers with total remuneration exceeding $2 million in a year pay tax on the full amount at the basic tax rate of 2.15 per cent, i.e., the first $1 million is not exempt.

  For example: The tax payable on remuneration of $5.5 million is ($5,500,000 X 2.15%) = $118,250.

Non-resident contractors

- A non-resident contractor who is required to provide security for tax payable under The Retail Sales Tax Act must also deposit cash or securities with the Minister, or to enter into a bond, to secure payment of the Payroll Tax. The Payroll Tax security shall be in an amount not exceeding 2.15 per cent of the total price to be paid under the contract.

  Please note: The bond must be issued by an insurer who is licensed to carry on business under The Insurance Act of the province of Manitoba, and is to be in a form satisfactory to the Minister of Finance. (A sample form is available from the Taxation Division).

- Before the final payment is made to a non-resident subcontractor, either the resident general contractor or principal must obtain a clearance letter from the Taxation Division stating that the non-resident subcontractor's tax account is in good standing. If the general contractor is a non-resident, the principal must ensure that the clearance letter from the Taxation Division has been obtained for each of the non-resident subcontractors and the general contractor.

  If a non-resident contractor's account is not in good standing, either the resident general contractor or the principal is required to set apart from any holdback, an amount equal to the tax due and to remit that amount to the Taxation Division. If the general contractor is a non-resident, the principal must remit the tax due to the Taxation Division that has not been remitted by the non-resident contractors.

  Please note: If the holdback is released without a clearance letter, the general contractor or principal, as the case may be, will be held liable for any unpaid tax.

- Upon completion of the contract in Manitoba, an audit may be performed by the Taxation Division. The deposit or bond will be returned and a clearance letter issued if it is determined that the tax has been fully paid.

- For information regarding the retail sales tax responsibilities of non-resident contractors, see Bulletin No. 005 – Information for Contractors.

Self-employed earnings

- The earnings from self-employment of a proprietor, or of a partner from a partnership, is not remuneration for purposes of the Payroll Tax and therefore is not taxable.

Payments made for contract services are not subject to Payroll Tax

- Contract services are considered to be services performed by a person who does not have an employer/employee relationship with the payor. In this case the payments are not remuneration for purposes of the Payroll Tax and are not taxable.

  Please note: The rules for determining whether or not an employer/ employee relationship exists for Payroll Tax purposes are similar to those used by the Canada Revenue Agency (formerly known as Revenue Canada).

- For additional information, see Bulletin No. HE 002 - Remuneration.

Taxing remuneration paid by a joint venture

- A joint venture is not considered to be an employer for purposes of the Payroll Tax. Rather, it is the venturers individually that are considered to be the employers. The remuneration paid through the joint venture must be allocated to the individual venturers on the same basis otherwise used to allocate their revenues and expenses and is considered to be remuneration paid directly by the individual venturers. Each venturer is subject to the Payroll Tax on his/her total remuneration paid in the year (including the remuneration allocated from a joint venture).

Section 3 – REGISTRATION AND REPORTING REQUIREMENTS

Requirement to be registered

- An employer must register for Payroll Tax purposes if the total remuneration paid to its employees in the year is in excess of $1 million.

  Please note: An employer that maintains a permanent establishment in Manitoba for only a part-year must register for Payroll Tax purposes if the total remuneration paid to its employees, in respect of the Manitoba operations, exceeds the prorated exemption or the notch range explained in Section 2.

  Please note: If the total remuneration for an associated group (including corporate partnerships) exceeds $1 million for the year, each corporation and corporate partnership that is part of the group must be registered individually.

Monthly returns

- Each employer who pays remuneration of more than $1 million in the year must submit a monthly return to report the total remuneration paid in the month and remit the applicable tax payable. The monthly return is due no later than 4:30 p.m. on the 15^{th} day of the following month, e.g., the return for March must be **received** by the Taxation Division no later than 4:30 on April 15^{th}. If the 15^{th} day falls on a weekend or statutory holiday, the due date is 4:30 p.m. of the last working before the 15^{th}. If you file by mail, allow adequate time for mail delivery to ensure your return and remittance is received no later than 4:30 p.m. of the due date. The postmark date on the envelope will not be accepted as the date of receipt.

- Returns received by the Taxation Division after the due date will be subject to penalty and interest application.

- If your remuneration for the year is greater than $1 million, you must file a Payroll tax return for every month, even if you have not paid any remuneration in a particular month. In this case, record the word "nil" on each appropriate space on the return and file the return by the due date.

- The monthly returns are mailed in advance by the Taxation Division. If the return provided by the Taxation Division is not received, the employer must still report/make any payment of tax, by the due date.

- **Please note:** All entities that are part of an associated group (deemed to be a single employer) must submit individual monthly returns, if the total remuneration paid by the group in the year exceeds $1 million.

- There are two types of monthly returns:

  1) Employers (including corporations of an associated group) with remuneration in the year between $1 million and $2 million must submit a return each month showing the amount of remuneration paid, but only begin to pay the tax when the cumulative remuneration for the year exceeds $1 million. From this point on, payroll tax is payable on the remuneration exceeding $1 million and is calculated by using the notch tax rate of 4.3 per cent times the remuneration paid each month for the remainder of the year.

  2) Employers (including corporations of an associated group) with remuneration exceeding $2 million in the year pay tax on their total remuneration paid. They must submit a return and remit the tax each month calculated by using the basic tax rate of 2.15 per cent times the remuneration paid in the month.

- If your remuneration for the year is $1 million or less, you are not required to submit monthly returns.

  Please note: In this case, if in the previous year the remuneration you paid exceeded $1 million, or you receive a return from the Taxation Division, you must request the Division to change your account to exempt status. You may also be required to submit a declaration of your total remuneration in the year for which you are claiming exempt status.

Annual reports

- In addition to the monthly returns, employers with taxable remuneration in a year are required to file a Payroll Tax Annual Report for that year. The report must be filed by March 31 of the following year along with:

  - Schedule "A" Payroll Tax Schedule For Associated Corporations/Corporate Partnerships, if applicable.
  - Cheque for any amount owing.
  - Copy of every information summary (e.g., T4, T4A) required to be filed by

the employer under the Income Tax Act (Canada).
- Summary of contributions to an employee profit sharing plan (EPSP) or an employee trust.
- Reconciliation of the difference between the remuneration reported on the Annual Report and the amounts shown on the T4 and T4A Summaries, e.g. details of payments to employees that reported for work at a permanent establishment of the employer in another province or contributions to an EPSP.

- Associated groups are required to file a combined annual report. The associated group should designate one of the employers in the group to file the Payroll Tax Annual Report and Schedule "A" Payroll Tax Schedule For Associated Corporations/Corporate Partnerships on behalf of each of its associated corporations/corporate partnerships.

- While the Taxation Division mails the Payroll Tax Annual Report (and Schedule "A" if applicable), to registered employers prior to the due date, it is the employer's responsibility to file the annual report and remit the tax by the filing deadline even if the report has not been received**.**

Penalties

- Employers who fail to pay any balance of tax by the due date are liable to a penalty of 10 per cent of the unpaid tax balance.

  Please note: The 10 per cent penalty will also apply to any tax remitted on the annual report (which should have been previously reported on a monthly return).

- In addition, employers who fail to file any required return by the due date may be assessed a penalty not exceeding $200 for each day the failure continues.

Interest on debt

- Late or insufficient tax remittances on returns are subject to interest from the date that an amount was required to be paid to the date on which it was paid. Outstanding debts will be subject to monthly interest. The interest rate payable is set every January 1 and July 1 at the prime lending rate given to the province plus 4 per cent.

- Tax remitted on the annual return, that should have been remitted on a previous monthly return, is a debt past due and is subject to interest retroactive to the date it should have been remitted.

Records

- Records, books and documents adequate for determining the amount of Payroll Tax payable by the employer must be maintained and made available for audit in Manitoba, such as:

  - General ledger.
  - Payroll ledger and calculations related to the determination of the remuneration paid.
  - Details of benefits and other amounts paid to or on behalf of an employee.
  - Copy of every information summary (e.g., T4, T4A) required to be filed by the employer under the Income Tax Act (Canada).

- Where these records are not maintained in Manitoba, the employer is required to pay for the out of province travel expenses incurred by the Taxation Division auditor for purposes of auditing the records at the place where they are kept.

Period of record retention

- The books and records of the current year plus the immediately preceding six years are to be retained.

  Please note: The general ledger is to be kept indefinitely.

- Also, books and records are to be retained for any year where:

  - Any Payroll Tax amounts are outstanding or in dispute with the Taxation Division.
  - Written notice has been given from the Taxation Division to the employer that those books and records are not to be destroyed.

Changes to registration information

- The Taxation Division should be advised immediately of any changes to your registration information, including:

  - Business name change (must be in writing).
  - Address change.
  - Phone or fax number change.
  - Discontinuation or sale of your business.
  - Changes in the form of business (partnership, corporation, etc.)
  - Changes affecting an associated corporation/associated group, for example:
    - ❑ Change in the members of an associated group.
    - ❑ Change of control of a corporation.
    - ❑ Change of a corporate partner's share of the profits/losses in a partnership.
  - An increase/decrease in total remuneration paid in a year which causes an employer to become taxable/non-taxable for that year.

FURTHER INFORMATION

This bulletin is intended as a guideline and is not all-inclusive. For the specific wording of the law, please refer to the Act and Regulations stated below. Further information may be obtained from:

Winnipeg Office
Manitoba Finance
Taxation Division
101 – 401 York Avenue
Winnipeg, Manitoba R3C 0P8
Telephone (204) 945-5603
Manitoba Toll Free 1-800-782-0318
Fax (204) 948-2087
E-mail: MBTax@gov.mb.ca
Web site: www.gov.mb.ca/finance/taxation

Westman Regional Office
Manitoba Finance
Taxation Division
349, 340 – 9th Street
Brandon Manitoba R7A 6C2
Telephone (204) 726-6153
Manitoba Toll Free 1-800-275-9290
Fax (204) 726-6763

Principal References in Legislation: *The Health and Post Secondary Education Tax Levy Act (C.C.S.M. c. H24) and Manitoba Regulation* 212/93