

## **THE RETAIL SALES TAX ACT**

### **PROMOTIONAL DISTRIBUTOR**

This bulletin outlines the responsibilities of a promotional distributor to pay Retail Sales Tax (RST) on taxable goods and services that are provided to a customer or potential customer without charge or at a nominal charge.

#### **Section 1 – GENERAL INFORMATION**

**Who is a promotional distributor ?**

- A “promotional distributor” is any person who is a resident of Manitoba, or who carries on business in Manitoba, and provides taxable goods or services (promotional items) to a person in Manitoba, either without charge or at a nominal charge, for any one or more of the following purposes:
  - To promote or encourage a person to attend a place of business.
  - To promote or encourage a person to patronize a business.
  - To promote or encourage a person to contract with a business.
  - To promote or encourage the purchase or consumption of, or contracting for any goods or services.
  - To describe goods or services provided by a business.
  - To furnish to any person a directory, listing or compilation of persons, places, prices, goods, services, utilities ,etc.

**Examples of promotional items**

- Some examples of goods and services that are promotional items when provided at no charge or at a nominal charge are gifts (e.g., wrist watch) to open a credit card account, sales brochures and other advertising materials, sample products, car washes, accommodations, airline timetables, door prizes and contest prizes.

**Promotional distributor to pay tax**

- A promotional distributor is required to pay the RST on the purchase price of taxable promotional items he/she distributes within Manitoba.
- Where the promotional items are acquired from out-of-province, the taxable purchase price is the “landed cost” in Manitoba of the items, i.e., includes freight, currency exchange, duty, brokerage and other related costs (but not GST).
- Where the promotional distributor manufactures the promotional goods or provides the service, he/she must self-assess the RST on the fair value of the promotional goods manufactured or services provided, as discussed in Section 2 of this bulletin, and must remit the tax to the Taxation Division.

Note: Revisions to contents of previous Bulletin (July 2001) have been identified by shading ( ).

**Explanation of “carries on business” in Manitoba**

- For the purpose of Manitoba retail sales tax, a person who is a resident of Manitoba, or of another jurisdiction, is considered to be carrying on business in Manitoba if he/she
  - Sells, leases, promotes or in any other way offers or solicits for sale goods or services to purchasers in Manitoba
  - Delivers goods or services, or causes them to be delivered in Manitoba to purchasers
  - Accepts orders that originate in Manitoba to sell tangible personal property

**For example:** An out-of-province supplier distributes catalogues in Manitoba and sells the goods through mail order or e-commerce sales (i.e., does not have an office in Manitoba). For purposes of RST, the supplier “carries on business” in Manitoba and is a “promotional distributor” of the sales catalogues distributed.

**Please note:** As a result of changes to the Act, effective May 2002, all out-of-province businesses that carry on business in Manitoba **must register** with the Taxation Division as a vendor and **must collect** and remit RST on all taxable sales delivered to purchasers in Manitoba.

**Discounts, coupons and cash rebates**

- See Bulletin No. 028 – Discounts, Coupons and Cash Rebates.

**Do promotional distributors need to be registered?**

- Promotional distributors are required to be registered for RST purposes if:
  - They sell taxable goods or services in Manitoba (including promotional items), or
  - They purchase taxable promotional items or machinery, equipment and other apparatus for their own use in Manitoba, without paying the RST (e.g., purchased from out-of-province suppliers), or
  - They manufacture taxable promotional items for distribution in Manitoba.

Applications for registration can be obtained at one of the Taxation Division offices or on the Web Site listed at the end of this bulletin.

**Section 2 – TAX APPLICATION ON GIVE-AWAY PROMOTIONAL ITEMS****No condition to purchase other goods or services**

- A person who gives away taxable promotional items without attaching any condition to purchase other goods or services is a promotional distributor and must pay the RST on his/her purchase price of the give-aways.

**For example:** Sample products (e.g., soap) mailed to residents of Manitoba.

**Provided with an exempt sale of goods or services**

- A person who gives away taxable promotional items with the sale of tax exempt goods or services is a promotional distributor and must pay the RST on his/her purchase price of the promotional items.

**For example:** A gasoline retailer that gives away glasses, dishes or other items with the sale of a specified amount of gasoline must pay the RST on

his/her cost of the glasses, etc. (gasoline is subject to a gasoline tax, but is not taxable for RST purposes).

- Similarly a promotional distributor is required to pay the RST on promotional items given away where the sales transaction consists of some taxable items and some exempt items.

**For example:** A grocery retailer that gives away windshield washer fluid to customers whose total purchases (taxable and exempt items) exceed \$100 must pay the RST on his/her cost of the windshield washer fluid.

**Provided with tax exempt personal services or a membership**

- A person who is in the business of providing a non-taxable professional or personal service and gives away promotional items conditional upon, or in conjunction with, the promotion of a membership, donation, enrolment, registration, etc., is a promotional distributor and must pay the RST on the purchase price of the give-aways.

**For example:** Maps and directories purchased by automobile associations, pencils and other supplies given away at seminars, materials given away upon enrolment in studies, credit cards distributed by banks and oil companies, bank deposit books, etc., are taxable.

**Promotional items sold separately**

- Where a person sells taxable promotional items (e.g., at cost) separately from the sale of other goods and services, he/she is a vendor in this case and must collect tax from the purchaser on the selling price of the promotional items and remit it to the Taxation Division. The vendor may purchase these promotional items exempt of RST.

**Sale for a nominal charge**

- A vendor that sells promotional items for a price that is lower than his/her purchase price is also a promotional distributor. In this case, he/she must collect the tax from the customer on the selling price of the items and, in addition, self-assess the RST on the difference between his/her purchase price and the selling price. The vendor must remit the total of the RST collected and self-assessed on the items to the Taxation Division but may purchase these promotional items exempt of RST.

**For example:** The advertised selling price of an item is \$20. The vendor's purchase price is \$40. The vendor must collect \$1.40 RST on the selling price ( $\$20 \times 7\%$ ) and self-assess \$1.40 RST on the difference ( $\$40 - \$20 = \$20 \times 7\%$ ). The vendor will in total remit \$2.80 RST to the Taxation Division on this item.

**Promotional items sold with other taxable goods or services**

- A person who gives a "free" item to a customer in conjunction with the sale of other goods or services that are totally taxed is not regarded to be a promotional distributor of the item **if**, the person's combined cost of the goods sold and given away "free" are less than the amount paid by the customer. In this case, he/she may purchase the items tax exempt as they are considered to have been purchased for resale, and the RST applicable to the item will be collected in conjunction with the overall sale. The transaction must substantiate that the "free" item has been sold as a package deal together with the sale of the other taxable goods or services (e.g., the free items are listed on the sales invoice or contract).

**Please note:** If the person's combined cost of the "free" item and the other

goods sold (or fair value of the services sold) exceeds the amount charged to the customer, the person is a promotional distributor of the “free” item and must pay the RST on its total cost.

**Example 1:** A car dealer is giving away a “free” TV with each sale of a car. The cost of the TV is \$500; the cost of the car is \$20,000; and the selling price of the car is \$21,000. Since the dealer’s cost of both items (\$20,500) is less than the selling price of the car, the dealer in this case may purchase the TV tax exempt for purposes of resale.

**Example 2:** A telephone company gives away a “free” cell phone when a customer signs a three-year contract for cellular service for a specified monthly charge. The amount chargeable to the customer for the duration of the service contract is \$850; the telephone company’s fair value of the service provided is \$700 [see (b) on page 5] and its cost of the cell phone is \$100. Since the combined cost of the “free” cell phone and the fair value of the service (\$700 + \$100 = \$800) will be recovered through the selling price of the taxable service, the telephone company may purchase the cell phones RST exempt. However, if the customer terminates the contract prematurely, and penalties apply, they are subject to RST.

**Example 3:** Referring to example 2, assume the total amount chargeable during the contract is only \$750. Since the telephone company’s total costs of \$800 cannot be recovered in the selling price of \$750, the “free” cell phone is a promotional item and not for resale. In this case, the telephone company is required to pay the RST on its total cost of the cell phone and must collect RST on the charge for the service.

**Free equipment or machinery with the sale of process supplies**

- Where a vendor provides production equipment or other apparatus “free” or “on loan” to a customer on the condition that the customer purchases from him/her certain non-taxable materials or supplies processed by that equipment, the vendor is a promotional distributor of the equipment and must pay the RST on its fair value.

**Example 1:** Coffee-making equipment that a coffee distributor provides at no charge to customers who purchase his/her coffee products.

**Example 2:** Container-filling equipment that a manufacturer of plastic containers provides to a food processor, on the condition that the processor purchases the plastic containers from the manufacturer. (In this case, the containers are non-taxable because they are used to package goods for sale.)

**Give-aways of manufactured goods or services by promotional distributors**

- Where the promotional distributor manufactures the taxable goods or provides the taxable services that are given away, he/she must pay the RST on the “fair value” of those goods or services as follows:
  - (a) Where the promotional distributor regularly sells similar goods, the fair value is a price at which the goods are regularly sold. Otherwise,
    - i. In the case of printed matter, the fair value is the total of:
      - the cost of materials, and
      - 220 per cent of the cost of materials.

**For example:** If the cost of materials is \$1,000 (excluding GST), then the fair value of the printed material is  $\$1,000 + (220\% \times \$1,000 = \$2,200) = \$3,200$ . The RST payable is  $7\% \times \$3,200 = \$224$ .

- ii. In the case of other manufactured taxable goods, the fair value is the total of:
- the cost of materials, and
  - the cost of direct labour, and
  - the manufacturing overhead of 150 per cent X the direct labour or the actual plant overhead rate of the manufacturer (whichever is less), and
  - 15% of the total of materials, labour and overhead.

**For example:** If the cost of materials is \$1,000 and the direct labour is \$500, then the fair value of the manufactured goods is  $[\$1,000 + \$500 + (\$500 \times 150\% = \$750) = \$2,250] + (15\% \times \$2,250 = \$337) = \$2,587$ . The RST payable is  $7\% \times \$2,587 = \$181$ .

- (b) In the case of taxable services provided by the promotional distributor, the fair value of the service is the lowest selling price at which he/she regularly sells the service.

**For example:** A hotel's standard rate for accommodations is \$100 per day; however the business class rate is \$75. Therefore, when the accommodation service is given away by the hotel owner, the fair value of the service is \$75. The RST payable is  $7\% \times \$75 = \$5.25$ .

- Where promotional distributors are required to pay the RST on the fair value of the goods or services they give away, they may purchase the materials they use to manufacture/provide the taxable give-aways tax exempt.

### Section 3 – PROMOTIONAL MATERIAL FOR USE INSIDE AND OUTSIDE MANITOBA

#### Promotional material consumed in Manitoba

- Where a promotional distributor purchases promotional materials that he/she (or his/her agent) takes delivery of in Manitoba, which are subsequently shipped or distributed to individuals or companies either within or outside Manitoba, the promotional distributor must pay RST on the total purchase price of the materials.

#### Promotional material consumed outside Manitoba

- A promotional distributor is not required to pay the RST on the purchase of promotional materials if he/she does not take delivery of it in Manitoba and instructs the supplier (or a common carrier **hired by the supplier**) to deliver the material directly to individuals or companies outside the province.

#### Promotional materials distributed from outside Manitoba

- A promotional distributor carrying on business in Manitoba, who acquires taxable promotional materials outside the province and subsequently distributes them in Manitoba (either through his/her office in Manitoba or directly from outside the province), must pay the RST on the total purchase price (landed cost) of the materials distributed in Manitoba.

**Promotional materials shipped to a branch office outside Manitoba**

- A promotional distributor must pay the RST for purchases of promotional material on which he/she takes delivery in Manitoba. If he/she subsequently ships some or all of the material to a branch (for its use) located outside the province, the promotional distributor may claim an adjustment of the RST paid on the value of the materials shipped to that branch. The promotional distributor must maintain adequate records to show evidence of the materials shipped and, wherever applicable, the tax payment made to the province where the material was shipped. Where in exceptional circumstances it is impractical to account separately for the actual value of the material shipped to each province, the promotional distributor may request permission from the Taxation Division to compute the RST payable to Manitoba and to the other provinces on a reasonably pro-rated basis at the time of purchasing the materials.

**FURTHER INFORMATION**

This bulletin is intended to serve as a guideline and is not all-inclusive. For the specific wording of the law, please refer to the Act and Regulation 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](mailto:MBTax@gov.mb.ca)  
Web Site: [www.gov.mb.ca/finance/taxation](http://www.gov.mb.ca/finance/taxation)

**Westman Regional Office**

Manitoba Finance  
Taxation Division  
311, 340 - 9th Street  
Brandon, Manitoba R7A 6C2  
Telephone (204) 726-6153  
Manitoba Toll Free 1-800-275-9290  
Fax (204) 726-6763

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**Principal References In Legislation:**

*The Retail Sales Tax Act of Manitoba (C.C.S.M. c. R130)*, Section 1(1), definition of “consumption”, “fair value”, “promotional distribution”, “promotional distributor”, “purchase price” and “service”.  
*Manitoba Regulation (75/88R)*, Section 3.