

NOTICE 119
January 2001

Note that this information may be within the scope of responsibility of Business Window and Technical Interpretation Services.

SUBJECT: Treaty Land Entitlement (Manitoba) Remission Order

On the recommendation of the Minister of National Revenue, the Governor General in Council has approved the Treaty Land Entitlement (Manitoba) Remission Order. The effective date of the Remission Order is December 13, 2000. Remission Order SI/2001-1, Treaty Land Entitlement (Manitoba) is available on the Canada Gazette Internet site (<http://canada.gc.ca/gazette/part2/pdf/g2-13501.pdf>).

This Remission Order provides for the remission of the Goods and Services Tax (GST) to a First Nation that is named in the Remission Order, under the conditions described in the Remission Order.

The remission of tax applies to the GST paid or payable on:

- the supply of land to a First Nation or its agent;

Condition: That the Department of Indian Affairs and Northern Development confirm in writing that the supply of the land is land that a First Nation selects or acquires in accordance with the applicable specific agreement.

The Remission Order defines this land as ‘qualifying land’.

- the supply to a First Nation , or its agent, of a ‘third party interest’ in qualifying land;
- the cancellation in favour of a First Nation, or its agent, of a ‘third party interest’ in qualifying land;

The term “third party interest” is a defined term. That definition is set out in Appendix A of this document.

- the supply to a First Nation, or its agent, of tangible personal property;

Condition: That the tangible personal property be situated on the qualifying land at the time that the First Nation, or its agent, acquires an interest in that land and that title to the tangible personal property be transferred to the First Nation or its agent.

- costs incurred by the First Nation, or its agent, in the context of the above described transactions.

In addition, the Remission Order also remits interest and penalties paid or payable by the First Nation, or its agent, in respect of any transactions described above.

If a supply to a First Nation, or its agent, meets the conditions of the Remission Order, it is possible that there will be no GST, interest and penalties paid by the First Nation, or its agent. However, to the extent that the First Nation, or its agent, has paid GST, interest and penalties under conditions which would qualify for remission as set out in the Remission Order, the First Nation may apply for remission of those amounts. A First Nation is eligible for a remission of GST, interest and penalties to the extent that those amounts have not otherwise been rebated, credited, refunded or remitted to any person.

A First Nation will apply for a remission of GST, penalties and interest using Form GST189, *General Application for Rebate of the Goods and Services Tax (GST)/Harmonized Sales Tax (HST)*. The part B – “Reason for Rebate Request” should be a code 1 (Amounts paid in error). The First Nation will note on the form (part G – Details of Rebate Application) that the claim is being submitted under the authority of the *Treaty Land Entitlement (Manitoba) Remission Order* quoting the number RO 2000-1767. The form should be submitted to Summerside Tax Centre or to the Audit Division of the Winnipeg Tax Service office, Attention Winnipeg Tax Services, Pre-payment Audit Group. Documents are required to be submitted with the request for remission.

If the GST, interest and penalties have been paid prior to the effective date of the Remission Order, the First Nation must apply for remission of those amounts within two years after the effective date of the Remission Order. If the GST, interest and penalties are paid on or after the effective date of the Remission Order, the First Nation must apply for a remission of those amounts within two years after the day that the GST, interest and penalties are paid.

Note that CCRA will provide an ‘information letter’ concerning the Remission Order to the Department of Indian Affairs and Northern Development. That Department proposes to provide this letter to First Nations affected by the Remission Order and vendors making supplies to these First Nations. That document is attached for your reference (Appendix B).

Appendix A

Reference: *Manitoba Framework Agreement Treaty Land Entitlement*

"Third Party Interest" means any interest, right or estate of any nature held by a Third Party in or to land, or any right of use or occupation of land, other than a fee simple interest, and includes without limiting the generality of the foregoing:

- (a) interests held by an occupant of land under a lease, licence or permit;
- (b) mortgages and charges;
- (c) assignments of rights, estates or interests in land for security or other purposes;
- (d) security interests on fixtures protected under *The Personal Property Security Act*;
- (e) easements and restrictive covenants and profits a prendre;
- (f) interests protected by caveat;
- (g) interests in Mines and Minerals; and
- (h) forage leases, casual grazing permits and renewable hay leases and permits
but does not include
- (i) a right or interest which is to expire after a specified period, and which is not subject to renewal as a matter of law, established practice or the policy of Manitoba as at the Date of Execution, once that specified period expires;
- (j) trapping licences or permits;
- (k) Forest Management Licences, timber sale agreements or timber permits, subject to Subsections 3.03(25) to (38) inclusive; and
- (l) the right to levy Municipal and School Taxes.

Appendix B

December 2000

On the recommendation of the Minister of National Revenue, the Governor General in Council has approved the Treaty Land Entitlement (Manitoba) Remission Order. The effective date of the Remission Order is December 13, 2000. Remission Order SI/2001-1, Treaty Land Entitlement (Manitoba) is available on the Canada Gazette Internet site (<http://canada.gc.ca/gazette/part2/pdf/g2-13501.pdf>).

In section 1 of the Remission Order, the definition of the term “third party interest” refers to the definition included in the Manitoba Framework Agreement Treaty Land Entitlement executed on May 29, 1997. The applicable section and the title page from that Agreement are also attached for your reference.

The *Excise Tax Act* is the legislative authority for the imposition of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST). Generally, the supplier of a taxable supply will be required to charge and collect tax from the purchaser.

However, the Treaty Land Entitlement (Manitoba) Remission Order sets out the conditions under which a First Nation that is identified in the Remission Order is eligible to obtain a remission of tax paid or payable; that is, if the tax is payable, the supplier is not required to collect that tax; if tax is paid, the First Nation may obtain a refund of the tax as provided for in the Remission Order.

You will note that in order for a supply of land to be eligible for remission of tax, the land must be “qualifying land” as defined in section 1 of the Remission Order. That is, the Department of Indian Affairs and Northern Development must confirm in writing that the supply of land is land that a First Nation selects or acquires in accordance with the applicable specific agreement.

It is a question of fact whether a particular transaction fulfills the terms of the Remission Order.

If you require information about the application of GST/HST or the Remission Order, please call 1-800-959-5525.