

READY FOR OC

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RETAIL SALES TAX ACT

REGULATIONS

Pursuant to section 20 of the *Retail Sales Tax Act* R.S.P.E.I. 1988, Cap. R-13.03, Council made the following regulations:

Part 1 — Definitions

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| 1. (1) In these regulations | Definitions |
| (a) “Act” means the <i>Retail Sales Tax Act</i> R.S.P.E.I 1988, Cap. R-13.03; | Act |
| (b) “commercial activity” has the same meaning as in Part IX of the federal Act; | commercial activity |
| (c) “commercial fisher” means a fisher who qualifies for a Marked Gasoline/Marked Diesel Oil permit issued under the <i>Gasoline Tax Act</i> R.S.P.E.I 1988, Cap. G-3; | commercial fisher |
| (d) “fire district” has the same meaning as in section 42 of the <i>Fire Prevention Act</i> R.S.P.E.I. 1988, Cap. F-11; | fire district |
| (e) “member of his or her family” in relation to a person means the spouse, common-law spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, grandson, granddaughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son or step-daughter of that person; | member of his or her family |
| (f) “settler” means an individual who takes up residence in the province immediately after residing outside the province,
(i) in the case of an individual who is an extrajurisdictional student, for a period of not less than three months, or
(ii) in the case of an individual other than an extrajurisdictional student, for a period of not less than six consecutive months; | settler |
| (g) “settler’s effects” means any household goods and equipment, including motor vehicles and boats, a settler brings into the province | settler’s effects |

on, or within six months of, taking up residence in the province and that

- (i) are solely for the personal consumption or use of the settler in the province and not for any commercial purpose, and
- (ii) were owned, physically possessed and used by the settler for at least 30 days prior to the settler's taking up residence in the province.

Valuation, value

- (2) For the purpose of subclause 1(r)(iii) of the Act
 - (a) the following trade valuation books are prescribed:
 - (i) Canadian Red Book, and
 - (ii) Canadian Sport Vehicle Blue Book;
 - (b) "value" for the purpose of subparagraph 1(r)(iii)(B)(I) means the
 - (i) average wholesale value in the Canadian Red Book, and
 - (ii) average wholesale value in the Canadian Sport Vehicle Blue Book,
 as the case may be;
 - (c) the following persons are authorized to make a written appraisal of the value of a motor vehicle:
 - (i) a motor vehicle dealer who has a Class A or Class D license issued under the Dealer's Trade License Regulations, and
 - (ii) an appraiser authorized by the Commissioner;
 - (d) the following persons are authorized to make a written appraisal of the value of an all-terrain vehicle or snow vehicle:
 - (i) a sport vehicle dealer who has a Class E license issued under the Dealer's Trade License Regulations, and
 - (ii) an appraiser authorized by the Commissioner.

Part 2 — Point-of-Sale Rebates

Definitions for this Part

2. In this Part:

children's diaper

- (a) "children's diaper" means a product that is designed for babies or children and that is
 - (i) a diaper,
 - (ii) a diaper insert or liner,
 - (iii) a training pant, or
 - (iv) a rubber pant designed for use in conjunction with any of the items referred to in subclauses (i) to (iii);

composite property

- (b) "composite property" means property that is wrapped, packaged or otherwise prepared for sale as a single product, the only components of which are a printed book and
 - (i) a read-only medium that contains materially all or substantially all of the value of which is reasonably attributable to one or more of the following:
 - (A) a reproduction of the printed book, and

(B) material that makes specific reference to the printed book and its content and that supplements, and is integrated with, that content, or

(ii) if the product is specially designed for use by students enrolled in a qualifying course, a read-only medium or a right to access a website, or both of them, that contains material that is related to the subject matter of the printed book;

(c) “national standard” means a standard of the National Standards of Canada, as they read on January 1, 2010, in the subject area CAN/CGSB-49, *Garment Sizes*, published by the Canadian General Standards Board; national standard

(d) “printed book” has the same meaning as in subsection 259.1(1) of the federal Act; printed book

(e) “qualifying course” means a course the supply of the service of instructing in which, qualifying course

(i) is an exempt supply included in Part III of Schedule V to the federal Act, or

(ii) would be an exempt supply included in Part III of Schedule V to the federal Act but for the fact that the supplier of the service has made an election under that Part;

(f) “read-only medium” means a tangible medium that is designed for the read-only storage of information and other material in digital format. read-only medium

3. (1) For the purposes of subclause 5(1)(b)(i) of the Act, children’s clothing means garments (other than garments of a class that is used exclusively in sports or recreational activities, costumes, children’s diapers or footwear referred to in subsection (2)) that are Qualifying property

(a) designed for babies, including baby bibs, bunting blankets and receiving blankets;

(b) children’s garments

(i) designed for girls and of a size not greater than the size that is girls’ size 16 according to the national standard applicable to the garments,

(ii) designed for boys and of a size not greater than the size that is boys’ size 20 according to the national standard applicable to the garments, or

(iii) if no national standard applies to the garments, designed for girls or boys and having a size designation of extra small, small, medium or large; or

(c) hosiery or stretchy socks, hats, ties, scarves, belts, suspenders, mittens and gloves in sizes and styles designed for children or babies.

- Footwear (2) For the purposes of subclause 5(1)(b)(ii) of the Act, children's footwear means footwear (other than stockings, socks or similar footwear or footwear of a class that is used exclusively in sports or recreational activities) that is
- (a) designed for babies; or
 - (b) designed for girls or boys and has an insole length of 24.25 centimetres or less.
- Heating oil (3) For the purposes of subclause 5(1)(b)(iii) of the Act, qualifying heating oil means fuel (other than heavy fuel oil or fuel sold as fuel for use in internal combustion engines) that is suitable for use as heating oil and is marketed or sold as fuel for use as heating oil for heating homes, buildings or similar structures.
- Books (4) For the purposes of subclause 5(1)(b)(iv) of the Act, books means:
- (a) a printed book or an update of a printed book;
 - (b) an audio recording all or substantially all of which is a spoken reading of a printed book;
 - (c) a bound or unbound printed version of scripture of any religion;
 - (d) a composite property.

Part 3 — Rebates

- Rebate 4. (1) Subject to subsection (2), the Minister may authorize a rebate to a fire district of an amount equal to 35 per cent of the tax paid under subsection 165(2) of the federal Act within four years of the date the tax was paid.
- Reduction of rebate (2) The rebate under subsection (1) shall be reduced to the extent that the fire district is eligible to receive a rebate of that tax under the provisions of any other federal or provincial Act.

Part 4 — Tax on Designated Property

Division 1 — Provisions Relating to Payment of Tax

- Time of payment of tax 5. (1) The tax due under sections 11 and 12 of the Act, in relation to designated property that is not a vehicle, is payable on the earlier of the date that is 20 days after the last day of the month in which the designated property was purchased at a sale in Prince Edward Island, brought or sent into Prince Edward Island or delivered in Prince Edward Island.
- Idem* (2) The tax due under sections 11 and 12 of the Act, in relation to designated property that is a vehicle, is payable on the earlier of

- (a) the time an application is made for the registration or licensing of the vehicle under the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5 or the *Off-Highway Vehicle Act* R.S.P.E.I. 1988, Cap. O-3; and
- (b) the date that is 20 days after the last day of the month in which the vehicle was purchased at a sale in Prince Edward Island, brought or sent into Prince Edward Island or delivered in Prince Edward Island.

(3) The tax due under section 13 of the Act is payable at the time an application is made for the registration of the vehicle under the *Highway Traffic Act* or *Off-Highway Vehicle Act*. *Idem*, section 13

6. The report and tax due under subsections 14(2) and (4) of the Act are due and payable on the date that is 20 days after the last day of the month in which the designated property was used as described in clause 14(1)(b) or (3)(b) of the Act. Prescribed time — section 14 of the Act

Division 2 — Exemptions

7. A purchaser is exempt from paying tax under section 11 of the Act in relation to designated property that is not a vehicle if Designated property shipped out of province by seller
- (a) the designated property is purchased for use outside of Prince Edward Island;
 - (b) after the designated property is purchased, no use is made of the designated property while it is in Prince Edward Island other than to store it and to send it out of Prince Edward Island;
 - (c) the seller sends the designated property out of Prince Edward Island; and
 - (d) the purchaser does not take possession of the designated property in Prince Edward Island.
8. A purchaser is exempt from paying tax under section 11 of the Act in relation to designated property that is a vehicle if Exemption for vehicles
- (a) the vehicle is purchased primarily for use outside Prince Edward Island;
 - (b) the vehicle will not be registered or licensed under the *Highway Traffic Act* or the *Off-Highway Vehicle Act*; and
 - (c) the vehicle is removed from the province within 30 days of purchase.
9. (1) Subject to subsection (3), a corporation is exempt from paying tax under section 11 of the Act on the purchase of designated property if Purchase by a corporation
- (a) the corporation purchased the designated property from a person (the “seller”) who wholly owns and controls the corporation;
 - (b) the seller paid tax or was exempt from tax on the designated property under
 - (i) the Act,

- (ii) the *Revenue Tax Act* R.S.P.E.I. 1988, Cap. R-14, or
- (iii) subsection 165(2), section 212.1 or 218.1 or Division IV.1 of Part IX of the federal Act; and
- (c) the seller wholly owns and controls the corporation for a period of not less than six months after the date of the purchase referred to in clause (a).

Idem

- (2) Subject to subsections (3) and (4), a corporation is exempt from paying tax under section 11 of the Act on the purchase of designated property if
- (a) the corporation purchased the designated property from a person (the “seller”) who does not wholly own and control the corporation;
 - (b) the seller paid tax or was exempt from tax on the designated property under
 - (i) the Act,
 - (ii) the *Revenue Tax Act*, or
 - (iii) subsection 165(2), section 212.1 or 218.1 or Division IV.1 of Part IX of the federal Act;
 - (c) the consideration for the purchase of the designated property by the corporation is the concurrent issue or transfer of the corporation's own shares to the seller; and
 - (d) the seller is the beneficial owner of the shares referred to in clause (c) for a period of not less than six months after the date the shares were issued or transferred to the seller.

Limitation to exemption

- (3) A corporation is not exempt under subsection (1) or (2) if the seller
- (a) was exempt from tax on the designated property under the Act or the *Revenue Tax Act* because the seller
 - (i) purchased the designated property for resale, or
 - (ii) qualified for exemption by reason of the seller’s use of the designated property and the corporation is not entitled to a similar exemption; or
 - (b) was exempt from tax on the designated property under section 165(2), 212.1 or 218.1 or Division IV.1 of Part IX of the federal Act because the seller qualified for exemption by reason of the seller’s use of the designated property and the corporation is not entitled to a similar exemption.

Quantum

- (4) If the actual value of the shares issued or transferred in consideration for the purchase of the designated property is
- (a) at least equal to the fair market value of the designated property, all the purchase price is exempt from tax; or
 - (b) less than the fair market value of the designated property, the difference between the fair market value of the designated property and the actual value of the shares issued or transferred is subject to the tax.

(5) For the purposes of this section, “wholly owns and controls a corporation” means that the beneficial ownership of not less than 95 per cent of the total issued and outstanding voting share capital of the corporation is in the hands of a person or of a person and members of his or her family.

Definition, wholly owns and controls

10. A commercial fisher is exempt from paying tax under sections 11 and 12 of the Act on designated property that is a boat if the boat is used in the commercial fishery and for no other purpose.

Boat purchased by a commercial fisher

11. A person is exempt from paying tax under section 12 or 13 of the Act in relation to designated property if

Temporary use

- (a) the designated property is sent outside Prince Edward Island within 30 days after the entry date of the designated property to be used primarily outside Prince Edward Island; and
- (b) the designated property is in Prince Edward Island for use in Prince Edward Island for less than 30 days in a calendar year.

12. For the purpose of subclause 1(r)(iv) of the Act, a transfer of a vehicle is a transfer between a person and members of his family if

Family transfer

- (a) the person who is the transferor
 - (i) has owned the vehicle for a minimum of twelve months prior to the date of transfer, or
 - (ii) has
 - (A) owned the vehicle for less than twelve months prior to the date of transfer, and
 - (B) paid the tax under
 - (I) Part IX of the federal Act,
 - (II) this Act, on the greater of the purchase price or the value that was set out in the Canadian Red Book or Canadian Sport Vehicle Blue Book, when the person acquired the vehicle, or
 - (III) the *Revenue Tax Act*, on the greater of the purchase price or the value that was set out in the Canadian Red Book or Canadian Sport Vehicle Blue Book, when the person acquired the vehicle;
- (b) the transferor has made the transfer to a member of the transferor’s family; and
- (c) the purchase price paid by the transferee is less than the value that is set out in the Canadian Red Book or the Canadian Sport Vehicle Blue Book for the vehicle.

13. (1) In this section, “spouse” means a person who

- (a) is married to another person; or

Transfer due to dissolution of marriage or relationship

(b) lived with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, for a period of at least 2 years.

Exemption

(2) A person is exempt from paying tax under section 11, 12 or 13 of the Act in relation to designated property that the person acquired from a spouse or a former spouse under a written separation agreement, a marriage contract referred to in the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, or an order of a court on the dissolution of a marriage or marriage-like relationship.

Inheritance

14. A person is exempt from paying tax under section 11, 12 or 13 of the Act if the designated property is received as part of the distribution of a deceased's estate.

Settler's effects

15. A settler who brings or sends into Prince Edward Island, or receives delivery in Prince Edward Island of, settler's effects that are designated property is exempt from paying tax under section 12 or 13 of the Act.

Tax paid under the Act

16. (1) A person is exempt from paying tax under section 12 or 13 of the Act in relation to designated property if

- (a) tax under the Act has been paid previously by that person on that designated property; and
- (b) the person is not eligible for a refund in respect of the tax paid previously under the Act on that designated property.

Tax paid under the Revenue Tax Act

(2) A person is exempt from paying tax under section 12 or 13 of the Act in relation to designated property if

- (a) tax under the *Revenue Tax Act* has been paid previously by that person on that designated property; and
- (b) the person is not eligible for a refund in respect of the tax paid previously under the *Revenue Tax Act* on that designated property.

Division 3 — Refunds

Designated property returned to seller

17. The Minister may refund to an applicant the tax paid under section 11 of the Act on designated property if the Minister is satisfied that, within 30 days after the date of the sale of the designated property to the applicant,

- (a) ownership of the designated property was transferred to the previous owner;
- (b) the designated property was returned to the previous owner; and
- (c) the purchase price for the designated property was refunded to the applicant.

Designated property sent out of PEI within 30 days of purchase

18. The Minister may refund to an applicant the tax paid under section 11 of the Act on designated property if the Minister is satisfied that

- (a) the designated property was subsequently sent out of Prince Edward Island within 30 days of the date of purchase to be used primarily outside Prince Edward Island; and
- (b) the applicant paid tax on the designated property under Division IV.1 of Part IX of the federal Act or under the law of another jurisdiction that imposes a sales tax.

19. The Minister may refund to an applicant the tax paid under section 11 of the Act on designated property that is a boat if the Minister is satisfied that

Boat purchased by a commercial fisher

- (a) the purchaser is a commercial fisher; and
- (b) the boat is used in the commercial fishery and for no other purpose.

20. (1) The Minister may refund to an applicant a portion of the tax paid under the Act on the purchase designated property that is a motor vehicle equipped for use by an individual with a disability.

Modifications to a motor vehicle

(2) The refundable portion of the tax is the tax related to the cost to modify the motor vehicle for the purpose of

Refundable portion of tax

- (a) facilitating the placement or transportation of a wheelchair without the need to collapse the wheelchair; or
- (b) equipping the motor vehicle with auxiliary driving controls to facilitate the operation of the motor vehicle by an individual with a disability.

21. For the purposes of sections 17 to 20, a person may apply for a refund of tax or a portion of the tax paid under the Act in accordance with section 19 of the *Revenue Administration Act*.

Application for refund

Division 4 — Records

22. (1) Subsection (2) applies to a person who

- (a) is required to pay tax under the Act in respect of designated property; or
- (b) is exempt from paying tax under the Act in respect of designated property, other than by reason of an exemption under section 17 of the Act or section 13 of this regulation.

Records respecting designated property

(2) A person to whom this subsection applies must keep, in accordance with subsection (3), all records relating to the purchase, bringing or sending into Prince Edward Island or the delivery in Prince Edward Island of the designated property.

Requirement to keep records

(3) The records required to be kept under subsection (2) must be kept by the person at the principal premises in Prince Edward Island where the records of the person are kept.

Location

Retention of records **23.** (1) A person who is required to keep records under section 22 must retain those records in Prince Edward Island for a period of 5 years from the dates the records are created.

Authorization for early destruction (2) If a person who is required to retain records under subsection (1) makes a written application to the Commissioner for permission to destroy a record, the Commissioner may authorize the requested destruction prior to the expiry of the period described in subsection (1).

Retention of records for longer period (3) Despite any other provision of this section, if a record might be necessary for the purposes of an objection under section 9 or an appeal under section 10 of the *Revenue Administration Act*, the person required to keep the records must retain the record after the expiry of the period described in subsection (1) and until the appeals have been exhausted.

Commencement **24.** These regulations come into force on

EXPLANATORY NOTES

SECTION 1 provides definitions for certain words and terms used in the regulations.

SECTION 2 provides definitions for certain words and terms used in Part 2 – Point-of-Sale Rebates.

SECTION 3 sets out the goods that are eligible for a point-of-sale rebate of the provincial component of the harmonized sales tax.

SECTION 4 provides authority for the Minister to rebate to fire districts an amount equal to 35% of the provincial component of the harmonized sales tax paid on goods and services they purchase.

SECTION 5 sets the time when tax due under sections 11, 12 and 13 of the Act are due and payable.

SECTION 6 sets the time when tax due under section 14 of the Act is due and payable.

SECTION 7 provides an exemption from the tax due under section 11 of the Act where the goods, other than a vehicle, are purchased for delivery out of the province.

SECTION 8 provides an exemption from the tax due under section 11 of the Act where a vehicle is purchased and removed from the province within 30 days of purchase.

SECTION 9 provides an exemption from the tax due under sections 11 of the Act where the goods are purchased by a corporation from a person who wholly owns the corporation or from a person who accepts shares in the corporation as consideration for the sale.

SECTION 10 provides an exemption from the tax due under sections 11 or 12 of the Act where the good is a boat purchased by a commercial fisher.

SECTION 11 provides an exemption from the tax due under sections 12 or 13 on goods that are brought into the province solely for the purpose of being shipped out of the province within 30 days of being brought in.

SECTION 12 provides a definition of the term “family transfer” used in subclause 1(r)(iv) of the Act.

SECTION 13 defines the term “spouse” and provides an exemption from the tax under the Act where designated property is transferred as the result of a marriage breakdown.

SECTION 14 provides an exemption from the tax due under the Act where the goods are received as part of an inheritance.

SECTION 15 provides an exemption from the tax due under the Act where the goods that are a settler’s effects.

SECTION 16 provides an exemption where tax was previously paid under the Act or the *Revenue Tax Act*.

SECTION 17 provides authority for the Minister to rebate tax paid under the Act where the goods are returned within 30 days and a full refund is received.

SECTION 18 provides authority for the Minister to rebate tax paid under the Act where the goods are shipped out of the province within 30 days of purchase and tax was paid in another jurisdiction.

SECTION 19 provides authority for the Minister to rebate tax paid under the Act on a boat purchased by a commercial fisher.

SECTION 20 provides authority for the Minister to rebate tax paid under the Act where the tax relates to modifications of a vehicle to allow for its use by a person with a disability.

SECTION 21 sets the application process for a rebate under sections 17 to 20.

SECTION 22 sets out the requirements for retaining records related to tax due under the Act.

SECTION 23 sets the length of time that records must be retained and allows the Commissioner to waive the time requirement.

SECTION 24 provides for the commencement of these regulations.