

Purchase and Sale of Assets: The Importance of a Bulk Sale Clearance Certificate

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The purpose of this article is to provide an overview of the Bulk Sales legislation in Manitoba and to describe the importance of ensuring proper compliance with this legislation in connection with the purchase and sale of business assets.

In Manitoba, Bulk Sales are governed by *The Tax Administration and Miscellaneous Taxes Act* (Manitoba) (“**TAMTA**”). A Bulk Sale is the sale of business assets (including land, buildings, machinery, equipment, furniture, fixtures, leasehold improvements, inventory, goodwill and accounts receivable) in connection with a seller ceasing to carry on its business. A Bulk Sale will have occurred if a seller sells its business assets and closes its business entirely, or if a seller sells the business assets of a particular business facility, of which there are more than one, and closes that facility in conjunction with the sale.

If the parties to a Bulk Sale do not comply with the relevant provisions of TAMTA, the risk will shift to the purchaser as it will be exposed to potential liability for the seller’s tax debt as at the date of the Bulk Sale, including any amount assessed on or after that date in respect of transactions that occurred prior to the date of the Bulk Sale.

The purchaser is liable, upon assessment under section 46, for the seller's tax debt as at the date of sale, including any amount assessed on or after that date in respect of transactions that occurred before that date, unless the purchaser obtains the duplicate certificate from the seller. The debt may be enforced against the purchaser, the seller or both.

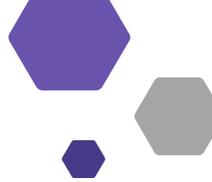
In a Bulk Sale, the seller must complete and file an Application for a Bulk Sale Clearance Certificate in the prescribed form with Manitoba Finance (Taxation Division) (the “**Tax Division**”), for the period up to the date of the Bulk Sale. The following items must accompany the completed application form:

- \$50.00 processing fee (payable to the Minister of Finance – Manitoba)
- A copy of the purchase and sale agreement

Note: If the purchase and sale agreement does not contain a detailed breakdown of the purchase price for the business assets and leasehold improvements (if any), a Business Assets Declaration in the prescribed form will need to be completed and signed by both the seller and the purchaser. If there were leasehold improvements included in the transaction and a breakdown is not provided, the entire amount of leasehold improvements will be taxable.

Following the submission of the Application for a Bulk Sale Clearance Certificate, the Tax Division will issue to the seller, a Bulk Sale Clearance Certificate, provided that:

1. The seller has filed all tax returns and paid all taxes under the following statutes (if applicable):
 - a. *The Credit Unions and Caisses Populaires Profits Tax Act* (Manitoba)
 - b. *The Emissions Tax on Coal and Petroleum Coke Act* (Manitoba)
 - c. *The Fuel Tax Act* (Manitoba)
 - d. *The Health and Post Secondary Education Tax Levy Act* (Manitoba)



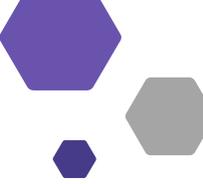
- e. *The Insurance Corporations Tax Act* (Manitoba)
 - f. *The Mining Tax Act* (Manitoba)
 - g. *The Retail Sales Tax Act* (Manitoba)
 - h. *The Tobacco Tax Act* (Manitoba)
2. The Tax Division is satisfied that the seller has no tax debt (any tax, penalties, interest, fees or other charges owing to the Tax Division) under any of the statutes listed above.
 3. If the seller does have any tax debt, that sufficient arrangements for payment have been made with the Tax Division.

If the Tax Division issues a Bulk Sale Clearance Certificate, the seller must provide the duplicate copy to the purchaser. The Bulk Sale Clearance Certificate will provide confirmation to both the seller and the purchaser that the Tax Division does not have any security interest in the business assets acquired, and that the seller has no tax debt for which the purchaser may be liable. If the Tax Division issues a Bulk Sale Clearance Certificate, and then subsequently discovers, based on new information, that a tax debt was owing by the seller when the Bulk Sale Clearance Certificate was issued, that tax debt cannot be enforced against the purchaser who obtained the duplicate copy of the Bulk Sale Clearance Certificate.

This article focuses on the importance of obtaining a Bulk Sale Clearance Certificate in connection with a Bulk Sale, and is not intended to be an exhaustive review. There are other legal and tax matters that need to be taken into consideration, including the payment of retail sales tax under *The Retail Sales Tax Act* (Manitoba), and the payment of goods and services tax under the *Excise Tax Act* (Canada). If you need assistance with any of these matters, please contact TDS and ask to speak to one of our knowledgeable lawyers.

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While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.

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Courtney's practice is focused in the areas of corporate and commercial law, with a concentration on mergers and acquisitions, corporate reorganizations and commercial real estate transactions including financing, leasing and development.