

THE RETAIL SALES TAX ACT

LEGAL SERVICES

This bulletin explains the application of retail sales tax (RST) to legal services at the rate of 8%. Questions and answers attached to this bulletin provide additional information on applying the retail sales tax to legal services.

Section 1: APPLICATION OF TAX ON SERVICES

- Legal Services**
- Legal services are services provided by lawyers within the meaning of “the practice of law” under Manitoba’s *Legal Profession Act*, that are directly or indirectly performed in expectation of a fee.
 - Taxable legal services are provided in **all** areas of the practice of law, including commercial and corporate, labour and employment, family, real estate, criminal, environmental, personal injury and taxation.

- Taxable Legal Services**
- Taxable legal services include:
 - drawing, revising or settling documents including documents:
 - relating to real or personal property (e.g. mortgage, divorce settlement)
 - used in an administrative or judicial proceeding (e.g. statement of claim)
 - relating to the incorporation, administration, organization, reorganization, dissolution or winding-up of a corporation (e.g. documents to register a corporation, charity, society or company under Manitoba’s *Corporations Act* or the *Canada Corporations Act*, minutes and resolutions)
 - involving a will, deed, settlement, trust deed, power of attorney or any document relating to the guardianship or estate of a person
 - appearing as a lawyer before any court or before a justice of the peace
 - suing out a writ or process or soliciting, commencing, carrying on or defending any action or proceeding before a court
 - negotiating settlement, or soliciting the right to negotiate settlement, or settling a claim for loss or damage in a civil matter
 - giving legal advice
 - Related charges for these services, including legal research and secretarial services are considered part of the legal service and are subject to RST

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

even if separately itemized on the client's invoice.

- Retainers are not subject to RST until a bill for legal services is provided to the client.
- Legal services are subject to RST if the services relate to Manitoba (Please refer to page 3 *Legal Services Relating to Manitoba*).

Exempt Services

- Exempt legal services include:
 - legal services covered by the *Legal Aid Services Society of Manitoba Act*
 - services provided by a notary public or a public officer within the scope of their authority in these positions
 - services provided by a lawyer to their employer in their course of employment
 - services performed by a person preparing a document for their own use or acting on their own behalf in an action or proceeding
 - legal services provided to a Status Indian or Indian Band, if the services relate to Aboriginal treaty or land claims issues, property, or business activity on a reserve (legal services provided to corporations owned by a Status Indian or Indian Band are taxable)
 - legal services provided to the federal government, if an RST number is provided, (legal services provided to federal Crown corporations, and provincial government departments, agencies and Crown corporations are taxable)
 - legal services provided to members of the diplomatic and consular corps, if an RST number is provided.
- The following services provided by lawyers and law firms are not within the meaning of the "practice of law", and are not subject to RST when segregated from taxable legal services on the client's invoice:
 - acting as a trustee, executor, director or administrator of an estate
 - acting as a Commissioner for Oaths
 - acting as a mediator or an arbitrator
 - acting as a member of a tribunal
 - teaching or providing courses or seminars
 - providing immigration or emigration services (e.g. completing an application for permanent residence or temporary work visa)
 - providing services to secure patent and trademark rights (e.g. conducting searches, filing applications)
 - acting as an officer or director of a corporation
 - providing financial planning services (e.g. advising clients on investments and financing options, recommending and purchasing investments, and reporting on investment results)
 - providing tax planning services related to future tax applications (e.g. devising strategies, organizational structures and reorganizations to minimize future tax liabilities). If tax planning includes the preparation of legal documents, tax returns or elections, 10% of the total fee is deemed to be taxable.
 - providing estate planning services related to future tax applications (e.g. devising strategies to maximize estate value and minimize estate tax).

If estate planning includes the preparation of legal documents or a will, 10% of the total fee is deemed to be taxable.

Disbursements

- Disbursements, billed on a cost recovery basis, are exempt when itemized separately from taxable legal services on the client's invoice including:
 - application fees for licenses and permits granted to the client (e.g. subdivision, zoning, building permits)
 - fees to register documents related to real or personal property in the Land Titles Office or Personal Property Registry (e.g. transfer of title, mortgage, discharge, postponement, financing statement) or to register intellectual property (e.g. patents, trademarks)
 - fees to incorporate, amalgamate, register, dissolve or maintain a corporation, partnership, association, etc. (e.g. articles of incorporation, annual return, notice of change of directors, by-law amendment)
 - search fees (e.g. land titles, municipal regulations or tax arrears, utility arrears or workorders, bankruptcy status, labour or environmental standards, and wills)
 - fines, penalties and taxes (e.g. land transfer tax)
 - court fees to start a legal proceeding and subsequent court fees (e.g. to file a document, notice or defence, a summons to witness fee, a judgment certificate fee, a fee to obtain a writ of seizure or court transcript)
 - a fee paid to a person who has appeared as a witness
 - probate fees
 - charges for facsimile transmission, telephone and courier services
 - charges for printing or photocopying documents
 - a flat charge to recover the cost of administering disbursements
 - third party fees or charges that do not form part of the legal service and are charged separately on the client's invoice on a cost-recovery basis.
- The lawyer or law firm will pay RST on the disbursement item, where applicable.
- A lawyer or law firm who obtains taxable services on behalf of a client may include those expenses as an exempt disbursement if the lawyer has paid tax in respect of those services, including:
 - legal services from another lawyer
 - private investigation services
 - accommodation services incurred in connection with the legal services

Legal Services Relating to Manitoba

- All legal services that relate to Manitoba are subject to RST, including those provided by a non-resident lawyer or provided to a non-resident client.
- Legal services relate to Manitoba if the service relates to any of the following:
 - real property in Manitoba
 - tangible personal property that is ordinarily situated in Manitoba, or that is to be delivered into Manitoba, or the right to use, or the contemplated use of the tangible personal property

- the ownership, possession, or use of intangible property (e.g. intellectual property), or the right to use, or the contemplated use of the intangible property
 - a court or administrative action or proceeding in Manitoba, or a contemplated action or proceeding
 - the incorporation or contemplated incorporation of a corporation carrying on business in Manitoba, or the registration of a corporation as an extra-provincial corporation in Manitoba
 - a matter that involves the interpretation or application of an existing, former or proposed enactment of Manitoba, as defined in *The Interpretation Act*
 - a matter that involves the interpretation or application of an existing, former, or proposed enactment of a jurisdiction other than Manitoba, where the matter, contract or covenant relates to:
 - a physical, legal, or contemplated presence in Manitoba, or
 - an activity or contemplated activity in Manitoba, or
 - a transaction or contemplated transaction in Manitoba.
- Examples of services that do not relate to Manitoba include:
 - the purchase or sale of real property situated outside Manitoba
 - the purchase or sale of goods outside of Manitoba, unless the goods are to be delivered to or used in Manitoba

**Legal Services
Relating to
More Than One
Jurisdiction**

- Legal services provided to a client who is resident in, or carries on business in more than one jurisdiction, are subject to RST only on the portion of the legal services that relate to Manitoba.
- The allocation of legal services that relate to Manitoba may be based on:
 - the taxable income allocated to Manitoba on the client's T2 Schedule 5 for income tax purposes
 - the percentage of the total purchase price that represents property situated in Manitoba
 - some other reasonable basis for allocation
- If there is no basis for allocation, the lawyer or law firm providing the legal service must charge RST on the entire charge, unless the client provides their RST number as noted below. The client may claim a credit on their sales tax return for tax paid on the portion of legal services they indicate is not related to Manitoba.
- Clients can purchase legal services relating to more than one jurisdiction exempt of sales tax and self-assess RST on the portion of the fee allocated to Manitoba. The lawyer providing the legal services must record their client's RST number on their bill to allow the exemption.

Note: Clients may not purchase legal services that relate solely to Manitoba exempt from RST.

**Solicitor-Client
Privilege**

- No proceeding relating to the administration, enforcement or collection of tax will derogate from a client's rights to solicitor-client privilege under common law.

Section 2: APPLICATION OF TAX ON PURCHASES

Purchases for Your Own Use

- Lawyers and law firms are required to pay RST on purchases of equipment, services and supplies used in their business. If purchased from an unregistered supplier (i.e. located outside Manitoba), RST must be self-assessed and remitted with the next tax return on the laid-down cost of the taxable goods or services (includes exchange, transportation, customs and duties, but not GST).
- Law firms may purchase legal services from an associate lawyer exempt of RST because the legal services are being purchased for resale.

Section 3: REGISTRATION REQUIREMENTS

Registration

- Businesses providing legal services are required to register for RST purposes and can apply online at Manitoba.ca/TAXcess. Applications for registration are also available on our Web Site or by contacting the Taxation Division Offices listed at the end of this bulletin.
- Associate lawyers providing legal services solely to a law firm acquiring these services for resale are not required to register for sales tax purposes.
- Non-resident lawyers are required to register and collect Manitoba RST if they provide a taxable legal service that relates to Manitoba.

General Information for Vendors

- See Bulletin 004 - *Information for Vendors* - explaining a vendor's obligations to collect and remit the retail sales tax.
- See Bulletin 016 – *Record Keeping and Retention Requirements*.
- Bulletins are available at <http://www.gov.mb.ca/finance/taxation/bulletins.html>.

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 Retail Sales Tax Act* and *Regulations*. 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

Westman Regional Office

Manitoba Finance
Taxation Division
314, 340 - 9th Street
Brandon, Manitoba R7A 6C2
Fax (204) 726-6763

E-mail: MBTax@gov.mb.ca

ONLINE SERVICES

Our Web site at manitoba.ca/finance/taxation provides tax forms and publications about taxes administered by Taxation Division, and a link to Manitoba's laws and regulations. Forms and publications can also be obtained by contacting the Taxation Division.

Our online service at Manitoba.ca/TAXcess provides a simple, secure way to apply for, and to file, pay and view your Taxation Division tax accounts.

LEGAL SERVICES

This notice is an appendix to Bulletin No. 056 and provides answers to questions regarding the tax application on legal services. Retail sales tax (RST) applies at a rate of 8% on legal services related to Manitoba.

Section 1: APPLICATION OF TAX ON SERVICES

Taxable and Exempt Services

Are notary services taxable?

The services ordinarily provided by notaries are not legal services within the meaning of the “practice of law” under *The Legal Profession Act* and are not subject to RST. Examples of notary services are:

- administering oaths
- taking affidavits, declarations and acknowledgments
- attesting instruments by seal
- providing notarial certificates

The charge for a notary service provided on its own (e.g. notarizing a single document) is exempt.

When a notary service is included in the total legal services provided, it is considered part of the legal service and is taxable.

Are legal services related to a liability insurance policy taxable? Does this mean that handling a disability insurance claim is taxable?

Legal services related to a claim under a liability insurance policy are taxable.

Agreeing to provide services under a prepaid plan, including “a prepaid legal services plan”, a liability insurance policy, or a collective agreement, is not considered to be the practice of law, therefore charges for these services to the plan provider are not taxable.

Are the legal services I provide to a client in a mediation or arbitration taxable?

Legal services are taxable when a lawyer:

- acts as legal counsel or advocate to one party in a mediation
- acts as legal counsel or advocate in a legally mandated arbitration, or as part of a court or administrative proceeding

Legal services are exempt when a lawyer:

- serves as a mediator who assists parties to come to a mutually agreed settlement
- serves as an arbitrator who hears and considers the merits of a dispute and renders a final and binding decision

Are services related to negotiating a collective agreement and labour standards arbitration taxable? Is providing legal representation to a labour union taxable?

When a law firm provides legal services related to collective bargaining, as noted below, the services are generally taxable. When lawyers represent a labour union, a union member or business in proceedings in their capacity as employees of the union or the business, their services are exempt.

Services related to collective bargaining are taxable when they are legal services that fall within the definition of the practice of law. Examples are:

- providing legal advice in connection with the establishment of a bargaining unit or the negotiation of a collective agreement
- drafting a collective agreement
- providing legal advice to or representing a labor union, a union member or a business in a grievance procedure, or in proceedings before the Labor Board, or in an arbitration provided for under the collective agreement, or in court.

I am a lawyer on the board of directors for a condominium corporation and I occasionally give legal advice to the board. Is that advice taxable?

Providing legal advice in your capacity as a lawyer for or in expectation of a fee, in addition to your fee as a director of a corporation, is taxable.

Providing legal advice as part of your duties as a director of a corporation is considered legal services provided by a person to their employer and is exempt.

Is assisting a client with a municipal property tax appeal a taxable service?

This assistance is exempt when the matter under appeal is:

- the assessed value of the property, or
- the classification of the property.

Legal services provided to assist a client to appeal a municipal property tax assessment are taxable when the matter under appeal is the property's liability to taxation under the applicable statute.

Is assisting a client with an appeal regarding a provincial or federal tax statute a taxable service?

The interpretation of the applicable tax statute is a taxable legal service. This includes appeals of income tax, sales tax, corporation capital tax and payroll taxes.

Is tax planning a taxable service?

Tax planning that relates to future tax applications is not subject to RST. This includes devising strategies, organizational structures and reorganizations to minimize future tax liabilities. This exemption includes tax planning advice for business acquisitions and divestitures.

The execution of legal documents related to tax planning is taxable. Examples of such documents include a shareholder or commercial agreement, documents related to re-organization, acquisitions and divestitures, or transferring ownership of property.

When tax planning legal services are provided, rather than calculating the separate taxable and exempt component of each billing, 10% of the tax planning legal services are deemed to be the taxable component subject to RST. Using 10% on all tax planning legal services simplifies the

application of RST and reduces tax administration costs for business.

Legal tax planning services are not subject to RST if there are no legal documents prepared or executed.

If I advise my client to invest a court-awarded settlement in an RRSP or other investment instrument, is that advice exempt as financial planning or prospective tax planning?

A lawyer's advice regarding the client's investment of the settlement awarded is considered part of the taxable legal services provided.

Is estate planning a taxable service?

Estate planning services that relate to prospective tax application are not subject to RST. This includes all planning for the disposition of an individual's estate, including estate freezes, investment planning, asset allocation and any other planning to maximize the estate's value and minimize estate taxes.

The preparation of legal documents related to estate planning is taxable. Examples are:

- a will
- documents that relate to a trust
- documents that relate to transferring ownership of property.

When estate planning legal services are provided, rather than calculating the separate taxable and exempt component of each billing, 10% of the estate planning legal services are deemed to be the taxable component subject to RST. Using 10% on all tax planning legal services simplifies the application of RST and reduces tax administration costs for business.

The legal services are not subject to RST if there are no legal documents prepared or executed.

Are services to prepare income tax returns taxable?

All charges relating to the preparation of an income tax return are taxable. This includes advice as to the allocation of income, deductions available and any other planning required to complete the current or prior year's tax return. Examples include decisions to allocate corporate income to related corporations, bonuses/wages paid to shareholders and their families, and decisions to utilize loss carrybacks.

Are all services related to immigration and emigration exempt, or do I have to charge retail sales tax when I represent a client before a board?

All services related to immigration and emigration are considered outside the practice of law and are not taxable. Examples are:

- helping a client complete an application for permanent residence and ensuring that letters of reference comply with federal standards
- providing legal information about immigration law, regulations, policies, procedures
- helping a corporate client seeking to hire foreign employees
- helping a Canadian citizen with a temporary work visa application to the U.S. under NAFTA
- drafting a written submissions that argues the applicant's qualifications to be issued a visa
- representing a client at a hearing with Citizenship & Immigration Canada
- representing a client at a quasi-judicial hearing with the Immigration and Refugee Board involving deportation appeals, detention reviews, refugee determinations, appeals of sponsorship refusals, etc.

Are services to secure federal intellectual property rights such as patents and trademarks subject to RST?

Services related to securing patent and trademark rights are not the practice of law and are not subject to RST:

- conducting searches at patent or trademark (P&T) offices to determine whether or not a particular trademark can be registered or whether or not a particular invention is novel
- corresponding with a P&T office to execute applications through to registration, amending applications and addressing problems which arise during the execution of applications
- filing assignment and title documents with P&T offices.

Representing a client resident or carrying on business in Manitoba before a Patent Appeal Board or Trademark Opposition Board is a taxable legal service and is subject to RST.

If the charge for legal services is paid partly by The Legal Aid Services Society and partly by the individual client, is either portion of the charge taxable?

Legal services provided under the pre-paid Legal Aid plan are not the practice of law and are not subject to RST.

Any portion of the charge for legal services that the society bills to the individual client are exempt.

Inter-company Services (Related companies)***Are inter-branch fees for legal services exempt?***

Inter-branch legal services (services provided within one company) are not subject to RST.

How does RST apply on inter-company charges for legal services?

Inter-company charges for legal services that are provided within a related group of entities (corporations, partnerships, limited partnerships, corporate partnerships, joint ventures, etc.) are not subject to RST.

Management Services and Management fees (Unrelated companies)***What if a management company provides management services (including administration, receptionist, facility rental, and legal services) solely to one unrelated company?***

Where management services are provided solely to one other business, the management fee is not subject to RST even if the fee includes taxable legal services.

Are legal services taxable when provided to employees at no charge?

Legal services are exempt when provided to employees at no charge, but become taxable when the employee is charged a fee.

Disbursements***Does RST apply to disbursements?***

Disbursements invoiced to the client on a cost-recovery basis are exempt from RST when itemized separately from taxable legal services, provided RST was paid on the disbursement, where applicable.

I charge 1% of my total fee as a “disbursement charge” to recover my cost of photocopies, faxes and telephone calls. Is this fee taxable?

Disbursements for photocopies, faxes and telephone charges are exempt when applied as a fixed percentage of the fee as long as the percentage is a reasonable estimate of the actual cost of these items. In addition, a flat disbursement fee is exempt from RST provided the fee is separately itemized on the invoice and represents a recovery of costs.

I charge a 5% “administration fee” on my total disbursements included on my bill to recover my administration costs to itemize and account for the disbursements. Is this administration fee taxable?

Disbursements are not subject to RST as long as they are billed to the client on a cost recovery basis. A 5% administration fee is considered a recovery of cost and RST is not applied on the administration fee or the disbursements.

Is the recovery of my support and administrative costs considered a disbursement?

Charges to recover staff research time, clerical duties and other office overhead charges are not the recovery of third party charges and are taxable, even if separately itemized on the invoice.

Section 2: SERVICES RELATED TO MANITOBA

When a Manitoba resident or business purchases legal services in Manitoba, is the entire service taxable if some of the service does not relate to Manitoba?

Only legal services that relate to Manitoba are subject to RST. Legal services relate to Manitoba if they relate to any of the following:

- real property in Manitoba
- tangible personal property (TPP) situated in, or to be delivered in Manitoba
- the ownership, possession, use, or right to use property in Manitoba other than real property or TPP (e.g. intangible property such as intellectual property)
- a court or administrative proceeding, or possible proceeding, in Manitoba
- the incorporation or contemplated incorporation of a corporation under Manitoba's *Corporations Act*
- the interpretation of any existing, former or proposed enactment of Manitoba
- the interpretation of any existing, former or proposed law of any jurisdiction if it relates to a physical or legal presence, activity, transaction, or contemplated activity or transaction in Manitoba.
- a contract or covenant or a contemplated contract or covenant if it relates to a physical or legal presence, activity or transaction in Manitoba.

Examples of legal services that do not relate to Manitoba are:

- legal services related to the purchase of real property in another jurisdiction by a Manitoba resident or business
- legal services related to the purchase of goods outside of Manitoba, except where the goods are to be delivered to or used in Manitoba.

I provide legal services to clients that carry on business in Manitoba as well as other provinces. What portion of my fee is subject to Manitoba tax?

If the legal service only relates to Manitoba the entire fee is subject to RST. However, if the legal service relates to more than one province, only the portion of the service that relates to Manitoba is subject to RST.

The allocation to Manitoba may be based on information provided by the purchaser such as:

- the taxable income allocated to Manitoba on the T2 Schedule 5 for income tax purposes
- the percentage of the total purchase price of assets that represents assets located in Manitoba.
- some other reasonable basis for allocation

If the purchaser does not provide documentation to support the requested allocation, the entire charge is taxable. Purchasers may provide their RST number to acquire legal services exempt of the RST and self-assess the tax payable on the portion of the legal services that relate to Manitoba, on their next sales tax return. The lawyer must record the purchaser's RST number on the invoice to allow the exemption.

I am providing legal services for a Manitoba client to establish a national franchise operation, and the franchise locations are not known yet. How do I allocate my services?

The entire charge is taxable because the matter relates solely to Manitoba.

I am providing legal advice to my Manitoba client on the custody of her children. I will appear in court in Saskatchewan, where the children reside with their father. Are my services exempt because the case will be heard outside Manitoba?

Legal advice and other legal services provided in Manitoba that relate to Manitoba are taxable. The portion of legal services that relate directly to the court appearance in Saskatchewan, including travel time, are exempt.

How is RST paid when a Manitoba resident purchases legal services from an out-of-province lawyer that did not collect Manitoba RST?

Out-of-province lawyers who provide taxable legal services in the province must have a valid RST number issued under The Retail Sales Tax Act and collect the RST.

When a purchaser acquires legal services that relate to Manitoba from a lawyer that did not collect RST, the purchaser is responsible to self-assess RST on the purchase price of the legal services and remit the RST on their sales tax return.

Section 3: APPLICATION OF TAX ON PURCHASES

Can a lawyer or law firm use their RST number to purchase taxable goods or services exempt from RST?

Lawyers and law firms are required to pay RST on purchases of equipment, services, and supplies used in their business. If they are purchased from an unregistered supplier (e.g. located outside Manitoba), RST must be self-assessed and remitted with the next tax return on the laid-down cost of the taxable goods or services (includes exchange, transportation, customs and duties, but not GST).

When we photocopy staff training manuals for our own use, do we have to self-assess RST?

Businesses that produce printed material such as staff training manuals for their own use are required to pay RST on the produced value of the printed material. The value subject to RST is equal to the cost of direct material X 320%. RST is only applied on the produced value of printed material if the total value of printed material produced for their own use in the year exceeds \$50,000. Otherwise, RST is payable only on the materials used to do the printing.