

THE HEALTH AND POST SECONDARY EDUCATION TAX LEVY ACT

PERMANENT ESTABLISHMENT

This bulletin has been prepared to help employers determine if they have a permanent establishment in Manitoba for purposes of The Health and Post Secondary Education Tax Levy Act (payroll tax).

Section 1 – GENERAL INFORMATION

- Payroll tax is payable on remuneration paid by employers to:
 - a) employees who report for work at a permanent establishment of the employer in Manitoba, and/or
 - b) employees who are not required to report for work at any permanent establishment of the employer (either inside or outside of Manitoba) but who are paid from or through a permanent establishment of the employer in Manitoba.
- For information on tax rates, exemption, notch reduction and other general information, see Bulletin No. HE 001 – Information for Employers.

Section 2 – PERMANENT ESTABLISHMENT (PE)

What is a permanent establishment?

- A permanent establishment is any fixed place of business of the employer and includes a branch, a mine, an oil well, a gas well, a farm, timberland, a factory, a workshop, a warehouse, an office and an agency.

What is a fixed place of business?

- A “fixed place of business,” as it relates to the definition of “permanent establishment,” is characterized by circumstances such as these. It is a place where:
 - the business of the employer is carried out.
 - activities occur with a degree of regularity, either daily, weekly or monthly.
 - there is a degree of permanence and continuity even when it is only for a specific period (e.g., when telecommunication services and other utilities are provided to the business, advertising materials distributed depicting the place, i.e., address, telephone number, etc.).
 - there is a person who has the authority to authorize contracts or make decisions respecting the operations.

Deemed permanent establishments

THE ACT DEEMS THE FOLLOWING PLACES IN MANITOBA TO BE A PERMANENT ESTABLISHMENT OF AN EMPLOYER:

- The place designated by a corporation in its charter or by-laws as being its head office.
- The place where an employer carries on business through an employee or agent and the employee or agent has:
 - a) general authority to contract for the employer, or
 - b) a stock of merchandise owned by the employer from which he fills the orders he receives.
- The owned or leased land or premises of a corporation in the province, notwithstanding that the corporation has a permanent establishment elsewhere in Canada.
- The particular place where at any time in a month an employer has the use of substantial machinery or equipment.
- Each jurisdiction where an insurance corporation is registered or licensed to do business.
- Any place where a corporation, which did not otherwise carry on business in Canada in a fiscal year, did any of the following: produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved, processed or constructed, in whole or in part, anything in Canada, whether or not the corporation exported that thing without selling it prior to exportation.
- The principal location in which an employer with no fixed place of business conducted business and each place from which any substantial portion of its business was carried on or transacted.

Section 3 - EXPLANATIONS OF TERMS USED IN THIS BULLETIN**Report for work**

- Employees are generally considered to “report for work” at a PE of an employer if they go to that location regularly, consistently or on a scheduled basis to carry out the functions related to their employment duties, which among other things may include reporting to their supervisor, receiving work assignments, handing in customer orders.

Paid from or through

- This term is used to clarify that remuneration, paid to employees that are not required to report for work at any PE of the employer, is subject to Manitoba payroll tax if it is “paid from or through” a PE of the employer in Manitoba. For this purpose, the employees are considered to be “paid from or through” the Manitoba PE if the remuneration paid to these employees is directly or indirectly expensed to the operating statement of that location.

For example: A business has a head office in Ontario and a branch office (PE) in Manitoba. The company has salespersons located in Manitoba, Saskatchewan, and Ontario who essentially perform their job from their homes (but in this example their homes are not deemed to be a PE of the employer). In the case of the Saskatchewan employee, his/her sales and expenses are part of the Manitoba operations. The Ontario head office prepares the payroll for all its employees, but expenses the remuneration paid to the Saskatchewan employee to the Manitoba PE operating statement. In this case, the remuneration is “paid from or through” the Manitoba PE and is subject to Manitoba payroll tax.

Substantial machinery and equipment

- Where “substantial machinery and equipment” are used in the province, the Act deems that particular location to be a PE. This provision is generally intended to pertain to out-of-province contractors. In this respect, the Manitoba payroll tax provisions apply equally to Manitoba contractors and out-of-province contractors when competing for contracts in Manitoba.
- Though every employer’s case must be considered using the particular facts and circumstances, the following criteria are considered in determining if an employer has the use of “substantial machinery or equipment” in Manitoba:
 - i. The size, quantity and value of the machinery or equipment being used. This deeming provision applies to “substantial machinery and equipment” that is owned or leased by an employer. However, a comparison of the machinery or equipment being used in Manitoba to the employer’s total overall machinery or equipment (owned and leased) is not relevant.

For example: An out-of-province employer owns equipment worth a total of \$5 million. The employer brings a single testing unit valued at \$500,000 into Manitoba to fulfil a contract. While the equipment in Manitoba represents only 10% of the employer’s total equipment, the value of the unit would be regarded to be substantial and result in a PE in Manitoba for the time it was in Manitoba.

- ii. Whether the machinery or equipment contribute substantially to the gross income being generated by the employer at that location in Manitoba.

For example: An out-of-province employer has employees working in Manitoba on a road construction project. In this case, the machinery and equipment used to build the road are essential to earn the revenue from the contract. Therefore, the machinery and equipment are regarded to be “substantial” and the out-of-province employer has a PE in Manitoba during the period of the contract. On the other hand, where an out-of-province employer is providing a consulting service in Manitoba and his/her only equipment in the province is a passenger vehicle, laptop computer, etc. (that do not directly create revenue on the contract), that equipment would not in itself be regarded to be substantial machinery and equipment for purposes of payroll tax.

- Employers that do not maintain a PE in Manitoba during an entire year are required to prorate the amount of the exemption or notch provision (as the case may be) for that year. For further information, see Bulletin No. HE -001-Information for Employers.

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 Health and Post Secondary Education Tax Levy Act and Regulation. 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
349, 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.