

RECIPROCAL TAXATION AGREEMENT

(Canada – Manitoba)

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MEMORANDUM OF AGREEMENT

BETWEEN:

The Government of Canada (in this agreement referred to as "Canada"),
represented by the Minister of Finance (the "Federal Minister")

AND

The Government of Manitoba (in this agreement referred to as "the Province"),
represented by the Minister of Finance (the "Provincial Minister")

TOGETHER referred to as the "parties".

PREAMBLE

WHEREAS:

the parties agree that the main objectives of this agreement are to

- (i) reduce compliance costs and promote simplicity for non-government vendors in respect of certain taxes and fees;
- (ii) enhance competitive equity as between government and non-government suppliers; and
- (iii) enhance consistency in reciprocal taxation between the parties and within Canada;

the parties agree to interpret and apply the provisions of this agreement in a manner that respects these objectives;

in order to achieve these objectives the parties agree to pay taxes and fees imposed by one another that are specified in this agreement; and

the Federal Minister is authorised by section 32 of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8 to enter into this agreement and the Provincial Minister is authorised by section 16 of *The Executive Government Organization Act*, C.C.S.M. c. E170 and Order in Council _____ to enter into this agreement.

NOW, THEREFORE, the parties agree as follows:

PART I
INTERPRETATION

Definitions

1. In this agreement:

“Agreement” means this Reciprocal Taxation Agreement, entered into by Canada and the Province, including all Schedules attached, and all instruments amending or restating it, or any successor agreement to it;

“Federal Act” means the *Excise Tax Act*, R.S.C. 1985, c. E-15;

“Federal Tax” means any tax imposed or levied under the Federal Act, other than the Value-Added Tax;

“FPFAA” means the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8;

“Provincial Sales Tax” means a tax imposed or levied under *The Retail Sales Tax Act*, C.C.S.M. c. R130 or under *The Tax Administration and Miscellaneous Taxes Act*, C.C.S.M. c. T2;

“Provincial Tax or Fee” means a tax or fee that is a provincial tax or fee as defined in subsection 31(1) of the FPFAA, other than the Provincial Sales Tax, and includes any such tax or fee which is imposed or levied under any of the following:

- (a) *The Fuel Tax Act*, C.C.S.M. c. F192,
- (b) *The Highway Traffic Act*, C.C.S.M. c. H60,
- (c) *The Off-Road Vehicles Act*, C.C.S.M. c. O31, and
- (d) *The Tobacco Tax Act*, C.C.S.M. c. T80;

“Third-Party Purchases” means property or services acquired other than in the name of Canada or the Province

- (a) by employees of Canada or by employees of the Province, including expenses incurred in the course of employment-related travel, for example: supplies of transportation, meals, accommodation, taxi services and incidental travel-related expenses; or

- (b) out of petty cash; and

“Value-Added Tax” means any tax imposed under Part IX of the Federal Act.

References

2. In the Agreement, a reference to an Act of the federal Parliament or of the legislature of the Province is a reference to that Act, and to the regulations made under that Act, as amended from time to time.

Application

3. The Agreement is binding on Canada, the Province and their respective agents.

Constitutional immunity

4. It is understood that neither Canada nor the Province is deemed, by reason of having entered into the Agreement, to have surrendered or abandoned any of its powers, rights, privileges or authorities under the Constitution of Canada, or to have impaired any such powers, rights, privileges or authorities.

PART II PAYMENT, COLLECTION AND REMITTANCE OF TAXES AND FEES

Agreement by Canada

5. Canada agrees:
 - (a) to pay the Provincial Taxes or Fees in accordance with the provincial laws, as if these laws were applicable to it;
 - (b) to pay the Provincial Sales Tax in accordance with the provincial laws, as if these laws were applicable to it, in respect of:
 - (i) purchases made by entities listed in Schedule I to the FPFSA, and
 - (ii) Third-Party Purchases;
 - (c) not to apply for, nor claim the benefit of, any refund, rebate or remission of any Provincial Sales Tax where it has agreed to the payment of that tax under subparagraph (b)(ii);
 - (d) to collect and remit the Provincial Sales Tax and the Provincial Taxes or Fees in respect of the sale of property or services by Canada in accordance with the provincial laws, as if these laws were applicable to it;
 - (e) to pay any other amounts on account of the Provincial Sales Tax or the Provincial Taxes or Fees collectible and remittable that Canada failed to collect or remit to the Province; and

- (f) to pay interest, but not penalties, in respect of any Provincial Sales Tax or any Provincial Taxes or Fees collectible by Canada.

Agreement by the Province

6. The Province agrees:

- (a) to pay, subject to paragraph (b), any Federal Tax in accordance with the Federal Act, as if that Act were applicable to it;
- (b) to pay any tax imposed or levied under Part III of the Federal Act on goods imported by the Province, to the same extent as Canada pays that tax on any importation of goods;
- (c) not to apply for, nor claim the benefit of, any refund of tax paid under Part III of the Federal Act, or any payment in respect of such tax for which provision is made in section 68.19 of the Federal Act, and that no refund or payment in respect of tax paid under that Part can be granted under that section to an importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer;
- (d) to pay the Value-Added Tax in accordance with the Federal Act, as if that Act were applicable to it, in respect of:
 - (i) supplies of property or services acquired by provincial entities other than the entities listed in Schedule A, and
 - (ii) Third-Party Purchases;
- (e) not to apply for, nor claim the benefit of, any refund, input tax credit, other rebate or remission of any Value-Added Tax where the Province has agreed to the payment of that tax under subparagraph (d)(ii);
- (f) to collect and remit tax imposed or levied in accordance with the Federal Act;
- (g) to pay any other amounts on account of any tax imposed or levied under the Federal Act collectible and remittable under that Act, that it failed to collect or remit to Canada; and
- (h) to pay interest, but not penalties, in respect of any tax imposed or levied under the Federal Act collectible by the Province.

Motor vehicle fleet management

7. The Province agrees to treat the payments made by an independent contractor, in respect of goods or services used directly in the servicing or maintenance of motor vehicles owned by Canada in accordance with a motor vehicle fleet management service contract between the contractor and Canada, as payments made by Canada in respect of supplies received by Canada that are not subject to Provincial Sales Tax at point of purchase.

Credit cards – Canada

8. (1) If a credit card is used by Canada to pay for a supply of a property or service for which Canada has not otherwise agreed to pay the Provincial Sales Tax, Canada shall ensure
- (a) that it is solely liable for the payment of the amounts owing under the relevant credit card agreement; and
 - (b) that there appears a clear indication on the credit card that it is for use in acquiring supplies exempt of Provincial Sales Tax.
- (2) Canada agrees to provide to the Province, upon request, the necessary information to establish that property or a service was acquired by means of a credit card described in sub-clause (1).

Credit cards – Province

9. (1) If a credit card is used by the Province to pay for a supply of a property or service for which the Province has not otherwise agreed to pay the Value-Added Tax, the Province shall ensure
- (a) that it is solely liable for the payment of the amounts owing under the relevant credit card agreement; and
 - (b) that there appears a clear indication on the credit card that it is for use in acquiring supplies exempt of Value-Added Tax.
- (2) The Province agrees to provide to Canada, upon request, the necessary information to establish that property or a service was acquired by means of a credit card described in sub-clause (1).

PART III EQUALITY OF TREATMENT

Equality of treatment

10. (1) With respect to the imposition or administration of any tax or fee, each party agrees to treat the other party in a manner that is consistent with the rules of general application of the tax or fee.
- (2) For the purpose of this clause and any relevant provincial laws, the parties agree that:
- (a) any vessel operated by Canada is deemed to be a cargo or passenger vessel operated for the purposes of trade and commerce;
 - (b) any aircraft operated by Canada is deemed to be operated according to a regular flight schedule for the purposes of trade and commerce; and

- (c) any tax levied in respect of the sale, rental or use of any such vessel or aircraft must be determined accordingly.

PART IV
DISPUTE RESOLUTION

Settlement of disputes under the Agreement

11. (1) If the parties fail to agree on the interpretation or application of the Agreement, a party can refer the matter in dispute to a Board established in accordance with sub-clause (2).
- (2) A Board consists of three members. Canada and the Province shall each appoint a member. The third member shall be appointed by the two members already selected. If the two selected members fail to agree as to the third member, the parties shall request the Chief Justice of the Federal Court of Canada to select the third member. In the event of the absence or inability of the Chief Justice or a vacancy in that office, the request shall be made to the Acting Chief Justice of the Federal Court of Canada.
- (3) The parties agree to facilitate the constitution and functioning of the Board and to supply promptly any information required by the Board.
- (4) Canada agrees:
- (a) to inform the Province of any dispute arising under an agreement similar to the Agreement with any other province or territory at least thirty days before the selection of a Board under any provision of the agreement with the other province or territory similar to sub-clause (2);
- (b) that any other province or territory that enters into an agreement similar to the Agreement is an interested party, for all purposes, in any proceeding before the Board and has the right to intervene and to make representations in the same manner as the parties; and
- (c) to include a provision similar to this provision in any agreement similar to the Agreement with any other province or territory.
- (5) The Board shall review any matter in dispute. The report of the majority of the Board, including any findings and recommendations, shall be submitted as soon as possible to the parties to the Agreement and to the other interested parties. The Federal Minister shall within a reasonable time thereafter forward the report to all other provinces and territories that have entered into similar agreements. Upon submission of its report, the Board will be dissolved.

- (6) Within a reasonable time after receiving the report, the parties to the Agreement and all provinces and territories that are interested parties shall approve or reject the recommendations of the Board and inform all other interested parties of their decision. When Canada and the Province agree with the recommendations, the recommendations become applicable at the time specified therein or at any time and manner agreed to by them.
- (7) The Board determines its own rules of procedure.
- (8) Canada shall pay, in the first instance, all reasonable expenses incurred by the Board, including the members' remuneration, witness fees, travel expenses and any other administrative costs. In its report, the Board shall apportion these expenses, in its sole discretion, between the parties to the Agreement and amongst any other parties who may have made any representations to the Board.
- (9) This clause does not apply where a difference arises between the parties as to any matter related to the administration or enforcement of any Act that imposes a tax that a party has agreed to pay.

PART V EXCHANGE OF INFORMATION

Information

12. Canada agrees to provide the Province, upon request and by notice in writing, with:
 - (a) all agreements similar to the Agreement between Canada and any province or territory, including any related amendments and administrative procedures; and
 - (b) all findings or decisions and recommendations of any Board established in accordance with clause 11 (or under similar provisions of agreements or arrangements entered into for purposes similar to that of the Agreement with any province or territory) and any decision of the interested parties regarding a matter in dispute reviewed by the Board under such clause.

PART VI IMPLEMENTATION AND AMENDMENTS

Implementation

13. Canada and the Province agree to introduce legislative measures and undertake the administrative measures they deem necessary to give effect to the Agreement.

Amendments

14. (1) Subject to sub-clause (2), the parties may amend, alter or change the Agreement by an exchange of letters between the Federal Minister and the Provincial Minister.

- (2) The parties may amend, alter or change any Schedule to the Agreement by exchange of letters between, in the case of Canada:

The Director
Intergovernmental Tax Policy, Evaluation and Research Division
Department of Finance
Government of Canada
Ottawa, Ontario
K1A 0G5

and, in case of the Province:

The Director
Taxation Analysis Branch
Fiscal Research Division
Department of Finance
Government of Manitoba
Room 910, 386 Broadway Avenue
Winnipeg, Manitoba
R3C 3R6

PART VII TERM AND COUNTERPARTS

Effective date

15. The Agreement is effective as of January 1, 2017.

Duration

16. (1) The Agreement will continue in full force and effect, in accordance with and subject to the provisions of this Part, until the date that is specified by a party in a written notice referred to in sub-clause (2).
- (2) Either party may terminate the Agreement at any time by providing six months' notice in writing to the other party.
- (3) No rights or obligations which may have accrued to either party during the term of the Agreement are affected if the Agreement ceases to have effect.

Review

17. (1) The parties agree that they will, at a minimum once every five years after the coming into force of the Agreement, review the Agreement to ensure its intended operation and amend any such clauses as necessary.

- (2) As part of the review referred to in sub-clause (1), the parties will review the entities listed on Schedule A, as well as any other entities put forward by the Province for inclusion on that Schedule. Based on the result of this exercise, the parties will amend, alter or change Schedule A, as necessary.
- (3) Each party will communicate the results of the review referred to in sub-clause (1), including any amendments, alterations or changes made to Schedule A as a result of the exercise referred to in sub-clause (2), to the Federal and Provincial Ministers.

Execution in counterparts

18. (1) The Agreement, and any amendments made pursuant to clause 14, may be executed in counterparts each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.
- (2) A party may accept and rely on an executed counterpart as an original, notwithstanding that it is received in the form of a facsimile or a portable document format file (pdf) if the party delivering the document in such form promptly provides the counterpart bearing the original signature.

EXECUTION

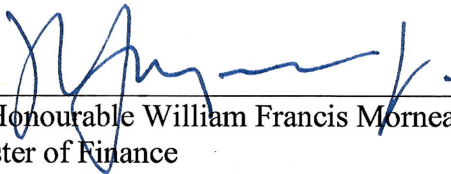
IN WITNESS WHEREOF, THIS AGREEMENT IS SIGNED IN DUPLICATE,

THE GOVERNMENT OF CANADA

AT OTTAWA

THIS 15th DAY OF December 2016

BY



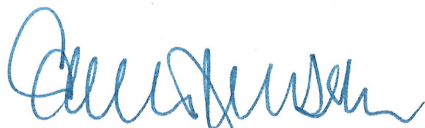
The Honourable William Francis Morneau, P.C., M.P.
Minister of Finance

THE GOVERNMENT OF MANITOBA

AT WINNIPEG

THIS 24th DAY OF February -2016/2017

BY



The Honourable Cameron Friesen, M.L.A.
Minister of Finance

SCHEDULE A

All Government of Manitoba Departments (except the Selkirk Mental Health Centre within the Department of Health)

Addiction Foundation of Manitoba
Advisory Board for Programs for the Deaf and Hard of Hearing
Agassiz Youth Centre
Agri-Food and Rural Development Council
Apprenticeship and Trade Qualification Board
Automobile Injury Compensation Appeal Commission

Board of Review (Justice)

CancerCare Manitoba
Child Care Staff Qualifications Review Committee
Civil Service Commission Board
Civil Service Superannuation Board
Civil Service Superannuation Fund Investment Committee
Clean Environment Commission
Communities Economic Development Fund
Companies Offices
Conservation Districts Commission
Co-operative Loans and Loans Guarantee Board
Co-operative Promotion Board
Correctional Institutions
 Brandon
 Dauphin
 Headingley
 Milner Ridge
 Portage la Prairie
 The Pas
 Winnipeg Remand Centre
Crown Corporations Council
Crown Lands and Property Agency

Elections Manitoba
Electoral Divisions Boundaries Commission
Emergency Measures Organization
Entrepreneurship Manitoba

Farm Machinery Board
Farm Practices Protection Board
Food Development Centre
Food Development Centre Advisory Board

SCHEDULE A (continued)

Hazardous Waste Management Corporation
Health Services Insurance Fund
Hearing Aid Board
Highway Traffic Board
Human Rights Commission

Industrial Technology Centre
Insurance Council of Manitoba
Interdepartmental Planning Board

Judicial Council

Land Value Appraisal Commission
Law Enforcement Review Board
Law Reform Commission
Legal Aid Services Society of Manitoba
License Suspension Appeal Board and Medical Review Committee
Liquor and Gaming Authority of Manitoba

Manitoba Agricultural Services Corporation
Manitoba Agricultural Services Corporation Appeal Tribunal
Manitoba Arts Council
Manitoba Boxing Commission
Manitoba Bureau of Statistics
Manitoba Development Corporation
Manitoba Farm Lands Ownership Board
Manitoba Farm Mediation Board
Manitoba Farm Products Marketing Council
Manitoba Film and Sound Recording Development Corporation
Manitoba Film Classification Board
Manitoba Habitat Heritage Corporation
Manitoba Heritage Council
Manitoba Horse Racing Commission
Manitoba Housing and Renewal Corporation
Manitoba Milk Prices Review Commission
Manitoba Public Insurance Corporation (except payments for claims)
Manitoba Public Insurance Corporation Rate Appeal Board
Manitoba Securities Commission
Manitoba TextBook Bureau
Manitoba Water Services Board
Manitoba Youth Centre
Materials Distribution Agency
Medical Review Committee

SCHEDULE A (continued)

Mental Health Review Board
MERLIN (Manitoba Education Research and Learning Information Network)
Mining Board
Minister of Culture, Heritage and Citizenship's Art Purchase Committee
Municipal Board

Office of the Fire Commissioner – Special Operating Agencies Advisory Board
Oil and Natural Gas Conservation Board

Pesticides and Fertilizer Advisory Committee
Public Library Advisory Board
Public Schools Finance Board
Public Trustee of Manitoba
Public Utilities Board

Special Operating Agency Financing Authority
Surface Rights Board

Taxicab Board
Teachers' Retirement Allowances Fund
Trades Advisory Committee
Travel Manitoba

Vehicle and Equipment Management Agency
Veterinary Services Commission
Vital Statistics Agency

Workers Compensation Board of Manitoba