

The Saskatchewan Capital Gains Tax Rebate Regulations, 1981

Repealed

by Saskatchewan Regulations 40/98 (effective May 13, 1998).

Formerly

Chapter I-2 Reg 1 (effective January 1, 1979) as amended by
Saskatchewan Regulations 100/83 and 62/86.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER I-2 REG 1

The Income Tax Act

Title

1 These regulations may be cited as *The Saskatchewan Capital Gains Tax Rebate Regulations, 1981*.

Interpretation

2 In these regulations:

- (a) **“Act”** means *The Income Tax Act*;
- (b) **“active businessman”** means:
 - (i) an individual whose chief source of active income for any four out of any five consecutive years since December 31, 1971, was from the operation of an eligible small business or a business that would have been an eligible small business after December 31, 1978; or
 - (ii) the spouse of an individual described in subclause (i);
- (c) **“active farmer”** means:
 - (i) an individual whose chief source of active income for any four out of any five consecutive years since December 31, 1971, was from:
 - (A) farming;
 - (B) the rental of farm land;
 - (C) the operation of a farm corporation or a corporation that would have been a farm corporation after December 31, 1978; or
 - (D) any combination of the sources described in paragraphs (A) to (C); or
 - (ii) the spouse of an individual described in subclause (i);
- (d) **“capital gains tax rebate”** of a taxpayer for a taxation year means:
 - (i) for taxation years ending on or before December 31, 1981, an amount equal to the difference between:
 - (A) any income tax paid under the Act by the taxpayer for the taxation year; and
 - (B) where the eligible taxable capital gain of the taxpayer is not included in the taxpayer’s taxable income for the taxation year and where:
 - (I) the taxpayer applies section 119 of the Federal Act to determine his taxable income, an amount equal to the income tax payable under the Act calculated with reference to section 118 of the Federal Act;

- (II) the taxpayer does not apply section 119 of the Federal Act to determine his taxable income, an amount equal to the income tax payable under the Act calculated without reference to section 118 of the Federal Act;
- (ii) for the taxation years ending after December 31, 1981, an amount equal to 12% of the eligible taxable capital gain of the taxpayer for the taxation year;
- (e) **“chief source of active income”** means the source of income that is the largest component of the taxpayer’s net income;
- (f) **Repealed.** 22 Jly 83 SR 100/83 s3.
- (g) **“eligible business property”** means any capital property used in operating an eligible small business and includes share capital of an eligible incorporated small business and an interest in a partnership that is an eligible small business;
- (h) **“eligible capital gain”** means any capital gain for a taxation year, calculated in accordance with subsection 40(1) of the Federal Act and any other applicable provisions of the Federal Act, which arises from a disposition after December 31, 1978 and before January 1, 1985, of eligible farm property, eligible business property or eligible residential property;
- (i) **“eligible capital loss”** means any capital loss for a taxation year, calculated in accordance with subsection 40(1) of the Federal Act and any other applicable provisions of the Federal Act, which arises from a disposition after December 31, 1978 and before January 1, 1985, of eligible farm property, eligible business property or eligible residential property;
- (j) **“eligible farm property”** means any capital property used in the business of farming and includes share capital of a farm corporation and an interest in a farm partnership;
- (k) **“eligible incorporated small business”** means a corporation carrying on business:
- (i) that is for the current taxation year, or was for any one of the three taxation years preceding the current taxation year, eligible for the small business deduction under the Federal Act; and
 - (ii) whose chief source of active income for any four out of any five consecutive taxation years since December 31, 1971, was from an active business as defined in the Federal Act;

but does not include a farm corporation, a corporation primarily engaged in the rental or leasing of real property or a business that is a profession to which subsection 34(1) of the Federal Act applies;

- (l) **“eligible residential property”** means a self-contained dwelling unit located in Saskatchewan which was owned by the taxpayer and from which the taxpayer received no rental income for a period of at least one year since December 31, 1971, and includes any amount of land not exceeding one acre upon which the dwelling unit is located, but does not include a dwelling unit used principally for recreational purposes;

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(m) **“eligible small business”** means an eligible incorporated small business, a partnership or a proprietorship carrying on business but does not include a business engaged in farming, a business engaged in the rental or leasing of real property or a business that is a profession to which subsection 34(1) of the Federal Act applies;

(n) **“eligible taxable capital gain”** means:

(i) with respect to eligible farm property and eligible business property, the least of:

(A) the amount equal to the difference between:

(I) 50% of the amount by which any eligible capital gains for a taxation year exceed any eligible capital losses for the taxation year; and

(II) the net capital losses for other taxation years, as defined in paragraph 111(8)(a) of the Federal Act, that are deducted in determining the taxpayer's taxable income for the taxation year and that arise from the disposition of eligible farm property or eligible business property or property that would have been eligible farm property or eligible business property had it had been disposed of after December 31, 1978;

(B) the amount equal to the difference between:

(I) 50% of the amount by which the total capital gains for a taxation year, calculated in accordance with subsection 40(1) of the Federal Act and any other applicable provisions of the Federal Act, exceed the total capital losses for the taxation year, calculated in accordance with subsection 40(1) of the Federal Act and any other applicable provisions of the Federal Act; and

(II) the total net capital losses for other taxation years, as defined in paragraph 111(8)(a) of the Federal Act, that are deducted in determining the taxpayer's taxable income for the taxation year; and

(C) \$50,000;

(ii) with respect to eligible residential property, the least of:

(A) the amount equal to the difference between:

(I) 50% of the amount by which any eligible capital gains for a taxation year exceed any eligible capital losses for the taxation year; and

(II) the net capital losses for other taxation years, as defined in paragraph 111(8)(a) of the Federal Act, that are deducted in determining the taxpayer's taxable income for the taxation year and that arise from the disposition of eligible residential property or property that would have been eligible residential property had it been disposed of after December 31, 1978;

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- (B) the amount equal to the difference between:
 - (I) 50% of the amount by which the total capital gains for a taxation year, calculated in accordance with subsection 40(1) of the Federal Act and any other applicable provisions of the Federal Act, exceed the total capital losses for the taxation year, calculated in accordance with subsection 40(1) of the Federal Act and any other applicable provisions of the Federal Act; and
 - (II) the total net capital losses for other taxation years, as defined in paragraph 111(8)(a) of the Federal Act, that are deducted in determining the taxpayer's taxable income for the taxation year; and
- (C) \$25,000;
- (o) **"farm corporation"** means a corporation engaged in farming:
 - (i) that is for the current taxation year, or was for any one of the three taxation years preceding the current taxation year, eligible for the small business deduction under the Federal Act; and
 - (ii) whose chief source of active income, for any four out of any five consecutive taxation years since December 31, 1971, was from any combination of farming or the rental of farm land;
- (p) **"first taxation year"** means the taxation year in which:
 - (i) an individual claims a capital gains tax rebate to which he is entitled under section 3;
 - (ii) a corporation claims a capital gains tax rebate to which it is entitled under section 10;
- (q) **"net income"** means:
 - (i) with respect to a corporation, the net income of the corporation for a taxation year as determined for the purpose of the corporation's income tax return filed pursuant to the Federal Act, but does not include income from an eligible capital gain;
 - (ii) with respect to an individual, the sum of the following components used to determine his total income for a taxation year for the purpose of his income tax return filed under the Federal Act:
 - (A) net employment earnings;
 - (B) net rental income;
 - (C) net Business income;
 - (D) net Professional income;
 - (E) net Commission income;
 - (F) net Farming income;
 - (G) net Fishing income;

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(r) “**second taxation year**” means the taxation year preceding the first taxation year;

(s) “**third taxation year**” means the taxation year preceding the second taxation year.

10 Apr 81 cI-2 Reg 1 s2; 22 Jly 83 SR 100/83 s3;
20 Jne 86 SR 62/86 s3.

Rebate on eligible farm property; eligible business property

3(1) Where an individual is an active farmer at the end of the taxation year in which he disposes of his eligible farm property, he is entitled to a capital gains tax rebate with respect to any eligible taxable capital gain he makes arising from the disposition.

(2) Where an individual or his spouse disposes of real property that is eligible farm property and that was owned by him or his spouse or both of them continuously from December 31, 1958, to the time of the disposition, he is entitled to a capital gains tax rebate with respect to any eligible taxable capital gain he makes arising from the disposition.

(3) Where an individual is an active businessman at the end of the taxation year in which he disposes of eligible business property, he is entitled to a capital gains tax rebate with respect to any eligible taxable capital gain he makes arising from the disposition.

(4) Where an individual or his spouse disposes of real property that is eligible business property and that was owned by him or his spouse or both of them continuously from December 31, 1958, to the time of the disposition, he is entitled to a capital gains tax rebate with respect to any eligible taxable capital gain he makes arising from the disposition.

(5) Notwithstanding subsections (1) to (4), but subject to sections 4, 7 and 9:

(a) an individual is entitled to only one capital gains tax rebate under this section in his lifetime; and

(b) where an eligible small business or farm corporation has claimed a capital gains tax rebate pursuant to section 10 with respect to a disposition of eligible farm property or eligible business property, no individual who, at the time of the disposition, is the beneficial owner of more than 75% of the share capital of the corporation is entitled to a capital gains tax rebate under this section with respect to the disposition of that property.

10 Apr 81 cI-2 Reg 1 s3; 22 Jly 83 SR 100/83 s4.

Rebates for more than one taxation year

4(1) Where the eligible taxable capital gains of an individual in a first taxation year are less than \$50,000, he may claim a capital gains tax rebate under section 3 for the second taxation year in an amount equal to the lesser of:

(a) any eligible taxable capital gains made by the individual arising from a disposition of eligible farm property or eligible business property in the second taxation year; and

- (b) the difference between \$50,000 and any eligible taxable capital gains of the individual in the first taxation year.
- (2) Where the sum of the eligible taxable capital gains of an individual for the first taxation year and the second taxation year are less than \$50,000, he may claim a capital gains tax rebate under section 3 for the third taxation year in an amount equal to the lesser of:
 - (a) any eligible taxable capital gain made by the individual arising from a disposition of eligible farm property or eligible business property in the third taxation year; and
 - (b) the difference between \$50,000 and the sum of any eligible taxable capital gains of the individual in the first taxation year and the second taxation year.
- (3) An individual may claim a capital gains tax rebate under this section with respect to a second taxation year and a third taxation year only when he:
 - (a) makes one application for every capital gains tax rebate to which he is entitled under section 3;
 - (b) has not claimed a capital gains tax rebate at any previous time; and
 - (c) does not claim a capital gains tax rebate with respect to both eligible farm property and eligible business property.

10 Apr 81 cI-2 Reg 1 s4.

Rebate on eligible residential property

- 5(1) Subject to subsection (2) and sections 6, 7 and 9, where an individual disposes of eligible residential property, he is entitled to a capital gains tax rebate with respect to any eligible taxable capital gain he makes on the disposition of that eligible residential property.
- (2) An individual is entitled to only one capital gains tax rebate under this section in his lifetime.

10 Apr 81 cI-2 Reg 1 s5.

Rebate on non-rental property

- 6(1) In this section, “**acquisition date**” means the date upon which a taxpayer last acquired or re-acquired eligible residential property.
- (2) Notwithstanding subclause 2(n)(ii), where an individual taxpayer has received rental income from eligible residential property at any time after the later of December 31, 1971, or the acquisition date, the eligible taxable capital gain which is to be used in calculating any capital gains tax rebate to which the taxpayer may be entitled, is equal to the product of:
 - (a) the eligible taxable capital gain of the taxpayer calculated in accordance with subclause 2(n)(ii); and

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(b) the number of taxation years after the later of December 31, 1971, or the acquisition date in which the taxpayer received no rental income from the eligible residential property divided by the number of taxation years after the later of December 31, 1971 or the acquisition date during which the taxpayer owned the eligible residential property.

10 Apr 81 cI-2 Reg 1 s6.

Proceeds from disposition deferred

7(1) Where the total proceeds from the disposition of eligible farm property, eligible business property or eligible residential property are not due to the taxpayer in the year of sale and a reserve is claimed by the taxpayer pursuant to the Federal Act for the portion of the eligible taxable capital gain that is deferred, a capital gains tax rebate with respect to the disposition is permitted for the current taxation year and for any subsequent taxation year in which:

- (a) the eligible taxable capital gain is included in determining the taxpayer's taxable income for the taxation year; and
- (b) the individual is a resident of Saskatchewan on December 31 of the taxation year;

but the total amount of the eligible taxable capital gains used in calculating any capital gains tax rebates to which the taxpayer is entitled under these regulations must not exceed the amount that would have been calculated for the year of disposition under clause 2(n) if the reserve had not been claimed by the taxpayer.

(2) Notwithstanding subsection (1), the Minister of Finance may pay, at any time, any capital gains tax rebates that may be payable to the taxpayer pursuant to this section with respect to the 1985 taxation year and any subsequent taxation years.

10 Apr 81 cI-2 Reg 1 s7; 20 Jne 86 SR 62/86 s4.

Capital gain on disposition of share capital

8 Notwithstanding clause 2(n), any eligible taxable capital gain made by a taxpayer arising from a disposition of share capital of an eligible incorporated small business or of a farm corporation may be included as part of the eligible taxable capital gains of the taxpayer in calculating the capital gains tax rebate to which he may be entitled in the taxation year, but the eligible taxable gain may be included only to the extent that the eligible taxable capital gain is not deducted under subsection 110.1(1) of the Federal Act when determining the taxpayer's taxable income for the taxation year.

10 Apr 81 cI-2 Reg 1 s8.

Income averaging annuity contracts

9(1) In this section, "**attributable**" means attributable in any manner that the Minister of Finance, or a designated person, may determine.

(2) Subject to subsections (3) and (4), where a taxpayer purchases one or more income averaging annuity contracts with the proceeds of an eligible taxable capital gain, he is entitled to a capital gains tax rebate for the taxation year in which the income averaging annuity premiums are deductible and for any subsequent taxation years in which:

- (a) the annuity payments are received by the taxpayer; and
- (b) the taxpayer is a resident of Saskatchewan on December 31 of the taxation year.

(3) For the purposes of calculating a capital gains tax rebate of a taxpayer under this section, the eligible taxable capital gain of the taxpayer:

(a) with respect to the taxation year in which the income averaging annuity premiums are deductible, is deemed to be the eligible taxable capital gains calculated without reference to paragraph 2(n)(i)(C) or 2(n)(ii)(C), as the case may be, less any part of the premiums that are:

- (i) paid to purchase the income averaging annuity contracts; and
- (ii) attributable to the eligible taxable capital gain; and

(b) with respect to any taxation years subsequent to the taxation year in which the income averaging annuity premiums are deductible, is deemed to be that portion of the annuity payments received by the taxpayer in the taxation year which is attributable to the eligible taxable capital gain.

(4) The total amount of the eligible taxable capital gains used in determining capital gains tax rebates to which a taxpayer is entitled under this section must not exceed the eligible taxable capital gain determined for the year of disposition under clause 2(n).

(5) Notwithstanding subsections (2) and (3), the Minister of Finance may pay, at any time, any capital gains tax rebates that may be payable to the taxpayer pursuant to this section with respect to the 1985 taxation year and any subsequent taxation years.

10 Apr 81 cI-2 Reg 1 s9; 20 Jne 86 SR 62/86 s5.

Corporation eligible for rebate

10(1) In this section, “**corporation**” means an eligible incorporated small business or a farm corporation.

(2) Where a corporation is carrying on business in Saskatchewan and:

- (a) is in the process of winding-up;
- (b) intends to finalize its winding-up in accordance with any statutory provisions to which it is subject within one year after payment of the capital gains tax rebate to which it is entitled under this section;
- (c) not more than 75% of the share capital of the corporation is beneficially owned by taxpayers who were shareholders of another corporation at the time the other corporation disposes of the eligible business property or the eligible farm property with respect to which the other corporation claimed a capital gains tax rebate; and

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- (d) not more than 75% of the share capital of the corporation is beneficially owned by individuals who have previously claimed a capital gains tax rebate under section 3;

the corporation is entitled to a capital gains tax rebate with respect to any eligible taxable capital gains it makes arising from a disposition of any of its eligible business property or eligible farm property.

(3) The capital gains tax rebate that the corporation may claim in its first taxation year is to be based upon any eligible taxable capital gains of the corporation in the first taxation year arising from the disposition of eligible business property or eligible farm property prior to the date upon which the corporation makes an application for a capital gains tax rebate under this section.

(4) Where the eligible taxable capital gains of a corporation in a first taxation year are less than \$50,000, it may claim a capital gains tax rebate for the second taxation year in an amount equal to the lesser of:

- (a) any eligible taxable capital gains made by the corporation arising from a disposition of eligible business property or eligible farm property in the second taxation year; and

- (b) the difference between \$50,000 and any eligible taxable capital gains of the corporation in the first taxation year.

(5) Where the sum of the eligible taxable capital gains of the corporation for the first taxation year and the second taxation years are less than \$50,000, it may claim a capital gains tax rebate for the third taxation year in an amount equal to the lesser of:

- (a) any eligible taxable capital gains made by the corporation arising from a disposition of eligible business property or eligible farm property in the third taxation year; and

- (b) the difference between \$50,000 and the sum of any eligible taxable capital gains of the corporation in the first taxation year and the second taxation year.

(6) A capital gains tax rebate paid under this section is subject to the condition that the corporation to which the rebate is paid must wind up in accordance with the statutory provisions to which the corporation is subject within one year after the date of payment of the capital gains tax rebate to which it is entitled under this section.

(7) If a corporation does not wind up in the manner provided in subsection (6), the corporation shall repay the amount of the capital gains tax rebate paid to it to the Minister of Finance together with interest on that amount at an annual rate equal to 3 percentage points above the prime lending rate as at the date of payment to the corporation of the bank holding the province's consolidated fund, from the date of payment to the corporation to the date upon which the corporation makes full repayment.

(8) **Repealed.** 22 Jly 83 SR 100/83 s5.

Applicant to be resident

11 An individual applying for a capital gains tax rebate shall be resident in Saskatchewan on December 31 of the taxation year with respect to which the application is made and shall:

- (a) have been resident in Saskatchewan for the year prior to the date of disposition of the eligible farm property, eligible business property or eligible residential property from which the eligible taxable capital gain arose; or
- (b) have been resident in Saskatchewan for the year after the date of disposition of the eligible farm property, eligible business property or eligible residential property from which the eligible taxable capital gain arose.

10 Apr 81 cI-2 Reg 1 s11.

Eligibility

12 No person is eligible for a capital gains tax rebate under these regulations unless:

- (a) he applies for a capital gains tax rebate to the Minister of Finance:
 - (i) by December 31, 1987; and
 - (ii) in any form that the Minister of Finance may require;
- (b) he provides any information and documents that the Minister of Finance may require; and
- (c) he files all the returns required by the Act and the Federal Act and has paid any income tax payable under the Act for the taxation years with respect to which he claims a capital gains tax rebate.

22 Jly 83 SR 100/83 s6; 20 Jne 86 SR 62/86 s6.

Reassessment

13 The Minister of Finance may at any time reassess the amount of any capital gains tax rebate payable or paid under these regulations.

10 Apr 81 cI-2 Reg 1 s13; 22 Jly 83 SR 100/83 s7.

Recovery of overpayment

14 The Minister of Finance may recover as a debt due to Her Majesty in any court of competent jurisdiction or in any other manner provided for in the Act:

- (a) any overpayment of a capital gains tax rebate determined as a result of a reassessment or by any other means; and
- (b) any capital gains tax rebate and interest that is repayable pursuant to section 10.

10 Apr 81 cI-2 Reg 1 s14.

15 Repealed. 22 Jly 83 SR 100/83 s8.