

SNL2002 CHAPTER M-16.1

MINING AND MINERAL RIGHTS TAX ACT, 2002

Amended:

2004 c36 s25; 2004 c47 s24

CHAPTER M-16.1

AN ACT TO IMPOSE TAXES ON INCOME FROM MINING OPERATIONS WITHIN THE PROVINCE AND ON INCOME OBTAINED OR DERIVED FROM PERSONS HOLDING RIGHTS TO MINE

(Assented to December 19, 2002)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the Mining and Mineral Rights Tax Act, 2002 .

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Definitions

2. In this Act

(a) "arm's length" has the same meaning as under section 251 of the Income Tax Act (Canada) and the word "control" used in that section shall be read in the context given in subsection 256(5.1) of that Act ;

(b) "assessment" means an assessment, a reassessment, an amended assessment or an additional assessment of tax under this Act;

(c) "books and records" means any recorded information in original or copied form relating to a taxpayer or taxpayer's returns, including every kind of financial book or record, all purchase invoices, sales invoices, sales tapes, other documents of original sale or purchase, statements of account, bank statements or statements of other financial institutions, bank agreements, loan agreements, partnership agreements, articles of incorporation, share registries, minute books, sales journals, purchase journals, all other journals, letters, memoranda, notes, draft agreements, charts of account, general ledgers, all subsidiary ledgers, payroll journals and summaries, income tax returns, returns under this Act, financial statements, auditors opinions and notes that comprise part of the financial statements, internal audit reports, executive and management committee minutes and any other thing containing information, and includes those items or data in machine readable or electronic format;

(d) "commercial production" means a point when 60% of the stated processing capacity is achieved for 30 days or as the minister may determine;

(e) "exploration expenditure" means an expenditure relating to prospecting, sampling, mapping, diamond drilling and other work involved in searching for ore in the province under a licence to explore for minerals issued under the Mineral Act ;

(f) "government assistance" means assistance provided by a government, including a municipal government and an agency of a government, and includes a grant, subsidy, forgivable loan, deduction from tax, but does not include an amount provided under section 7 ;

(g) "impacts and benefits agreement" means an agreement between a person or an association of persons, whether or not incorporated, and an operator that could reasonably confer a benefit on the person or association of persons or its members, which includes any matter connected with exploration, mine development or a mining operation that may affect the person or association;

(h) "joint venture" means a business undertaking entered into by 2 or more persons which terminates upon completion of that undertaking and where the control and contribution of resources are shared;

(i) "mine" means a shaft, open pit, quarry or other place from which minerals are extracted, and where more than one mine is operated under the same mining lease, or on contiguous properties,

those mines shall be considered to be one mine;

(j) "mineral" means mineral as defined in the Mineral Act ;

(k) "mining lease" means a mining lease issued under the Mineral Act ;

(l) "mining operations" means the extraction or production, within the province, of minerals up to and including primary crushing, and includes the transportation, handling, storing, distribution and sale of those minerals, mine rehabilitation and decommissioning, but does not include processing;

(m) "minister" means the minister appointed under the Executive Council Act to administer this Act;

(n) "operator" means a person who

(i) has the right to extract minerals, and

(ii) carries out mining operations on or under lands within the province;

(o) "person" includes a partnership, limited partnership, association, syndicate, joint venture or co-venture;

(p) "pre-production expenditure" means costs, other than capital costs, incurred in order to bring a mine into commercial production, less revenue earned before the mine comes into commercial production;

(q) "tax" means a tax imposed by this Act and includes all penalties, costs and interest that may be added to the tax;

(r) "taxpayer" means a person liable to pay or withhold money by way of tax under this Act; and

(s) "year" means the fiscal year of a person.

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Mining tax

3. An operator is liable for and shall pay to the minister, in the manner and at the time prescribed by regulations, an annual tax of

(a) 15% of the taxable income determined under subsection 6 (1), less the credit determined under section 7 ,

plus

(b) 20% of the amount taxable as determined under subsection 6 (2).

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Gross revenue

4. (1) Gross revenue is the revenue derived by an operator from the sale of minerals as a result of mining operations in a year and includes

- (a) if those minerals are processed before the sale, the income from processing;
- (b) gains or losses resulting from
 - (i) the fixing of a price for output of a mine before delivery, and
 - (ii) other hedging transactions related directly to the proceeds of the output of a mine;
- (c) insurance proceeds for which related premiums are deductible or deducted;
- (d) government assistance related to revenue;
- (e) withdrawals from a financial assurance fund established under paragraph 10(3)(d) of the Mining Act ; and
- (f) other revenue that may be prescribed by regulation.

(2) Notwithstanding subsection (1), where an operator receives revenue from a person with whom he or she does not deal at arm's length, the revenue attributed to the transaction for tax purposes shall be adjusted by the operator to reflect an arm's length fair market receipt and, for the purpose of subsection (1) but subject to subsection (3), the gross revenue from that transaction shall be the fair market value as determined by the operator.

(3) A determination of fair market value by an operator may be reviewed by the minister, who may impose his or her own determination of fair market value and, in the absence of evidence to the contrary, the minister's determination of fair market value shall be considered to be the gross revenue from that transaction and, for the purpose of subsection (4), the minister's determination is considered to have been made at the time of the transaction.

(4) Where the minister's determination of fair market value under subsection (3) is greater than the determination of the operator under subsection (2), the minister may make an assessment of tax due, including interest, under this Act.

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Net income

5. (1) The net income of a taxpayer shall be ascertained by deducting from the gross revenue of the taxpayer

- (a) all expenses and outlays directly attributable to and reasonably incurred in mining operations and in processing and smelting;
- (b) depreciation expenses that may be prescribed by regulation respecting vehicles, machinery, plant, equipment, buildings and other assets of a capital nature used in mining operations and in processing and smelting;

(c) an amount for unamortized pre-production expenditures divided by the estimated remaining life of the mining operation;

(d) all money paid to the Crown during the year by way of rentals, royalties, charges and other payments for the right to engage in the mining operations which generates all or part of the gross revenue, but not a payment by way of taxation;

(e) contributions to a financial assurance fund established under paragraph 10(3)(d) of the Mining Act ; and

(f) those amounts respecting those items that are prescribed by regulation.

(2) In addition to the amounts deductible under subsection (1), an operator may deduct exploration expenditures exclusively incurred by the taxpayer anywhere in the province before the commencement of commercial production, but only to the extent that these expenditures have not been deducted in a previous year.

(3) In addition to the amounts deductible under subsection (1), an operator may deduct an amount by way of return on capital directly and necessarily employed by the taxpayer in processing, in an amount or at a rate that the Lieutenant Governor in Council may prescribe by regulation, and the Lieutenant Governor in Council may prescribe different amounts or rates for different types of processing and smelting assets.

(4) An amount determined under subsection (3) shall not exceed 65% of the portion remaining after deducting from the gross revenue the amounts deductible under subsections (1) and (2).

(5) Notwithstanding subsections (1) and (2), where an operator incurs an expenditure payable to a person with whom that operator does not deal at arm's length, the expenditure deductible under this section shall be adjusted by the operator to reflect an arm's length fair market value of the expenditure and, for the purpose of subsections (1) and (2), the fair market value of the expenditure shall be the fair market value as determined by the operator.

(6) A determination of the fair market value of an expenditure by an operator may be reviewed by the minister, who may impose his or her own determination of fair market value and, in the absence of evidence to the contrary, the minister's determination of the fair market value of the expenditure shall be considered to be the expenditure incurred by the operator and, for the purpose of subsection (7), the minister's determination is considered to have been made at the time of the expenditure.

(7) Where the minister's determination of fair market value under subsection (6) is less than the determination of the operator under subsection (5), the minister may make an assessment of tax due, including interest, under this Act.

(8) Amounts deductible under this section shall be reduced by related government assistance.

(9) Notwithstanding another provision of this section, the following shall not be deductible for the purpose of calculating net income:

(a) tax imposed under this Act;

(b) other tax imposed upon revenue, income, profits or capital by any jurisdiction;

(c) legal or professional fees incurred with respect to an objection or an appeal in respect of an assessment of a tax referred to in paragraphs (a) and (b);

(d) interest, dividends and all other costs of financing including the acquisition and maintenance of equity financing;

(e) social and recreational costs, other than at the mine site;

(f) bad debts;

(g) costs incurred for incorporation, organization or reorganization;

(h) a payment under Part IX of the Excise Tax Act (Canada);

(i) royalties or similar payments, other than those referred to in paragraph (1)(d);

(j) payments made under an impacts and benefits agreement, except where that payment represents fair market value for a good or service which would otherwise be an eligible expenditure under paragraph (1)(a), if not for this paragraph;

(k) a payment for loss, costs, liability or damage based in tort with respect to a third party;

(l) costs incurred or damages paid as a result of a negligent act or omission or as a result of a wilfully damaging act;

(m) costs incurred or a fine paid as a result of a strict liability imposed by, or an act or omission which is a breach of laws, rules, regulations, permits, licenses, orders or other directives of a government, government agency, or a court;

(n) an expenditure on account of, instead of, in satisfaction for or in relation to paragraphs (k), (l) and (m);

(o) charitable donations, and gifts to the Crown;

(p) depreciation, other than as specified in paragraph (1)(b);

(q) depletion or exhaustion;

(r) the cost of capital assets; and

(s) another expenditure prescribed by regulation.

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Taxable income

6. (1) For the purpose of paragraph 3 (a), the taxable income shall be net income less the greater of

(a) 20% of the net income, if positive, or

(b) amounts paid to a person referred to in paragraph 8 (1)(a).

(2) For the purpose of paragraph 3 (b), the amount taxable shall be

- (a) 20% of the net income, if positive, minus
- (b) amounts paid to a person referred to in paragraph 8 (1)(a).

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Corporate income tax credit

7. (1) For the purpose of paragraph 3 (a), an operator may, in respect of the current tax year, credit against the tax otherwise payable, an amount in respect of corporate income tax paid to the province in the year as determined under this section.

(2) Subsection (1) applies only for 10 consecutive years beginning in the year in which commercial production is achieved in the mine from which the mining income is derived, but the cumulative amount of the deduction shall not exceed \$20 million.

(3) A credit under subsection (1) is applicable only if all depreciation and exploration expenses available in the year have been utilized by the operator.

(4) The amount of the credit in respect of corporate income tax for a year shall be the lesser of

(a) \$2 million, and

(b) amounts payable under the Income Tax Act, 2000 for the year in respect of mining operations.

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Mineral rights tax

8. (1) A person who receives,

(a) from an operator or other person, consideration of any kind including a lump sum, periodic payment, rent, royalty or other income, which is contingent upon production of a mine, or computed by reference to the amount or value of production from a mining operation, for the grant or assignment of any right issued under the Mineral Act, including an exploration license, a mining lease and any claim, permit or right held under them; or

(b) consideration under section 7 of the Undeveloped Mineral Areas Act , by way of payment to that person as owner of an undeveloped mineral area,

is liable for and shall pay to the Crown, in the manner and at the time set out in this Act, an annual tax of 20% of the net revenue received for the consideration during that year.

(2) Notwithstanding subsection (1), where a person receives consideration referred to in that subsection from an operator, and the net revenue of the person in that year as determined under subsection (4) is \$100,000 or less, no tax is payable under this section.

(3) Notwithstanding subsection (1), where net revenue in a year is greater than \$100,000 and less than \$200,000, the tax payable under this section shall be the product of

(a) net revenue minus \$100,000, times

(b) 40%.

(4) For the purpose of this section, "net revenue" means the total value of consideration received under paragraphs (1)(a) and (b), less

(a) legal expenses incurred by the person in the collection of the consideration referred to in subsection (1);

(b) exploration expenditures incurred by the person;

(c) consideration paid by the person who receives the royalty payment to another person, where that other person is subject to the tax referred to under subsection (1) in respect of the consideration received; and

(d) an amount that may be prescribed by regulation.

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Withholding

9. (1) A person who pays the consideration referred to in section 8 shall deduct and withhold 20% of the value of that consideration and shall account for and pay over the amount to the minister at the time and in the manner prescribed by regulation.

(2) A person who withholds tax under subsection (1) is relieved of all liability at law for the obligation to pay the taxpayer to the extent of the amount withheld, notwithstanding the terms of a statute, agreement, lease, contract or other document which binds the person to make the payment to the taxpayer.

(3) A person who withholds tax under subsection (1) is considered to hold the tax in trust for the Crown and shall pay over the tax in the manner and at the time required by the minister.

(4) A person who fails to make a withholding under subsection (1) shall be personally liable, without the interposition of a court, to a penalty under this Act in an amount equal to the amount which was not withheld.

(5) A penalty under this section is not deductible under section 5 or 8 .

(6) A penalty under this section does not relieve the liability of a person subject to the tax under section 8 .

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Application and construction of prior statutes and contracts

10. (1) The tax imposed under section 3 applies to every operator, but notwithstanding this Act, where a tax or royalty is payable to the Crown for the right to engage in mining operations or in respect of income from those mining operations

(a) by a person under an Act of the province relating specifically to that person;

(b) by a person under an agreement or lease ratified or confirmed by a statute; or

(c) by an operator who has assumed the obligation to pay that tax or royalty under an agreement entered into with that person,

the tax or royalty imposed by the Act, agreement or lease shall be payable instead of the tax imposed under section 3 .

(2) Nothing in an Act, or in a grant, deed, licence, contract, agreement or other document, whether or not that grant, deed, licence, contract, agreement or other document has received ratification by the Legislature, or been passed, given, made or entered into before the coming into force of this Act, shall be construed so as

(a) to defeat the liability of a taxpayer to pay the tax required to be paid by section 8 ; or

(b) to enable a person who is liable for the tax under section 8 , to require the operator from whom that person receives consideration,

(i) to pay the tax in its place, or

(ii) to indemnify that person against the tax; or

(c) to impose liability on the Crown for loss or damage sustained,

and, where an Act, grant, deed, licence, contract, agreement or other document is in conflict with this section, the latter shall prevail.

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Application of Financial Administration Act

11. (1) A person who withholds tax shall be considered to act subject to sections 77 to 80 and 83 of the Financial Administration Act and for the purpose of these sections the collector is a person who has received money on behalf of the Crown.

(2) Amounts received by the minister under this Act are part of the Consolidated Revenue Fund.

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Return and payment required

12. (1) A taxpayer shall file a return with the minister in the time and manner prescribed by regulation and in the form required by the minister, and shall pay to the Crown, at the time of filing the return, all tax payable in respect of the period to which the return relates.

(2) Notwithstanding a regulation prescribing the time for filing a return or paying tax, the minister may vary the time, manner and form by which a taxpayer or class of taxpayers is required to file a return or pay the tax in respect of a period that the minister may specify.

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Liability for tax

13. (1) A taxpayer's liability for tax arises when the tax is due and continues until it is paid.

(2) A person who withholds tax is liable for tax when the tax is required to be withheld and that liability continues until the tax is paid over to the minister.

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Books and records

14. (1) A taxpayer shall keep and maintain books and records relating to the taxpayer's business and returns and shall make available within the province for inspection, examination and audit under this Act, all books and records the minister considers necessary to determine tax payable under this Act, or shall make other arrangements satisfactory to the minister to make them available for inspection, examination and audit under this Act.

(2) Where the books and records kept by a taxpayer are, in the opinion of the minister, inadequate for the purpose of this Act, the minister may, by written order, require particular books and records to be kept by the taxpayer and the nature of entries to be made in the books and records, and the taxpayer shall, within a reasonable time that the minister may stipulate in the order, begin keeping the books and records as required.

(3) A person required under this section to keep records shall keep them until authorized by the minister to destroy them, but in no event shall they be destroyed before the expiration of 7 years after the year to which they relate.

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Confidentiality

15. (1) Books and records received in the course of administering this Act shall be kept confidential and a person who receives books and records shall not use or disclose them except

(a) for the purpose in relation to which they were provided;

(b) for the purpose of administering or enforcing this Act or another Act of the province imposing a tax or fee, or administering legislation relating to minerals;

(c) under an agreement between the government of the province and another government that provides for the exchange or disclosure of information, returns, or books and records that relates to the administration or enforcement of a taxation Act; or

(d) for the purpose of conducting tax policy analysis, or compiling statistical information by the government of the province or the Government of Canada.

(2) Books and records received or handled under this Act shall not be made available to anyone except those persons authorized by the minister to do so and the minister shall not authorize anyone to receive or handle books and records except for the purpose outlined in subsection (1).

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Production of documents

16. (1) The minister may demand from a taxpayer, which in this section shall include a person the minister has reasonable grounds to believe may be a taxpayer, a return, supplementary return or the production, including the production on oath or affirmation, of books and records.

(2) The minister may specify a reasonable time within which a demand under this section is to be complied with, and a person to whom a demand is made shall comply with the demand within the specified time.

(3) A person who fails to comply with the requirement of the minister under subsection (1) is liable, regardless of whether that person is prosecuted or convicted under another provision of this Act, to a penalty to be assessed by the minister not exceeding \$500 for each day during which the failure continues, and an amount assessed under this section shall be considered to be tax payable under this Act and is in addition to another tax payable under this Act.

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Appointment of inspectors

17. The minister may appoint or designate a person or class of persons as inspectors for the purpose of the administration and enforcement of this Act and may authorize the inspectors to perform or exercise the duties and the powers conferred upon the minister by this Act that the minister considers appropriate, and the performance or exercise of those duties or powers by an inspector shall be of the same effect as if they were performed or exercised by the minister.

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Powers of inspectors

18. An inspector may, at all reasonable times, for a purpose related to the administration or enforcement of this Act, inspect or examine the premises, processes, books and records of a person that the inspector considers may be relevant in determining the obligations of that or another person under this Act, and, for those purposes, the inspector may

(a) enter any premises where

(i) a business is carried on,

(ii) any property, or books and records are or may be kept, or

(iii) anything is or is suspected by the inspector of being done or stored in connection with a mining operation;

(b) make copies, extracts, photographs or videos the inspector considers necessary;

(c) require the owner or person in charge of a premises to give the inspector all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or person in charge to attend at the premises with the inspector; and

(d) require the owner or person in charge to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

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Power of search

19. (1) A Provincial Court judge who is satisfied upon oath or affirmation that an inspector has reasonable grounds for believing there is or may be in or on business or private premises anything that may provide evidence with respect to compliance with this Act, may issue a warrant authorizing an inspector to enter the premises for the purpose of exercising the duties and powers conferred upon the inspector and to

(a) search;

(b) examine the contents of the premises and make those inquiries that the inspector considers necessary; and

(c) copy, extract, photograph, video, seize and take away evidence, books and records.

(2) The owner or person in charge of a premises referred to in this section or a person there shall give an inspector reasonable help to enable the inspector to carry out his or her duties and functions under this section and shall provide the information that the inspector may reasonably require.

(3) Notwithstanding subsection (1), an inspector may exercise the power of search referred to in that subsection without a warrant where the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

(4) In this section, "exigent circumstances" include circumstances in which the delay necessary to obtain a warrant might reasonably result in danger to human life or safety or the loss or destruction of evidence.

(5) An inspector may make a copy of a document, or books and records that have been seized, examined or produced under this Act, and a copy certified by the inspector to be a true copy made under this section is admissible in evidence, without proof of the office or signature of the certifying inspector, and has the same probative value as the original document.

2002 cM-16.1 s19; 2004 c36 s25; 2004 c47 s24

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Actions against inspectors

20. A judgment shall not be given against an inspector in a court of law with respect to anything done by the inspector under this Act where the court is satisfied there was reasonable cause for the action of the inspector and the action was not malicious.

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Assessment

21. (1) Where

(a) it appears from information or an inspection, audit or examination of books and records that a taxpayer has failed to pay tax due as required by this Act;

(b) in the opinion of the minister, the books and records of a taxpayer do not substantiate that taxpayer's return or are inadequate for the purpose of this Act;

(c) a taxpayer fails or refuses to produce his or her books and records or alleges that they have been lost or destroyed; or

(d) information comes to the attention of the minister that a person has failed to collect, report or pay tax due,

the minister shall assess the amount of tax payable to the Crown by a method of estimating the minister considers appropriate.

(2) The amount assessed shall be considered to be the tax payable by the taxpayer, unless varied under an objection, proceeding or an appeal.

(3) The minister may revoke, amend, revise or make a further assessment.

(4) Liability for tax shall not be affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(5) An assessment shall include interest as prescribed by regulation from the time tax should have been paid until it is paid.

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Notice of assessment

22. (1) An assessment becomes binding, notwithstanding an error, defect or omission in the observation of a directory provision of this Act, when a notice of assessment in writing is delivered to a taxpayer personally or by certified mail addressed to the taxpayer's current address in the records of the minister or to another address where the taxpayer is known to reside or maintain an office or place of business, and a mailed notice shall be considered to be received on the day it would be received in the normal course of mailing.

(2) A person who receives a notice of assessment shall pay the tax assessed within 60 days of the day on which the notice is considered to have been received, regardless of an objection, proceeding or appeal.

(3) An affidavit or other evidence that a notice of assessment has been delivered shall be considered as proof that the notice was received as provided in this section, in the absence of evidence to the contrary.

(4) A copy of the notice of assessment may be entered in evidence without proof of the office or signature of the person appearing to have signed the notice.

(5) A person's liability for tax is unaffected by this section and notification under this Act is for administrative purposes only and does not relate to liability.

(6) An assessment may be reviewed by a court of law only as provided in this Act through a proceeding or an appeal in the Trial Division.

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Objection and review

23. (1) A person may object to an assessment of tax or other decision of the minister under this Act within 90 days of receiving the notice of assessment or decision of the minister by delivering a written notice to the minister objecting to part or all of the assessment or decision.

(2) A notice of objection shall clearly identify the matter objected to, setting out the reasons for objection, all the relevant facts and the remedy requested.

(3) The minister shall review the notice of objection and

(a) may deliver a demand for further particulars to be provided to the minister within 30 days of the demand; and

(b) shall deliver a reply to the person objecting, confirming, amending or rescinding part or all of the matter objected to,

in the same manner provided for delivering a notice of assessment.

(4) The provisions of this Act pertaining to a notice of assessment apply as appropriate to a reply from the minister, except for a further objection under this section.

(5) Notwithstanding another provision in this Act, the minister shall not delegate the authority to confirm, amend or rescind a matter under review under this section.

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Proceeding in the Trial Division

24. (1) Part or all of a reply from the minister in response to a notice of objection may be appealed to the Trial Division by commencing a proceeding in the Trial Division within 60 days of receiving the minister's reply.

(2) The costs of the proceeding are in the discretion of the judge who hears the matter and he or she may make an order respecting costs in favour of or against the Crown and may fix the amount of them.

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Effect of delay

25. (1) A notice of objection, proceeding or appeal does not affect the due date or liability for payment of a tax, but where the tax is set aside or reduced following review, the minister shall refund the excess of tax, together with a penalty or interest paid, to the person entitled to it.

(2) Notwithstanding subsections (1) and 22 (2), the minister may agree to defer a payment of tax, interest or penalty until after the final resolution of an objection, proceeding or appeal, and the minister may make the deferral subject to conditions the minister considers appropriate.

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Director liability

26. (1) Where a corporation fails to pay tax due, each director of the corporation at the time of the failure is jointly and individually liable with the corporation to pay the tax, whether or not the corporation has been prosecuted or convicted for failure to pay tax due.

(2) A director of a corporation is not liable under subsection (1) unless the minister has taken all action that the minister considers necessary against the corporation to recover the debt of unpaid tax of the corporation.

(3) A director of a corporation is not liable under subsection (1) where the director is able to show that he or she exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) The minister may assess a director for tax due under this section independent of a prosecution of directors or the corporation and, where the minister sends a notice of assessment to a director, this Act is considered to apply, with the necessary changes, as if the director were the taxpayer.

(5) An assessment under subsection (4) of an amount payable by a person who is a director of a corporation shall not be made more than 4 years after the person last stopped being a director of the corporation.

(6) For the purpose of this section, the minister may apply payments made by or on behalf of the corporation under this Act to any of the liabilities described under subsection (1).

(7) A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim.

(8) For the purpose of this section, a director includes an owner, principal, officer or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the failure, and a corporation includes a partnership, business, association or person.

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Recovery of tax

27. (1) An amount of tax due may be recovered with costs, as a debt due to the Crown, by a proceeding in a court in the name of the minister.

(2) A proceeding under subsection (1) shall be tried without a jury, and the court may make an order as to costs in favour of or against the Crown.

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No time limitation

28. A complaint may be made and proceedings may be taken on it in respect of an offence under this Act or the regulations without limitation of time.

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Certificate of judgment

29. (1) Where a person fails to pay an amount of tax owing that is due to the Crown under this Act, the minister may issue a certificate stating the amount due and remaining unpaid to the Crown, and the name of the person by whom it is payable, and file the certificate with the Registrar of the Supreme Court.

(2) Where a certificate is filed with the Registrar of the Supreme Court under subsection (1), it has the same effect and all proceedings may be taken on the certificate as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

(3) A person named in a certificate filed under this section may, within 30 days after the certificate is filed, apply to a judge of the Trial Division for a review, on a question of law or jurisdiction, of the certificate or the decision upon which the certificate was based.

(4) On an application under subsection (3), the judge may make any amendment to the certificate that is necessary to make the certificate accord with the judge's decision.

(5) There is no appeal from a decision of a judge made under this section.

(6) A certificate filed under this section may also be filed in the judgment enforcement registry upon the expiration of the 30 day period referred to in subsection (3) in accordance with Part III of the Judgment Enforcement Act and enforced in accordance with that Act.

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Trustee, etc.

30. Notwithstanding another act of the province, every trustee, assignee, liquidator, receiver, administrator or other person administering, managing, winding-up, controlling or otherwise dealing

with property or business of a taxpayer, shall make returns and pay tax that the taxpayer would otherwise be required to make or pay, including payment of tax relating to an obligation of the taxpayer coming due during the trusteeship, assignment, liquidation, receivership or bankruptcy and shall honour all arrangements with the minister for payment of tax arrears, in priority to payment of any creditors of the taxpayer regardless of the nature of their security or position of priority by time or registration, and, where it is apparent upon appointment of the trustee, assignee, liquidator, receiver, administrator or other person administering, managing, winding-up, controlling or otherwise dealing with the property or business of a taxpayer that the taxpayer has insufficient funds on hand to provide for payment on time of tax coming due currently or under an arrangement, the trustee, assignee, liquidator, receiver, administrator or other person administering, managing, winding-up, controlling or otherwise dealing with the property or business of a taxpayer shall immediately create a reserve to be held in trust for payment of that tax, from the taxpayer's receivables.

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Tax as lien

31. (1) Until the amount of the tax required to be paid under this Act is paid, it is a first lien in favour of the Crown on the entire assets of the estate of the taxpayer and the lien has priority over all other claims of a person against the taxpayer.

(2) The lien referred to in subsection (1) attaches on the date the tax was due to the Crown and continues in force until paid, or until a clearance certificate has been issued by the minister.

(3) A lien for tax in respect of real property is considered to be a first mortgage ranking in priority over every grant, deed, lease or other conveyance and over every judgment, mortgage or other lien or encumbrance affecting the real property affected or the title to the real property affected and the minister may discharge the lien by power of sale under the Conveyancing Act.

(4) The registration of a grant, deed, lease or other conveyance, or of a judgment, mortgage, or other lien or encumbrance, whether the registration was before or after the time the lien was attached, does not affect the priority of the lien.

(5) The minister may register the lien in the Registry of Deeds or the Personal Property Registry under the Personal Property Security Act .

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Demand on third party and effect

32. (1) Where the minister has knowledge that a person is or is about to become indebted to a taxpayer who has not paid tax due under this Act, the minister may demand of that person that the money otherwise payable by him or her to the taxpayer be in whole or in part paid to the minister on account of the taxpayer's liability under this Act.

(2) The receipt of the minister for money paid by a person in response to a demand made under subsection (1) is a sufficient discharge of the liability of that person to the taxpayer to the extent of the amount set out in the receipt.

(3) A person paying money to a taxpayer after receipt of a demand under this section is personally liable to the Crown for the lesser of

- (a) the amount of money paid to the taxpayer; and
- (b) the amount of tax payable by the taxpayer.

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Recovery by distress

33. (1) The minister may levy an amount due as tax under this Act, with costs, by distress upon any property

- (a) subject to a mortgage under this Act;
- (b) found in the possession or on the premises of a taxpayer liable to pay the amount due; or
- (c) in the possession of an occupant of premises of the taxpayer that would be subject to distress for arrears of rent due to a landlord.

(2) Where distress is made under subsection (1) for the recovery of tax,

(a) the minister shall, by advertisement in a newspaper distributed in the locality in which the property was distrained, give at least 10 days' notice of the time and place of the sale and the name of the person whose property is to be sold; and

(b) at the time named in the notice, an authorized agent of the minister shall sell at public auction, or by another means with the consent of the taxpayer, the property distrained or so much of the property that may be necessary to satisfy the claim of the minister for tax and for costs and expenses incidental to the distress and sale.

(3) Where the property distrained is sold for more than the amount of tax, costs and expenses referred to in subsection (2) and a claim for the surplus is not made by another person on the grounds that the property sold belonged to him or her or that he or she was entitled by lien or other right to the surplus, the surplus shall be paid over to the person in whose possession the property was when the distress was made and his or her receipt shall be taken for the property.

(4) Where the property distrained is sold for more than the amount of taxes, costs and expenses referred to in subsection (2) and a claim for the surplus is made by another person other than the person in whose possession the property was taken when the distress was made, then,

(a) where the claim is not contested, the surplus shall be paid to the claimant and his or her receipt shall be taken for the surplus; and

(b) where the claim is contested, the minister shall retain the surplus until the respective rights of the parties have been determined by action at law or otherwise.

(5) A claim by the minister for distress under this section shall take priority over a claim of title or possession in the property distrained, including a claim or an act of distress by a landlord for arrears of rent due, no matter which is first in time.

(6) Notwithstanding subsection (2), where the property subject to distraint is perishable in the opinion of the minister or his or her agent, it may be sold at a time and manner reasonably practical,

provided prior notice is given to the taxpayer, and the minister is not liable for damages for a loss occurring that would not have occurred if there had been no seizure.

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Bulk sale clearance certificate

34. (1) A person shall not dispose of stock through a sale in bulk unless the person first obtains from the minister a certificate confirming that all tax payable or collected by that person has been paid to the minister, or that satisfactory arrangements for the payment of all tax have been agreed to by the minister.

(2) A person who buys stock through a sale in bulk, without obtaining from the seller a copy of the certificate referred to in subsection (1), is jointly liable with the seller for payment to the minister of all tax then due by the seller, and the minister may assess the buyer and take an action against the buyer to collect that tax that the minister might take against the seller, and the buyer may recover an amount paid to the minister from the seller.

(3) A person who purchases the stock of another through a sale in bulk, shall, upon a demand of the minister, hold back a sufficient amount of money to cover tax considered to be payable by the seller of the stock, either in cash or in the form of a bond or other suitable instrument as approved by the minister.

(4) In this section, "sale in bulk" and "stock" have the same meaning as in the Bulk Sales Act.

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Set-off

35. (1) Where a person is indebted to the Crown under this Act or another Act, the minister may require the retention, by way of deduction or set-off, out of an amount that may be or becomes payable to that person by the Crown, of an amount that the minister may specify.

(2) Where a deduction or set-off is made under subsection (1), the minister shall inform the person immediately.

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Offences

36. A person who

(a) refuses, or wilfully neglects, or fails to produce books and records to a person entitled under this Act to inspect, examine or audit the books and records;

(b) refuses, or wilfully neglects to answer, a question which

(i) is put to him or her by a person entitled under this Act to direct questions, and

- (ii) he or she is required under this Act and the regulations to answer;
 - (c) obstructs an inspector, while making an inspection, examination or audit;
 - (d) refuses, or wilfully neglects, or fails to file a return or make a report required from him or her under this Act;
 - (e) files or makes a false or misleading return or report or gives false or misleading answers or information in a return or report under this Act or the regulations, or makes a false or misleading answer to a question described in paragraph (b);
 - (f) destroys, alters, mutilates, conceals or disposes of the books and records of a business or commercial activity in order to evade tax;
 - (g) makes or permits, or assents to or acquiesces in the making of, false or misleading entries or omissions in the books or records of a corporation in order to evade tax; or
 - (h) wilfully evades, or attempts to evade, complying with this Act or payment of tax,
- is guilty of an offence and is liable on summary conviction to the penalty provided in this Act.

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Penalty

37. (1) A person who is guilty of an offence under this Act for which no other penalty has been provided or prescribed by regulation is liable on summary conviction

- (a) for a first conviction to a fine of not less than \$5,000 nor more than \$1 million or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment;
- (b) for a second conviction to a fine of not less than \$10,000 nor more than \$2 million or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment; and
- (c) for a third or subsequent conviction to a fine of not less than \$20,000 nor more than \$5 million or to imprisonment for a term of not more than 12 months or to both a fine and imprisonment.

(2) In addition to the fine imposed under subsection (1), a court shall order the person found guilty of an offence to pay to the minister the tax due under this Act and, in default of the payment of the tax, the court shall order that person imprisoned for a term of not less than one month nor more than 6 months.

(3) A period of imprisonment imposed under subsection (2) shall be served consecutively to a term imposed under subsection (1).

(4) Sections 736 and 737 of the Criminal Code shall not be applied in disposing of a complaint made or in imposing punishment for an offence under this Act.

(5) Where a person is guilty of a continuing offence, the person may be liable to a further fine of not more than \$10,000 for each day during which the offence continues, in addition to a fine imposed under subsection (1).

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Evasion of tax

38. A person convicted of attempting to evade payment of all or part of tax payable under this Act, by wilfully understating the value of tax withheld or payable, is liable, in addition to payment of the tax, without the interposition of a court to payment of a penalty to be assessed by the minister of not more than 50% of the amount of the tax sought to be evaded.

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Additional penalty

39. The minister may, notwithstanding another penalty imposed by this Act and without the interposition of a court,

(a) impose a penalty of 10% of an amount of tax payable, upon a person who fails to pay tax to the minister, in the manner and within the time provided by this Act or the regulations; and

(b) impose a penalty of not less than \$200 nor more than \$10,000, upon a person who fails to make a return required by this Act or the regulations in the manner and within the time provided for it.

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Exercise of recovery powers

40. The powers conferred by this Act for the recovery of taxes, due or collected under this Act by action in court and by filing a certificate may be exercised separately, concurrently or cumulatively, and the liability of a person to pay taxes due or to remit taxes collected is not affected by the fact that a term of imprisonment has been served or a fine or penalty has been imposed on or paid by him or her in respect of an offence under this Act.

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Affidavit of official

41. In a prosecution for failure to pay, withhold or remit tax, and in an action to recover money, for which a person is liable under this Act, an affidavit by an inspector sworn or affirmed before a person authorized to take affidavits, that the officer has charge of the appropriate records and that after careful examination and search of those records the officer has been unable to find that a return or payment required by this Act has been received in the department, shall be accepted in a court, in the absence of evidence to the contrary, as proof that the required return or payment has not been received or paid.

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Interest

42. (1) Where a person does not pay tax in the time and manner required under this Act, interest shall be levied upon that tax at the rate and in the manner prescribed by regulations and the regulation may provide for a minimum amount upon which interest shall be levied.

(2) Where a certificate is issued under section 29 , interest under subsection (1) shall continue to be added to the amount of the tax payable as contained in the certificate.

(3) The minister may, by written notice either mailed to or served on the person concerned, require that person to pay over to the minister, or otherwise account for, interest levied under subsection (1).

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Refunds

43. (1) Where a person pays to the minister an amount which exceeds the amount of tax required to be paid, the minister shall refund to that person the amount of the overpayment, together with interest, at the rate and in the manner prescribed by the regulations.

(2) Notwithstanding subsection (1), where a person owes money to the Crown under this or another Act, the minister shall deduct the amount owing from the refund and shall inform the person of the set-off.

(3) Notwithstanding subsection (1), the minister shall not make a payment under this section unless the overpayment is disclosed to or by the minister within 3 years from the date on which the overpayment was made.

(4) Notwithstanding subsection (1), refund and interest payments under this section may be restricted or denied as prescribed by regulation.

(5) Money paid under this section shall be paid out of the Consolidated Revenue Fund and shall be accounted for as a reduction of revenues under this Act.

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Remission

44. (1) The minister may remit a penalty or interest imposed under this Act, where he or she considers it appropriate to do so.

(2) A remission under this section may be total or partial, conditional or unconditional, and may be granted before or after a suit or proceeding for the recovery of a penalty or interest and before or after a payment of it has been made or enforced by process or execution.

(3) Subsections 19(3) and (4) of the Financial Administration Act apply, with the necessary changes, to remissions under this section.

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Regulations

45. The Lieutenant-Governor in Council may make regulations

(a) prescribing the manner in and times at which tax payable under this Act shall be paid to the minister;

(b) providing for the accounting for money payable under this Act and regulating the time and manner of the accounting;

(c) prescribing the classes of capital assets and rates and methods of depreciation, and the accounting treatment of additions, disposals and removal from service;

(d) prescribing the expenses and deductions which may be allowed or disallowed for the purpose of section 5 ;

(e) prescribing, for the purpose of subsection 5 (3), the processing assets, or classes of processing asset, and amounts or rates for each class;

(f) prescribing the circumstances under which refunds and interest may be granted or denied and setting restrictions on the granting or denying of refunds and interest;

(g) prescribing rates and methods of calculating interest, and the manner of paying refunds, interest and making other payments;

(h) prescribing rates and methods of calculating depreciation for capital assets;

(i) prescribing rates and methods of calculating net revenue for the purpose of section 8 ;

(j) prescribing the doing of an act considered necessary or expedient for the collection of the tax, or to prevent evasion of the tax, or this Act;

(k) defining a word or expression that is not already defined in this Act;

(l) prescribing, for the purpose of section 4 , amounts to be included in gross revenue; and

(m) generally, to give effect to the purpose of this Act.

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Application

46. This Act applies to an operator commencing with the year beginning after the date of coming into force of this Act and, notwithstanding its repeal, the Act repealed by this Act continues to apply to the operator until the commencement of application of this Act.

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RSNL1990 cM-16 Rep.

47. The Mining and Mineral Rights Tax Act is repealed.

2002 cM-16.1 s47

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