

1973 Bill 93

Second Session, 17th Legislature, 22 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 93

The Freehold Mineral Taxation Act

THE MINISTER OF MINES AND MINERALS

First Reading

Second Reading

Third Reading

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BILL 93

1973

THE FREEHOLD MINERAL TAXATION ACT

(Assented to _____, 1973)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. In this Act,

- (a) "Appeal Board" means the Mineral Assessment Appeal Board;
- (b) "assessor" means the chief assessor and an assessor appointed under this Act;
- (c) "certificate of title" means a certificate of title issued pursuant to *The Land Titles Act*;
- (d) "chief assessor" means the chief assessor appointed under this Act;
- (e) "Department" means the Department of Mines and Minerals;
- (f) "Deputy Minister" means the Deputy Minister of Mines and Minerals;
- (g) "mineral" means a mineral (as defined in *The Mines and Minerals Act*) in situ;
- (h) "mineral right" means an estate in fee simple in a mineral;
- (i) "Minister" means the Minister of Mines and Minerals;
- (j) "owner" means the person who is the registered owner under *The Land Titles Act* of a mineral right;
- (k) "Registrar" means a registrar within the meaning of *The Land Titles Act*;
- (l) "Superintendent" means the person appointed as Superintendent of Mineral Tax pursuant to *The Department of Mines and Minerals Act*;
- (m) "tract" means the area of land described in a certificate of title.

2. This Act applies to the 1974 and subsequent taxation years.

Explanatory Notes

General. This Bill will, as to the 1974 and subsequent taxation years, replace The Mineral Taxation Act, 1972. The main change is that it applies to freehold mineral rights only and not to interests under Crown leases.

1. Definitions.

2. Application of Act.

3. The Minister may appoint a chief assessor and such other assessors as are required for the purposes of this Act.

4. (1) There shall be a board called the "Mineral Assessment Appeal Board" which shall be composed of

- (a) a member of the Energy Resources Conservation Board,
- (b) an employee of the Department, and
- (c) a person other than an employee of the Department or a member or employee of the Energy Resources Conservation Board,

all of whom shall be appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate one of the members of the Appeal Board as chairman and another as vice-chairman.

(3) The member of the Appeal Board referred to in subsection (1), clause (c) or a person acting for that member and appointed pursuant to subsection (5) shall be paid remuneration for his services and for his reasonable travelling and living expenses at the rates prescribed by the Lieutenant Governor in Council.

(4) The Lieutenant Governor in Council may appoint as acting members of the Appeal Board

- (a) a member or employee of the Energy Resources Conservation Board, to act in the event of the inability to act of the member appointed under subsection (1), clause (a) or in the event that no person holds office as a member under subsection (1), clause (a), or
- (b) an employee of the Department, to act in the event of the inability to act of the member appointed under subsection (1), clause (b) or in the event that no person holds office as a member under subsection (1), clause (b), or
- (c) any person (other than an employee of the Department or a member or employee of the Energy Resources Conservation Board) to act in the event of the inability to act of the member appointed under subsection (1), clause (c) or in the event that no person holds office as a member under subsection (1), clause (c).

(5) An acting member appointed under subsection (4) shall be deemed for all purposes to be a member of the Appeal Board while serving as an acting member of the Appeal Board.

3. Appointment of chief assessor and assessors.

4. Mineral Assessment Appeal Board.

(6) The chairman is the chief executive officer of the Appeal Board and shall summon and preside at all meetings.

(7) In the event that the chairman is unable to act or in the event of a vacancy in the office of chairman, the vice-chairman shall have the powers and shall perform the duties of the chairman and when it appears that the vice-chairman has exercised or performed any powers or duties of the chairman, it shall be conclusively presumed that he has done so while the chairman was unable to act or while the office of the chairman was vacant.

(8) In the event of a vacancy or vacancies on the Appeal Board, the remaining member or members may exercise and perform the powers and duties of the Board.

(9) In the exercise or performance of its powers and duties under this Act the Appeal Board has the same powers as, and, subject to the regulations, shall use the same procedure, with the necessary modifications, as the Alberta Assessment Appeal Board under *The Assessment Appeal Board Act*.

5. The Lieutenant Governor in Council may make regulations for the purpose of carrying out the provisions of this Act, and in particular may make regulations

- (a) governing assessment procedures and principles;
- (b) exempting any class of mineral right, any particular mineral right, or any mineral right in any area of land from all or any of the provisions of this Act;
- (c) fixing the period of time during which an exemption under clause (b) is to be in effect;
- (d) authorizing the Minister, upon such information as he may require and upon such conditions as he may prescribe, to exempt from the payment of tax under this Act any specified mineral right in a tract;
- (e) prescribing the circumstances under which any specified class of mineral right is exempt from assessment or from the payment of tax under this Act, or both, either with respect to the whole of the mineral right or with respect to any particular mineral or minerals;
- (f) prescribing an amount for the purposes of section 16;
- (g) governing the procedure of the Appeal Board and for that purpose making inapplicable or varying any procedure of the Alberta Assessment Appeal Board that would otherwise be applicable to the Appeal Board pursuant to section 4, subsection (9).

6. Every mineral right is liable to assessment and taxation in accordance with this Act.

5. Regulations.

6. Liability to assessment and taxation.

Assessment

- 7.** (1) Before the first day of April in each year
- (a) the assessors shall assess the fair actual value of each mineral right in each tract, and
 - (b) the chief assessor shall cause to be prepared an assessment roll setting out for each tract
 - (i) a description of the mineral right assessed and the certificate of title to which it relates,
 - (ii) the name and address of the owner of the mineral right, and
 - (iii) the value of the mineral right assessed.
- (2) In making an assessment, the assessor may, in accordance with this Act and the regulations,
- (a) take any steps that he considers necessary for the purpose of ascertaining the fair actual value of the assessed mineral rights, and
 - (b) resort to all sources of available information for that purpose.
- (3) Where there exists with respect to a mineral right any instrument which has the effect of conferring on any person, other than the owner of that mineral right, the right to recover or produce a mineral or the right to receive or take any portion of the mineral produced, the mineral right shall be assessed as though the instrument did not exist.
- (4) Subsection (3) shall not be construed as affecting or altering any agreement or arrangement made between any persons and relating to liability, as between those persons, for the payment of taxes imposed on the mineral right or for reimbursement of all or any part of the taxes paid.
- (5) The chief assessor or any other assessor may for a purpose relating to an assessment enter upon and inspect any land or property.

8. (1) If an arrangement is made whereby a mineral within an area comprising more than one tract is to be developed by unit operation of the area, or if such an arrangement is amended or terminated, then a copy of the agreement, order or other document setting out the arrangement under which the unit operation is to be conducted, or the amendment or termination thereof, shall be filed with the chief assessor.

(2) Subsection (1) applies only where the Crown is not a party to nor affected by the agreement, order or other document setting out the arrangement.

7. Assessment.

8. Unit operations.

9. Upon the completion of the assessment roll, the chief assessor shall attach thereto a certificate in Form A in the Schedule setting out the date upon which the roll was completed and shall sign the roll and deliver it to the Deputy Minister.

10. On receiving the assessment roll the Deputy Minister shall

- (a) cause a copy of the roll and of the certificate to be placed in a conspicuous place for at least 20 days
 - (i) in the Department at Edmonton, and
 - (ii) in the Land Titles Office at Calgary, and
- (b) within 10 days after the placing of the copy of the roll and the certificate in the Department cause to be sent to each owner whose name appears on the roll
 - (i) an assessment notice containing the particulars in the roll with respect to the mineral right assessed, and
 - (ii) a copy of section 11, subsections (1) and (2).

11. (1) An owner whose name appears on the assessment roll may, by giving the Appeal Board and the Deputy Minister written notice on or before the next following May 15th, appeal to the Appeal Board

- (a) to have the assessment roll varied by altering an assessment shown thereon that the owner claims to have been wrongfully made or improperly made or to be too high or too low, or
 - (b) to have any mineral right assessed that the owner claims is liable to be and is not assessed, and to have that mineral right included on the assessment roll.
- (2) A notice of an appeal by an owner under subsection (1) shall show
- (a) the name of the owner appealing,
 - (b) a description of the mineral right to which the appeal relates, either by reference to the land description, the number of the certificate of title or the number of the assessment shown on the assessment notice, and
 - (c) the grounds or reasons for the appeal.

(3) The Deputy Minister may, upon giving written notice to the Appeal Board and to the person shown on the assessment roll as the owner on or before the next following May 15th, appeal to the Appeal Board.

9. Certification and delivery of assessment roll.

10. Posting of assessment roll.

11. Assessment appeals.

- (a) to have the assessment roll varied by altering an assessment shown thereon that the Deputy Minister claims to have been wrongfully made or improperly made or to be too high or too low, or
 - (b) to have any mineral right assessed that the Deputy Minister claims is liable to be and is not assessed, and to have that mineral right included on the assessment roll.
- (4) If it appears from an appeal or otherwise that any mineral right is assessed in the name of the wrong person as owner, the Deputy Minister, on or before May 15th,
- (a) shall, by giving notice to the Appeal Board, appeal to vary the assessment roll by removing the name of the person wrongfully shown on the assessment roll as owner and by replacing that name with the name of another person as owner,
 - (b) shall cause to be sent by mail to the person whose name is proposed to be placed on the assessment roll as owner, an assessment notice containing the particulars appearing in the roll with respect to the mineral right assessed, a copy of the notice of appeal and a copy of this section, and
 - (c) shall cause a copy of the notice of appeal to be sent by mail to the person who is alleged by the Deputy Minister to be wrongfully shown on the assessment roll as owner.
- (5) Where proceedings are taken under subsection (4) to replace upon the assessment roll the name of another person as owner, that person may appeal to the Appeal Board in the same manner and upon the same grounds as if his name had appeared upon the assessment roll when the chief assessor issued his certificate under section 9.
- (6) A person entitled to appeal under subsection (5) shall give notice in writing of his appeal to the Appeal Board and the Deputy Minister
- (a) on or before the next following May 15th, if the notice prescribed by subsection (4) is sent from the office of the Deputy Minister on or before April 30th, or
 - (b) within 15 days from the date on which the notice prescribed by subsection (4) is sent from the office of the Deputy Minister, if such notice is sent after April 30th.

12. As soon as practicable after May 15th in each year, the Appeal Board

- (a) shall hear all appeals filed by owners and by the Deputy Minister, and
- (b) shall make such disposition of the appeals as it considers just.

12. Hearing and disposition of appeals.

13. (1) When the Appeal Board has disposed of the appeals mentioned in section 12, the Appeal Board

- (a) shall revise the assessment roll in accordance with its disposition of the appeals, and
- (b) shall cause to be attached to the revised assessment roll a certificate in Form B in the Schedule.

(2) The revised assessment roll and the certificate

- (a) is conclusive and binding on all owners mentioned in or affected by the revised assessment roll, and
- (b) shall not be questioned in any proceedings in any court as to any statement, matter or thing contained therein.

14. (1) Each year upon delivery of the assessment roll and after appeal and revision, if any, a tax shall be levied upon the assessed value of each owner's mineral right as shown on the assessment roll as certified by the chief assessor or by the Appeal Board, as the case may be, at such rate or rates on the dollar as the Lieutenant Governor in Council prescribes.

(2) The rates of tax may vary with respect to

- (a) different classes of mineral rights,
- (b) mineral rights with respect to different minerals, and
- (c) mineral rights in different areas of Alberta.

15. When the Lieutenant Governor in Council has fixed the rate or rates of tax pursuant to section 14, the Deputy Minister shall forthwith cause to be sent by mail to each person whose name appears on the assessment roll as the owner of an assessable mineral right a notice

- (a) describing the mineral right assessed,
- (b) stating the amount of tax payable in respect of the mineral right,
- (c) demanding payment of the tax by a specified date, and
- (d) containing a statement of the penalties prescribed by section 17, subsection (1).

16. Notwithstanding any other provision of this Act, no tax shall be levied on the assessed value of a mineral right where that assessed value is less than the amount prescribed by the regulations for the purposes of this section.

17. (1) Where the whole or any part of the tax levied under section 14 remains unpaid 30 days after the specified date in the notice under section 15, there shall be added to the unpaid tax a penalty consisting of a sum equal to 5 per cent of the unpaid tax.

13. Revised assessment roll.

14. Levy of tax.

15. Tax notice.

16. Exemption from tax.

17. Penalty on arrears.

- (2) When a penalty is added under subsection (1),
 - (a) the penalty forms part of the taxes due, and
 - (b) the taxes remaining unpaid are in arrears.
- (3) Where taxes or any part thereof are in arrears interest shall be charged thereon at the time any payment is made, at the rate of 8 per cent per annum calculated quarterly.
- (4) A payment made on account of taxes with respect to a mineral right shall be applied
 - (a) firstly, on the interest charged, if any,
 - (b) secondly, on the taxes in arrears, if any, and
 - (c) thirdly, on current taxes.
- (5) Nothing in this section extends the time for payment of the taxes nor impairs a remedy provided by this Act for the collection of the taxes.

18. The taxes and penalties payable pursuant to this Act constitute a charge upon the mineral right in respect of which they are payable and the charge so constituted has priority over other charges, mortgages, liens or encumbrances except a lien for wages filed under *The Builders' Lien Act*.

Tax Recovery

19. Where the taxes with respect to a mineral right are 30 days in arrears, the Deputy Minister or Superintendent may

- (a) send a notice by registered mail to the owner, at his address as shown in the records of the Land Titles Office, advising him that unless all taxes and penalties due and owing at the time of payment with respect to the mineral right are paid within 90 days from the date of the mailing of the notice, his certificate of title may be cancelled with respect to such mineral right and the mineral right vested in the Crown, and
- (b) mail a copy of the notice to each person shown by memorandum on the certificate of title as having an interest in the mineral right and at his address as shown in the records of the Land Titles Office.

20. (1) The Deputy Minister or Superintendent, within 30 days after mailing a notice to an owner under section 19, shall deliver or mail to the Registrar a tax arrears notification in duplicate stating

- (a) the name of the owner to whom the notice was sent,
- (b) the address of the owner to which the notice was sent, and
- (c) the description of the mineral right to which the notice referred.

18. Taxes constitute a charge.

19. Default notice re mineral titles.

20. Enforcement of tax collection against mineral right.

(2) The tax arrears notification delivered or mailed to the Registrar by the Deputy Minister or Superintendent may be in such form as the Deputy Minister may prescribe.

(3) Where a tax arrears notification relates to more than one owner to whom notices have been sent, the names of the owners, their addresses and the descriptions of their lands may be contained in a schedule to the notification.

(4) The Registrar shall

- (a) file the tax arrears notification,
- (b) endorse a memorandum thereof upon each certificate of title affected, and
- (c) return the duplicate copy of the tax arrears notification to the Deputy Minister.

(5) Where a tax arrears notification has been filed by the Registrar pursuant to subsection (4), the Registrar shall not cancel the certificate of title to the mineral right or mineral rights affected by the notification until it is discharged, except only under this section or section 23.

(6) Unless the taxes have been paid, the Deputy Minister within 60 days after the mailing of a notice to an owner pursuant to section 19, shall cause to be published in one issue of The Alberta Gazette a "Warning of Impending Cancellation of Title to Minerals".

(7) The warning shall be in Form C in the Schedule.

(8) If all taxes and penalties due under this Act together with a fee of \$3 for each certificate of title affected are paid to the Deputy Minister by or on behalf of the owner within 90 days after the date of the mailing of the notice under section 19 the Deputy Minister shall

- (a) pay the fee of \$3 for each certificate of title affected to the Registrar of the appropriate land titles office, and
- (b) instruct the Registrar to discharge the tax arrears notification in respect of each such certificate of title.

(9) The Registrar shall discharge the tax arrears notification forthwith and shall make a memorandum thereof upon each certificate of title affected.

(10) If at the expiration of 90 days after the date of the mailing of the notice under section 19 the taxes and penalties due and owing with respect to the mineral right and the fee of \$3 to discharge the tax arrears notification have not been paid, the Deputy Minister or Superintendent may deliver or mail to the Registrar a notice in Form D in the Schedule and upon receipt of any such notice the Registrar shall cancel the certificate of title of the owner with respect to that mineral right notwithstanding any other Act.

(11) When the certificate of title to a mineral right is cancelled under subsection (10) the title to the mineral right vests, free and clear of encumbrances, in the Crown in right of Alberta as represented by the Minister.

(12) When any mineral right in relation to which any prospecting, exploring, drilling or mining operations have at any time been conducted is vested in the Crown pursuant to subsection (11), all installations and fixtures, including casing placed within, upon or under the tract in connection with such operations, and being there when the mineral right vested in the Crown, also vest in the Crown free and clear of all encumbrances and become the property of the Crown in right of Alberta as represented by the Minister, irrespective of

- (a) whether the casing, installations or fixtures were the property of the owner of the mineral right, and
- (b) whether any notice has been delivered or sent to any person owning or having any interest in the casing, installations or fixtures.

21. Until the certificate of title with respect to the mineral right has been cancelled and the mineral right has vested in the Crown under section 20, the mineral right shall continue to be assessed and taxed.

General

22. (1) Where a person is registered as owner under *The Land Titles Act* of a specified undivided interest of less than the whole in a mineral right, any assessment, taxation or proceedings authorized with respect to a mineral right by this Act may be made, levied or taken with respect to his interest in the mineral right in the same manner as if he owned the mineral right in the whole of the tract and without regard to any other owner of an interest in the mineral right in the same tract.

(2) Where more than one person is registered under *The Land Titles Act* as the owner jointly or in common

- (a) of a mineral right, or
- (b) of a specified undivided interest of less than the whole in a mineral right,

all such persons shall be regarded as one owner for the purposes of this Act.

23. (1) An owner of a mineral right whose certificate of title is free and clear of encumbrances other than a charge under section 18 may with the prior consent of the Minister transfer the title to the mineral right to the Crown in right of Alberta.

21. Mineral right continues as taxable.

22. Multiple ownership.

23. Transfer to Crown.

(2) Where there is a transfer of title to a mineral right under subsection (1), the title vests in the Crown, upon the cancellation by the Registrar of the certificate of title of the owner with respect to that mineral right.

(3) Where the title vests in the Crown under subsection (2), the taxes and penalties outstanding against the mineral right under this Act shall be cancelled.

(4) A person who is the holder of an instrument that upon registration would vest title to a mineral right in him may transfer the mineral right to the Crown upon the terms and conditions applicable to an owner under subsections (1) to (3), if the instrument vesting title in him and the transfer to the Crown are submitted for registration at the same time.

24. (1) If anything to be done within a number of days or at or before a time fixed by or under this Act cannot be or is not so done, the Minister may from time to time by order appoint a further or other time for doing it, whether the time at or before or within which it ought to have been done has or has not arrived or expired, as the case may be.

(2) Anything done at or before or within the time specified in such order is as valid as if it had been done at or before or within the time fixed by or under this Act.

25. *The Mineral Taxation Act, 1972 is amended by striking out section 31 and by substituting the following:*

31. This Act applies only to the 1973 taxation year.

26. This Act comes into force on January 1, 1974.

SCHEDULE

FORM A

(Section 9)

THE FREEHOLD MINERAL TAXATION ACT

This is to certify the assessment roll hereto annexed for the year 19.... was completed on, 19....

Dated at this day of, 19....

.....
Chief Assessor

24. Extension to time.

25. Chapter 67 of the Statutes of Alberta, 1972 is amended.

FORM B

(Section 13)

THE FREEHOLD MINERAL TAXATION ACT

This is to certify the assessment roll hereto annexed is the assessment roll for the year 19.... as revised by the Mineral Assessment Appeal Board.

Dated at this day of, 19....

.....
*Chairman of the Mineral
Assessment Appeal Board*

FORM C

(Section 20)

THE FREEHOLD MINERAL TAXATION ACT
WARNING OF IMPENDING CANCELLATION OF
TITLE TO MINERALS

Take notice pursuant to *The Freehold Mineral Taxation Act*, as amended from time to time that unless all taxes and penalties due and owing under the said Act with respect to the mineral right or mineral rights contained in each certificate of title set out below are paid (on or before the date set out opposite that certificate of title), or (on or before the day of, 19.....) the certificate of title will be cancelled with respect to such mineral right or mineral rights and title vested in the Crown in right of Alberta as represented by the Minister of Mines and Minerals free and clear of all encumbrances.

Certificate of Title No.	Name of Registered Owner	Address of Registered Owner	Description of Land	Date after which Title may be cancelled

.....
*Deputy Minister of Mines
and Minerals*

FORM D

(Section 20)

THE FREEHOLD MINERAL TAXATION ACT
NOTICE

To the Registrar of the Alberta
Land Registration District.

Take notice pursuant to section 20 of *The Freehold Mineral Taxation Act*, as amended from time to time, that in respect of the mineral right or mineral rights contained in each certificate of title set out in the Schedule attached to this Notice, you are required to cancel the certificate of title of the owner in respect of such mineral right or mineral rights whereupon pursuant to the said section, title to the said mineral right or mineral rights, free and clear of all encumbrances, will vest in the Crown in right of Alberta as represented by the Minister of Mines and Minerals.

.....
*Deputy Minister of Mines and
Minerals or Superintendent, as the
case may be.*