

1976 Bill 240

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Second Session, 18th Legislature, 25 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 240**

**THE LAND SPECULATION TAX ACT**

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MR. TAYLOR

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**First Reading** .....

**Second Reading** .....

**Third Reading** .....

*Bill 240*  
*Mr. Taylor*

## **BILL 240**

1976

### **THE LAND SPECULATION TAX ACT**

*(Assented to \_\_\_\_\_, 1976)*

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

1. Any provision of this bill creating a tax shall come into effect only if and when a bill confirming the tax has been passed by the Assembly in accordance with its ordinary procedure.

2. For the purposes of this Act,

- (a) "appraised market value" means the appraised market value of designated land for the period immediately preceding the sale of the land by the person carrying out a speculation, such value to be appraised by an accredited member of The Appraisal Institute of Alberta or The Appraisal Institute of Canada;
- (b) "base value" means the price originally paid for designated land plus the cost of development or maintenance of the land and interest paid on money borrowed to purchase or develop the land, but shall not include any taxes paid on the land or on the development;
- (c) "control" means control by another corporation, individual or trust that is in fact exercising effective control, either directly or indirectly, and either through the holding of shares of the corporation or of any other corporation, or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means, whether of a like or different nature;
- (d) "designated land" means all lands situated in Alberta, any building, structures, fixtures or improvements on land, by whomsoever owned and every right, estate, interest, tenement or hereditament existing at law or an equity therein which is capable of being registered in any Land Titles Office in the Province, but does not include:

## **Explanatory Notes**

General: This bill is meant to serve the following purposes: to attempt to control the cost of land within the Province from excessive increases due to dealing in land for speculative purposes only; to control the amount of foreign investment in land, and to encourage the return of land that is at the present time held by foreign investors back into the Canadian market and the hands of Canadians.

**1.** Effective date of taxes.

**2.** Definitions.

- (i) any land in Alberta that is within the meaning of paragraph (c) of subsection 15 of section 66 of *The Income Tax Act (Canada)* as “Canadian resource property”, or
  - (ii) any land excluded by regulation, or
  - (iii) any interest held in land solely as security for some indebtedness secured by the land, or
  - (iv) any land which is the principal residence of the owner thereof.
- (e) “Disposition” or derivatives thereof when used with reference to designated land, means a disposition which has, or is deemed to have occurred with respect to designated land, and includes
- (i) sale or transfer, however effected, of any part of the beneficial interest in designated land,
  - (ii) sale, transfer or assignment of an option providing for the acquisition of designated land, or the transfer of designated land pursuant to the terms of any such option that has been exercised,
  - (iii) the entering into a lease or similar arrangement of any kind with respect to designated land where the terms of the lease or arrangement, including any renewals or extensions thereof, may exceed 20 years, and the sale, assignment or transfer of the rights under any such lease or arrangement exercisable by the lessee, or, in the case of an arrangement similar to a lease, by the person in a position similar to that of the lessee, if at the time of the sale, assignment or transfer of such rights the term remaining under such lease or arrangement, including any renewals or extensions thereof, may exceed 20 years, or
  - (iv) any change in the composition of the membership of or the persons beneficially interested in any corporation, partnership, firm, association, or other body, 50 per cent or more of the assets of which consist of designated land, if the effect of such change is that control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition is exercisable in fact by a different person or group of persons, or
  - (v) the sale or transfer in any manner of the beneficial interest in or the allotment and issue (other than an allotment and issue of shares made to the holders of all shares to which are attached rights to vote ordinarily exercisable at meetings of the shareholders of the corporation and issued in proportion to their owner-



ship of such shares determined immediately prior to such allotment and issue) of shares of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are shares in the capital stock of a corporation, 50 per cent or more of the assets of which consist of designated land, but this subclause does not apply to any transfer of the beneficial interest in such shares that occurs by reason of the death of the owner of them and that is not provided for by an agreement enforceable against the corporation that issued such shares, or enforceable by or against the person legally or beneficially entitled to such shares immediately following the death of the owner of the shares, or

- (vi) the amalgamation, merger, consolidation, or any other like agreement of any two or more corporations, 50 per cent or more of the assets of any one of which consist of designated land, that has the effect of making control over the use of the designated land or the proceeds of its disposition or of a subsequent disposition exercisable in fact and whether directly or indirectly by a different person or group of persons,

but for greater certainty disposition does not include any transfer of property for the purpose only of securing a debt or a loan, or any transfer by a creditor for the purpose only of returning property that has been used as security for a debt or loan, or any transfer of property by virtue of which there is change in the legal ownership of the property without any change in the beneficial ownership thereof;

- (f) "Minister" means the Minister of Municipal Affairs;
- (g) "notice" means notice by personal service or double registered mail;
- (h) "regulation" means a regulation made under or in connection with this Act;
- (i) "resident" means resident within the meaning of the *Income Tax Act (Canada)*;
- (j) "sale proceeds" means the gross proceeds from the disposition of land, without deduction of legal costs or real estate commission;
- (k) "speculation" means the holding of a parcel of designated land for a period of time for the purpose of making profit on re-sale, where no substantial use of the designated land is made within three years of its acquisition, development of the desig-



nated land only being deemed to be a use of the land where the development itself is used within one year of the completion of the development or where the completion of the development is not delayed for a time which the Minister deems to be without reasonable cause; however, land that has been substantially used for 75 per cent of the time it would normally be in use between acquisition and sale shall be deemed not to have been held for speculation;

- (l) "tax", unless otherwise expressly stated, means tax or taxes imposed by this Act, and the interest payable thereon;
- (m) "taxable value" of land means the amount by which the sale proceeds exceed the appraised market value or base value of the designated land as determined by section 4;
- (n) "use" includes clearing, filling, levelling, draining or otherwise improving land, and keeping in summer fallow only if it is in the normal practice of farming for the land to have been kept in summer fallow for the period of time in question.

**3.** The Minister shall have the authority to declare whether or not designated land has been or is being held for speculation. Designated land declared by the Minister to have been held, or currently being held for speculation, shall be subject to a speculation tax as follows:

- (a) 90 per cent of the taxable value of the land on its disposition to or by a non-resident of Canada, or to a resident of Canada, where the control of the resident purchasing the land will rest with a non-resident of Canada;
- (b) 70 per cent of the taxable value of the land on its disposition, when sold to a resident of Canada by a non-resident of Canada, where the control of the resident purchasing the land will rest with him or with another resident of Canada;
- (c) 50 per cent of the taxable value of the land on its disposition when sold to a resident of Canada by a resident of Canada where the control of the resident purchasing the land will rest with him or with another resident of Canada;
- (d) in a case where land has not been disposed of, 10 per cent of the appraised market value of the land for each year after the third year after the acquisition that the land remains unused or undeveloped or any development thereon remains unused or any development commenced thereon is delayed for a time which the Minister deems to be without reasonable cause.



**3.** Tax due where Minister has declared land to have been held or currently being held for speculation.

**4.** (1) The Minister shall charge such taxes on the basis of the appraised market value unless he receives by registered mail not less than 30 days prior to the sale of such land an application to have the taxes charged on the basis of the base value.

(2) An application sent to the Minister pursuant to subsection (1) shall contain a complete and comprehensive report of the base value of the land in question, and shall state the nature of any use or development thereof.

(3) The Minister shall allow or disallow any application made under subsection (1) within 30 days of receipt thereof.

**5.** Where a person objects to an assessment made under section 14 or to a decision pursuant to section 3, section 4, or section 16, he may, within 90 days of service of the notice of assessment or decision, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

**6.** Upon receipt of a notice of objection the Minister shall with all due dispatch reconsider the assessment or decision and cancel, confirm or vary it and give notice of his decision to the person who has made the objection.

**7.** If an assessment, declaration or decision by the Minister pursuant to section 3, 4, 14 or 16 has been objected to by notice to the Minister pursuant to section 5 and if agreement is not reached within 90 days between the person objecting and the Minister, the Minister's declaration or decision may be appealed by originating notice to a judge of the Supreme Court of Alberta, who may confirm, reverse or vary any declaration or decision of the Minister.

**8.** Where the owner of the land dies and

- (a) the land is held in his estate for a reasonable period of time to allow the distribution of the estate, or
- (b) the land passes by demise to a person on condition that the land shall not be sold or developed for a specific period of time,

the taxes set out in section 3, subsection (d) shall not apply for this period of time; however, taxes specified under section 3, subsections (a), (b) or (c) may be levied at the time of the disposition of such land by the person to whom the land passes.

**9.** Where, on the disposition of any land the value properly attributable to the land disposed of is determinable or ascertainable only by reference to the value of a larger

4. (1) Basis to be used for appraisal of market value.
- (2) Application to have taxes appraised on base value.
- (3) Time allotment on application.

**5, 6, 7.** Objections and appeals.

**8.** Disposition on death of owner of.

**9.** Value of land after subdivision.

amount of land of which that being disposed of is a part, the value attributed to the land being disposed of shall be apportioned in such reasonable manner as will reflect the relative value of the portion of the land being disposed of in its relation to the value of the larger amount of land.

**10.** (1) Taxes payable by the transferor of any land disposed of by him shall be paid at the time of the disposition of the land, and if not then paid, the taxpayer shall pay, 90 days after the disposition, or on the date of the completion of the transaction of which the disposition is a part, whichever is the later, interest at the rate of 9 per cent per annum.

(2) Notwithstanding subsection (1), the Minister may allow taxes to be paid over a period not to exceed five years, with interest at the rate of 9 per cent per annum, being charged on any unpaid portion.

**11.** A tax payable hereunder constitutes a debt to the Crown, and is payable to the Provincial Treasurer.

**12.** (1) No person in Alberta shall pay, deliver, assign or transfer to, or for the benefit of the transferor or of any other person at the direction of the transferor any money or property coming into his hands as solicitor or administrator, executor, trustee or other person acting in a fiduciary capacity, and by reason of the disposition of the land, without deducting therefrom or collecting from the transferor or ascertaining that some other person has retained or paid an amount sufficient to pay the tax due under this Act.

(2) Every administrator, executor, trustee or other person acting in a fiduciary capacity for the transferor, who makes or permits any payment, delivery, assignment or transfer referred to in subsection (1) without deducting or collecting or ascertaining that some other person has deducted or collected an amount sufficient to secure the tax is guilty of an offence and on summary conviction is liable to pay the Provincial Treasurer as a penalty an amount equal to 150 per cent of the amount of such tax.

(3) An administrator, executor, trustee or person acting in a fiduciary capacity for the transferor who has deducted or collected any money on account of the tax shall remit it to the Provincial Treasurer and is deemed to be the person accountable to the Crown therefor within the meaning of this Act.

**13.** Notwithstanding anything to the contrary in this Act where an attempt to dispose of designated land has been made and no buyer has been found, the Minister in his

**10.** Time for payment of taxes.

**11.** Tax constitutes a debt to the Crown.

**12.** Persons responsible for the collection of taxes.

**13.** No taxes charged on failure to sell land at a reasonable price.

discretion may decide whether or not the designated land has been offered for disposition at a fair market value and on reasonable conditions, and if no buyer is found the owner shall be exempt from tax payable under section 3 clause (d), for a period of one year which shall run from the day the property was advertised for sale.

14. (1) Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

(2) Where the Minister has made an assessment under subsection (1), he shall give notice of assessment to the persons so assessed, and the amount of the assessment shall be remitted to the Provincial Treasurer by the persons so assessed within 30 days of the date of giving notice of assessment.

(3) The Minister may at any time he considers reasonable assess or re-assess any tax payable by any person under this Act, and where the classification of land has been changed to a classification that would normally increase or decrease the value of the land prior to the date of its disposition, the Minister shall take this under consideration and order a new appraisal of the market value of the land.

(4) Where it appears on an inspection, audit, or examination of the books or accounts, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination under the powers of a warrant directing him to make such inspection, audit or examination, shall calculate the tax payable in such manner and form, and by such procedures as the Minister considers adequate and expedient, and the Minister shall assess the amount of tax.

(5) The Minister shall give notice of the assessment made under subsection (3) or (4) to the person so assessed at his latest known address, and the notice may provide that the amount of assessment is payable forthwith.

(6) Liability for tax is not affected by an incorrect or incomplete market value appraisal or by the fact that no market value appraisal has been made.

(7) The amount of the tax subject to being varied or vacated on an objection or appeal, and subject to a re-assessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceedings under this Act related thereto unless an appeal is made pursuant to section 7.

**14. Assesment of taxes due on land.**

(8) The amount of the tax is payable within the time required by notice of assessment, whether or not an objection or appeal of the assessment is made pursuant to section 7.

**15.** (1) Upon default of payment of any amount assessed under section 3 or section 14 which is not appealed or is confirmed on appeal, the Minister may cause an action to be brought for the recovery thereof.

(2) The Minister may issue a warrant directed to the sheriff of any county, district or judicial district in which any property of a person liable to make payment or remittance under this Act is located or situated for the amount of tax owing by him together with interest thereon from the date of issue of the warrant and the cost and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court of Canada.

**16.** (1) Every tax imposed on designated land by this Act, until paid, constitutes a special lien in favour of Her Majesty in right of Alberta upon the land and has priority over every claim, privilege, lien, encumbrance, right, title or interest of any person that arose or came into existence as part of or subsequent to the disposition of the designated land, and as a result of which tax was imposed on the designated land, and such special lien shall have priority over every execution in the hands of any sheriff or other officer that affects the designated land, whether the designated land was subject to the execution before or after disposition.

(2) The special lien conferred by this Act does not attach to any designated land disposed of where the Minister has given a certificate that no lien is claimed with respect to the land, but the giving of the certificate does not destroy the special lien or tax resulting from any disposition of the land occurring after the date as of which the certificate is given.

(3) Before the issuing of a warrant under section 15, subsection (2), the Minister shall give notice to all persons who have an interest, encumbrance or charge registered with the Registrar of Land Titles against the said land for the sale of which the warrant is to be issued that he intends to have the land that is subject to the special lien conferred by this Act sold pursuant to subsection (4), and such notice shall be given not less than 30 days nor more than 60 days before the issue of the warrant, and shall be sent, in the case of a notice sent by double-registered mail, to the last known address of each person to whom notice is to be given and to such other addresses as, in the opinion of the Minister, may be likely to bring the notice to the person's attention.



**15.** Recovery of tax.

**16.** Tax lien.

(4) Subject to subsection (3), the Minister may issue a warrant direct to the sheriff of the county, district or judicial district in which is situated any land that is subject to the special lien conferred by this Act, requiring the sheriff to sell the land within six months or such longer period as is stated in the warrant, and the sheriff, upon receiving the warrant, shall proceed within the period specified to sell the land in the same manner as for the sale under a writ of execution out of the Supreme Court of Alberta, and any person purchasing from the sheriff at such a sale shall take good title to the land, free and clear of all encumbrances and claims of any kind. However, when an appeal is made pursuant to section 7, of the notice to sell the land, the sheriff shall not attempt to sell or otherwise dispose of the land until such appeal has been determined.

(5) The proceeds received by the sheriff from a sale under such a warrant authorized by subsection (4) shall be applied first to paying the costs and expenses incurred by the sheriff in conducting the sale and next in payment of the amount of tax that was a special lien on the said land conferred by this Act, and any surplus thereafter remaining shall be paid in order of priority to those whose rights in the designated land were subject to the special lien, and if the order of priority cannot be established by the sheriff it shall be paid in to the Court and dealt with as the Court shall direct.

(6) At any time prior to the sale authorized by subsection (4), any person holding an interest in the land affected by the special lien conferred by this Act may pay to the Provincial Treasurer a sum sufficient to discharge the special lien, and if the special lien is discharged by some person having an encumbrance against the said land the amount accepted by the Provincial Treasurer may be added to that person's encumbrance, and shall, for all purposes in every court thereafter, be treated as part of the encumbrance and shall bear interest at the rate provided for in the encumbrance and shall be collectable in the same way as the encumbrance is enforceable.

(7) Upon such conditions as he may impose, the Minister may abandon, postpone, release or waive, with respect to all or any part of the said land, any special lien conferred by this Act.

**17.** Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Provincial Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years of the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

**17. Refund of taxes.**

**18.** The remedies for tax recovery in the *Income Tax Act (Canada)* shall apply, mutatis mutandis, to this Act.

**19.** (1) Every person who recklessly or knowingly makes any affidavit required hereunder that is false in some material particulars is guilty of an offence, and on summary conviction is liable to a fine of not less than \$100 plus the amount of the tax due to the Provincial Treasurer on the designated land or in respect of a disposition to which the affidavit relates.

(2) Every person who is required to remit to the Provincial Treasurer the tax imposed by this Act and who fails to remit such tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 plus the payment of the tax due to the Provincial Treasurer on the designated land or in respect of a disposition to which the affidavit relates.

(3) Any information in respect to an offence under this Act that may be for one or more than one offence and no information, warrant, conviction or other proceedings in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(4) Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable, for a first offence, to a fine of not less than \$25 or more than \$200, and for any subsequent offence to a fine of not less than \$100 or more than \$1,000.

(5) Every person

- (a) who knowingly makes, participates in, assents to, or acquiesces in the making of a false statement pursuant to this Act or the regulations, or
- (b) who, to evade payment of a tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of any record, document or thing relating to the disposition of the land, or
- (c) who in any manner wilfully evades or attempts to evade compliance with any act or payment of tax imposed by this Act, or
- (d) who conspires with any person to commit any offence described in clause (a), (b) or (c)

is guilty of an offence, and on summary conviction, in addition to any penalty otherwise provided by this Act, is liable to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax due on the land in respect of which the offence is committed, or to imprisonment for a term of not more than two years, or to both fine and imprisonment.

**18. Tax recovery.**

**19. Offences and penalties.**

(6) Any officer, director or agent of a corporation who directly authorizes, assents to, acquiesces in or participates in the commission by the corporation of any act which is an offence under this Act, or for which the corporation would be liable for prosecution under this Act is guilty of an offence and on summary conviction is liable to the penalty provided for the offence, whether or not the corporation has been prosecuted or convicted.

**20.** Where it is established to the satisfaction of the Minister that prior to the first day of June, 1976, there existed a written agreement providing for the disposition of land either

- (a) at a definite price or consideration the amount or value of which is set out in the agreement and is not determined or fixed by reference to any date or period of time after the first day of June, 1976, or
- (b) at a price or consideration the amount or value of which is determinable under the agreement by reference only to a valuation to be made with relation to value at a date not later than the first day of June, 1976.

no tax is payable by the transferor with respect to the disposition of the land; however, such agreement does not relieve the owner of any taxes imposed under section 3 subsection (d) of this Act.

**21.** The Registrar of Land Titles shall not register the transfer of any land unless there is filed with him

- (a) an affidavit by the transferor of the land stating that the land was his principal residence, or
- (b) a certificate issued by the Minister showing that no speculation tax is payable in respect to the said land, or
- (c) a certificate issued by the Minister showing the amount of the speculation tax that is payable on the transfer of the land, which must be accompanied by a statement by the Provincial Treasurer either that the tax has been paid or that arrangements satisfactory to the Minister have been made for the payment of tax.

**22.** The Minister may make regulations prescribing any written forms required for this Act.

**23.** The Lieutenant Governor in Council may make regulations

- (a) authorizing the refund of any tax and specifying

**20.** Agreements signed before the first day of June, 1976.

**21.** Land title not registered unless tax is cleared.

**22.** Minister to make regulations.

**23.** Lieutenant Governor to make regulations.

the conditions under which such refund may be made;

- (b) prescribing the evidence required to establish facts relevant to assessment or appraisal under this Act;
- (c) requiring any class of person to make returns respecting any class of information required under this Act;
- (d) providing for the payment of interest on any refund or on any payment of tax authorized by regulations and prescribing the rate of such interest and the method by which it is to be calculated;
- (e) providing for the temporary or permanent exemption of designated land from the application of this Act where special circumstances exist that would bring about significant hardship to an owner or prevent or delay development of the land if it were applied;
- (f) excluding any land from the definition of designated land;
- (g) that are considered necessary for the purpose of carrying into effect the provisions of this Act.

**24.** This Act comes into force on a date to be fixed by Proclamation.



**24. Coming into force.**