1977 BILL 42

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 42

THE ALBERTA INCOME TAX AMENDMENT ACT, 1977

THE PROVINCIAL TREASURER

First Reading .....

Second Reading .....

Third Reading .....

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THE ALBERTA INCOME TAX AMENDMENT ACT, 1977

(Assented to , 1977)

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

1. The Alberta Income Tax Act is hereby amended.

2. (1) Section 4 is amended

(a) as to subsection (3) by striking out clause (c) and by substituting the following:

(c) 26 per cent in respect of the 1975 and 1976 taxation years;

(d) 38.5 per cent in respect of the 1977 and subsequent taxation years.

(b) as to subsection (6), clause (b) by striking out subclause (ii) and by substituting the following:

(ii) the taxpayer's income earned in Alberta

(A) in the year, if section 114 of the federal Act is not applicable, or

(B) if section 114 of the federal Act is applicable, in the period or periods of the year referred to in paragraph (a) of that section,

minus any amounts deductible under section 110.1, section 111, subsection (1), paragraph (b) or section 112 of the federal Act for the year or such period or periods, as the case may be.

(2) Subsection (1), clause (b) applies to the 1976 and subsequent taxation years.

Explanatory Notes

1. This Bill will amend chapter 182 of the Revised Statutes of Alberta 1970.

2. Section 4(3)(c) and (6) presently read:

(3) For the purposes of this section, the percentage of the tax payable under the federal Act to be used for computing the tax payable under this section is

(c) 26 per cent in respect of the 1975 and subsequent taxation years.

(6) Where an individual resided in Alberta on the last day of a taxation year and had income for the year that included income earned in a country other than Canada in respect of which any non-business-income tax was paid by him to the government of a country other than Canada, he may deduct from the tax payable by him under this Act for that taxation year an amount equal to the lesser of

(a) the amount, if any, by which any non-business-income tax paid by him for the year to the government of such other country exceeds the amount claimed under the federal Act as a deduction for that taxation year by virtue of section 126, subsection (1) of that Act, and

(b) that proportion of the tax otherwise payable under this Act for that taxation year that

(i) the aggregate of the taxpayer's incomes from sources in that country

(A) for that year, if section 114 of the federal Act is not applicable, or

(B) if section 114 of the federal Act is applicable, for the period or periods in the year referred to in paragraph (a) of that section

on the assumption that

(C) no businesses were carried on by him in that country, and

3. Section 4.1 is struck out and the following is substituted:

4.1. The tax payable by an individual under section 4, subsection (1) or (2) shall be reduced

(a) for the 1975 and 1976 taxation years, by an amount equal to the lesser of

(i) the tax payable under section 4, subsection (1) or (2) for the taxation year, and

(ii) $80 minus 2 per cent of the individual's taxable income for that year;

(b) for the 1977 or any subsequent taxation year, by an amount equal to the lesser of

(i) the tax payable under section 4, subsection (1) or (2) for the taxation year, and

(ii) the aggregate of

(A) $116 minus one-half of the tax payable under section 4, subsection (1) or (2) for the taxation year, and

(B) the lesser of

(D) no amount was deducted under section 91, subsection (5) of the federal Act in computing his income for the year,

is of

(ii) the taxpayer's income

(A) for the year, if section 114 of the federal Act is not applicable, or

(B) if section 114 of the federal Act is applicable, for the period or periods in the year referred to in paragraph (a) of that section

minus any amounts deductible under section 111, subsection (1), paragraph (b) or section 112 of the federal Act for the year or such period or periods, as the case may be.

The amendment to section 4(3) will reflect the recent federal-provincial agreement regarding the transfer of income tax points to the provinces in respect of established program financing.

The new subclause (ii) of section 4(6)(b) is similar to the amendments to section 126(1) and (2.1) of the federal Act made by Bill C-22 enacted by Parliament on February 24, 1977. The effect of the amendment is to overcome the indirect effect on a taxpayer's foreign tax credit of deductions permitted for interest and dividend income of up to $1000.

3. Section 4.1 presently reads:

4.1 The tax payable by an individual under section 4, subsection (1) or (2) for the 1975 or any subsequent taxation year shall be reduced by an amount equal to the lesser of

(a) the tax payable under section 4, subsection (1) or (2) for the taxation year, and

(b) $80 minus 2 per cent of the individual's taxable income for that year.

The effect of the new section 4.1 will be to increase the benefits of the selective rate reduction as proposed in the Provincial Treasurer's budget address of March 11, 1977 and to further increase the benefit by extending a credit of $50 per dependant to lower income Alberta taxpayers.

(I) $300, and

(II) the product of $50 and the number of dependants claimed with respect to that taxation year.

4. Section 7 is amended by striking out subsection (2) and by substituting the following:

(2) Subsection (1) applies only in the case of an individual whose chief source of income throughout the averaging period was from farming or fishing.

5. (1) Section 8.3 is amended

(a) as to subsection (1), clause (b) by striking out the words ", if they are not separated and living apart pursuant to a judicial separation or a written separation agreement" *and by substituting the words* "except as provided by subsections (4.1) and (4.2)",

(b) as to subsection (2) by striking out clause (c) and by substituting the following:

(c) as a tenant residing in one or more eligible renter residences as his normal residence for a period of 120 days or periods totalling 120 days in the taxation year and who paid rent in respect of that period or those periods,

4. Section 7(2) presently reads:

(2) Subsection (1) applies only in the case of an individual who

(a) throughout the averaging period

(i) resided in Alberta, and

(ii) did not carry on a business with a permanent establishment (which, in this subsection, has the meaning given to that expression under the regulations made pursuant to section 120 of the federal Act) outside of Alberta,

or

(b) throughout the averaging period

(i) resided outside of Alberta, and

(ii) had no income other than his income from the carrying on of a business with a permanent establishment in Alberta and nowhere else.

Under section 7(2) as it stands, a taxpayer is only eligible to average his income from farming or fishing if he has lived in Alberta throughout the averaging period. This can result in a taxpayer who has changed his province of residence being ineligible to average his income for provincial tax purposes while remaining eligible to average it for federal tax purposes. The amendment would prevent such a situation arising. The farmer or fisherman would by the amendment be eligible for the averaging provision for provincial tax purposes if he was eligible for the averaging provision for federal tax purposes.

5. Section 8.3, subsections (1)(b), (2)(c) and (4) presently read:

8.3 (1) This section does not apply to

(b) the spouse of an individual who has received a refund or grant referred to in clause (a) or a credit under this section for the same taxation year, if they are not separated and living apart pursuant to a judicial separation or a written separation agreement;

(2) An individual, who

(c) resided in one or more eligible renter residences as his normal residence for an aggregate of 120 days during the taxation year,

is entitled to a renter assistance credit for that year in accordance with this section, the regulations made thereunder, the federal Act and the federal regulations.

(c) by striking out subsection (4) and by substituting the following:

(4) Subject to subsections (4.1) and (4.2), where two individuals are married to one another in a taxation year, only the spouse having the higher taxable income in the taxation year is entitled to a credit under this section for that year.

(4.1) Subsection (4) does not operate so as to disentitle an individual to a credit under this section for a taxation year if that individual became married in that year and would, in the absence of subsection (4), have been entitled to the credit for that year, but for the purposes of this subsection rent paid in that year after the marriage may be claimed only by the spouse having the higher taxable income for that year.

(4.2) Subsection (4) does not operate so as to disentitle an individual to a credit under this section for a taxation year if that individual

(a) lives apart from his or her spouse during all or part of that year pursuant to a judicial separation or a written separation agreement or as a result of a marriage breakdown, and

(b) would, in the absence of subsection (4), have been entitled to the credit for the year,

but for the purposes of this subsection, rent paid during cohabitation in any taxation year may be claimed only by the spouse having the higher taxable income for that year.

6. (1) Section 8.4 is amended

(a) as to subsection (1) by striking out clause (a) and by substituting the following:

(a) "attributed Canadian royalty income" of a taxpayer for a taxation year means the aggregate of

(i) the amounts required to be included in computing the taxpayer's income for the year by virtue of section 12, subsection (1), paragraph (o) of the federal Act, where those amounts relate to the production from oil or gas wells or bituminous sands deposits or oil sands deposits or to any right, licence or privilege to explore for, drill for or recover petroleum or

(4) Where two individuals are married to one another and are not separated and living apart pursuant to a judicial separation or a written separation agreement, only the spouse having the higher taxable income for the same taxation year is entitled to a credit under this section for that year.

The amendment to subsection (1)(b) is consequential to the proposed subsections (4), (4.1) and (4.2).

Subsection (2), clause (c) is rewritten to make it clear that the applicant for a credit must have paid rent in respect of his 120 day period of residence in addition to residing in an eligible renter residence for that period.

The proposed subsection (4.1) is intended to enable both spouses, in the year of marriage, to claim a renter assistance credit if otherwise eligible to do so.

Similarly, the proposed subsection (4.2) is intended to enable both spouses, in the event of separation by reason of marriage breakdown, to claim a renter assistance credit for the year in which they separated or any subsequent year during which they continue to be separated, if otherwise eligible to do so.

6. Section 8.4, subsections (1)(a), (4) and (8) presently read:

8.4. (1) In this section,

(a) "attributed Canadian royalty income" of a taxpayer for a taxation year means the aggregate of

(i) the amounts required to be included in computing the taxpayer's income for the year by virtue of section 12, subsection (1), paragraph (o) of the federal Act,

(ii) the amounts in respect of which no deduction is allowed in computing the taxpayer's income for the year by virtue of section 18, subsection (1), paragraph (m) of the federal Act,

natural gas or to explore for, mine, quarry, remove, treat or process bituminous sands or oil sands,

(ii) the amounts in respect of which no deduction is allowed in computing the taxpayer's income for the year by virtue of section 18, subsection (1), paragraph (m) of the federal Act, other than an amount described in section 66.2, subsection (5), paragraph (a) of the federal Act, where those amounts relate to the production from oil or gas wells or bituminous sands deposits or oil sands deposits or to any right, licence or privilege to explore for, drill for or recover petroleum or natural gas or to explore for, mine, quarry, remove, treat or process bituminous sands or oil sands,

(iii) any amounts by which the fair market value (as determined under section 69, subsection (8) of the federal Act) of petroleum, natural gas or related hydrocarbons (except coal) disposed of under dispositions referred to in section 69, subsection (6) of the federal Act, exceeds the proceeds of disposition, if any, actually received by him in respect of the petroleum, natural gas or related hydrocarbons so disposed of, and

(iv) any amounts by which the amount referred to in section 69, subsection (7) of the federal Act in respect of acquisitions of petroleum, natural gas or related hydrocarbons (except coal) referred to in that subsection exceeds the fair market value (as determined under section 69, subsection (9) of the federal Act) of the petroleum, natural gas or related hydrocarbons so acquired,

less the amount allowed to the taxpayer for the year under section 20, subsection (1), paragraph (v.1) of the federal Act in respect of oil or gas wells or bituminous sands deposits or oil sands deposits;

(b) by striking out subsection (4) and by substituting the following:

(4) A taxpayer may, in computing his tax payable under this Act for a taxation year, deduct his royalty tax rebate for the year.

(iii) the amount, if any, by which the fair market value of petroleum, natural gas or related hydrocarbons (except coal) disposed of by him and to which section 69, subsection (6) of the federal Act applies exceeds the proceeds, if any, of dispositions referred to in that subsection, and

(iv) any amounts by which the cost of acquisitions referred to in section 69, subsection (7) of the federal Act and incurred in the year exceeds the fair market value of the property so acquired,

where those amounts relate to the production from oil or gas wells or bituminous sands or oil sands or to any right, licence or privilege to explore for, drill for or recover petroleum or natural gas or to explore for, mine, quarry, remove, treat or process bituminous sands or oil sands, less the aggregate of

(v) any Canadian development expense as described in section 66.2, subsection (5), paragraph (a), subparagraph (iv) of the federal Act, and

(vi) the amount allowed to the taxpayer for the year under section 20, subsection (1), paragraph (v.1) of the federal Act in respect of oil or gas wells or bituminous sands or oil sands;

(4) A taxpayer may, at the time he applies for a royalty tax rebate for a taxation year, deduct his royalty tax rebate for the year from his tax otherwise payable under this Act for the year.

(8) A taxpayer is not entitled to a royalty tax rebate in respect of a taxation year unless application is made therefor by the taxpayer to the Provincial Treasurer in the manner and at the time prescribed by the Provincial Treasurer.

(c) by adding the following subsections after subsection (7):

(7.1) Where a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation of two or more corporations) from another corporation (in this subsection referred to as the "predecessor corporation") all or substantially all of the property of the predecessor corporation used by it in carrying on in Canada its business, the successor corporation shall, in determining its royalty tax rebate for a taxation year, be entitled to include in the calculation of its attributed Canadian royalty income for the year the lesser of

(a) the amount that, but for this subsection, the predecessor corporation would have been entitled to carry forward and use under subsection (5) or (6) in respect of its taxation year in which the property so acquired was acquired by the successor corporation, to the extent that such amount has not been included in the attributed Canadian royalty income of the successor corporation for a previous taxation year, and

(b) an amount equal to such part of its income for the year if no deduction were allowed under section 65, 66, 66.1 or 66.2 of the federal Act as may reasonably be regarded as attributable to the production of petroleum, natural gas or related hydrocarbons (except coal) from the property so acquired from the predecessor corporation,

and in respect of any such attributed Canadian royalty income included in the amount referred to in clause (a), no amount may be used by the predecessor corporation in determining its royalty tax rebate for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the successor corporation.

(7.2) Where a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired by purchase or otherwise (including an acquisition as a result of an amalgamation of two or more corporations) from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (7.1), all or substantially all of the property of the first successor corporation used by it in Canada in carrying on its business, the second successor corporation shall, in determining its

royalty tax rebate for a taxation year, be entitled to include in the calculation of its attributed Canadian royalty income for the year the lesser of

(a) the amount determined under subsection (7.1), clause (a) in respect of the first successor corporation to the extent that such amount has not been included in the attributed Canadian royalty income of the first successor corporation for its previous taxation year in which the property so acquired was acquired by the second successor corporation and has not been included in the attributed Canadian royalty income of the second successor corporation for a taxation year, and

(b) an amount equal to such part of its income for the year if no deduction were allowed under section 65, 66, 66.1 or 66.2 of the federal Act as may reasonably be regarded as attributable to the production of petroleum, natural gas or related hydrocarbons (except coal) from the property acquired from the first successor corporation's predecessor corporation within the meaning of subsection (7.1),

and in respect of any such attributed Canadian royalty income included in the amount referred to in clause (a), no amount may be used by the first successor corporation in determining its royalty tax rebate for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

(d) by striking out subsection (8) and by substituting the following:

(8) A taxpayer is entitled to a royalty tax rebate in respect of a taxation year only if application is made therefor by the taxpayer to the Provincial Treasurer at the time and in the manner prescribed by the Provincial Treasurer.

(2) Subsection (1), clauses (a) and (c) are applicable to the 1974 and subsequent taxation years.

(3) Subsection (1), clauses (b) and (d) apply to the 1977 and subsequent taxation years.

7. (1) Section 8.5 is amended

(a) by striking out subsection (9) and by substituting the following:

(9) Subsections (7) and (8) do not apply to a corporation (in this subsection called the "taxpayer corporation") for a taxation year in relation to another corporation with which it is associated in the year if throughout the year

(a) the taxpayer corporation

(i) was resident in Canada for the purposes of the federal Act, and

(ii) was not controlled directly or indirectly in any manner by one or more persons who are not resident in Canada for the purposes of the federal Act,

and

(b) the other corporation

(i) was a Canadian-controlled public corporation other than a corporation that controlled the taxpayer corporation, or

(ii) was controlled by a Canadian-controlled public corporation that is a corporation other than the taxpayer corporation or a corporation that controlled the taxpayer corporation.

(b) by adding the following subsections after subsection (10):

(10.1) For the purposes of subsection (9), a corporation is a Canadian controlled public corporation if

(a) for the purposes of the federal Act, it is resident in Canada,

(b) it is a corporation other than a corporation controlled directly or indirectly in any manner by one or more persons who are not resident in Canada for the purposes of the federal Act,

(c) a class or classes of equity shares of the corporation having full voting rights under all circumstances are listed on a prescribed stock exchange in Canada and the class or

7. Section 8.5, subsections (9) and (10) presently read;

(9) Subsections (7) and (8) do not apply to a corporation (in this subsection called the "taxpayer corporation") for a year in relation to another corporation with which it is associated in that taxation year if the taxpayer corporation was controlled by the other corporation at any time during that year and if, throughout that year,

(a) repealed 1975(2), c.58, s.4.

(b) the taxpayer corporation was, for the purposes of the federal Act, resident in Canada and controlled in Canada,

(c) a class or classes of equity shares of the taxpayer corporation having full voting rights under all circumstances were listed on a prescribed stock exchange in Canada and the class or classes represented in the aggregate not less than 50 per cent of that part of the paid-up capital of the taxpayer corporation that was represented by all its issued and outstanding equity shares, and

(d) no one person, either alone or in combination with any person related to him at any time within the year, owned equity shares representing in the aggregate more than 90 per cent of that part of the paid-up capital of the taxpayer corporation that was represented by all of its issued and outstanding equity shares.

(10) In subsection (9),

(a) "paid-up capital" and "equity share" have the meanings assigned to them respectively by section 89, subsection (1) and section 257, subsection (2) of the federal Act;

(b) "prescribed stock exchange in Canada" means a stock exchange in Canada that is prescribed for the purposes of any provision of the federal Act pursuant to the federal regulations.

classes represented in the aggregate not less than 50 per cent of that part of the paid-up capital of the corporation that was represented by all its issued and outstanding equity shares, and

(d) no one person, either alone or in combination with any person related to him within that year, owned equity shares representing in the aggregate more than 90 per cent of that part of the paid-up capital of the corporation that was represented by all its issued and outstanding equity shares.

(10.2) If, throughout the taxation year of a corporation that is associated with a taxpayer corporation referred to in subsection (9), the corporation and the taxpayer corporation complied with the conditions contained in subsection (9), clauses (a) and (b), the provisions of subsections (7) and (8) shall be deemed not to apply to the corporation for the year in relation to the taxpayer corporation.

(2) This section applies to the 1974 and subsequent taxation years.

8. Section 12, subsection (1) is amended

(a) by adding after clause (d) the following clause:

(d.1) an amount as a benefit under the *Unemployment Insurance Act, 1971* (Canada), or

(b) by adding the word "or" *at the end of clause (h),*

(c) by adding after clause (h) the following clauses:

(i) an adult training allowance under the *Adult Occupational Training Act* (Canada), or

(j) a payment out of or under a registered retirement savings plan or a plan referred to in section 146, subsection (12) of the federal Act as an "amended plan", or

(k) an amount as, on account or in lieu of payment of, or in satisfaction of, proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,

8. Section 12(1) presently reads:

12. (1) Every person paying

(a) salary or wages or other remuneration to an officer or employee, or

(b) a superannuation or pension benefit, or

(c) a retiring allowance, or

(d) an amount upon or after the death of an officer or employee, in recognition of his service, to his legal representative or widow or to any other person whatsoever, or

(e) an amount as a benefit under a supplementary unemployment benefit plan, or

(f) an annuity payment, or

(g) fees, commissions or other amounts for services, or

(h) a payment under a deferred profit sharing plan or a plan referred to in section 147 of the federal Act as a revoked plan,

at any time in a taxation year shall deduct or withhold therefrom such amount as may be prescribed and shall, at such time as may be prescribed, remit that amount to the Provincial Treasurer on account of the payee's tax for the year under this Act.

The amendments are intended to bring the Act into line with the source deduction provisions in section 153(1) of the federal Act as amended by Bill C-22 enacted on February 24, 1977.

9. Section 15, subsection (1), clause (b), subclause (i) is amended by adding the words "for the year or" *before the words* "for its immediately preceding taxation year".

10. This Act comes into force on the day upon which it is assented to.

9. Section 15(1) presently reads:

15. (1) Every corporation shall, during the 15-month period ending three months after the close of each taxation year, pay to the Provincial Treasurer

(a) either

(i) on or before the last day of each of the first 12 months in that period, an amount equal to one-twelfth of its tax payable for that year as estimated by it, or

(ii) on or before the last day of each of the first two months in that period, an amount equal to one-twelfth of its tax payable under this Act for the second taxation year preceding the year, and on or before the last day of each of the next following ten months in that period, an amount equal to one-tenth of the amount remaining after deducting the amount computed pursuant to this subclause in respect of the first two months in the period from its tax payable under this Act for the immediately preceding year, or

(iii) on or before the last day of each of the first 12 months in that period, an amount equal to one-twelfth of its tax payable under this Act for the immediately preceding year,

and

(b) the remainder of the tax as estimated by it under section 10

(i) on or before the last day of the period, where an amount was deducted by virtue of section 125 of the federal Act in computing the tax payable under Part I of that Act by the corporation for its immediately preceding taxation year, or

(ii) on or before the last day of the 14th month of the period, in any other case.

The amendment is made as a consequence of the amendment to section 157, subsection (1), clause (b), subclause (i) of the Federal Act made by Bill C-22 enacted by Parliament on February 24, 1977.