

1983 BILL 33

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 33

FREEHOLD MINERAL RIGHTS TAX ACT

THE MINISTER OF ENERGY AND
NATURAL RESOURCES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 33

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FREEHOLD MINERAL RIGHTS TAX ACT

(Assented to , 1983)

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

Definitions

1 In this Act,

(a) "appeal board" means the appeal board appointed under section 5(1);

- (b) “certificate of title” means a certificate of title granted pursuant to the *Land Titles Act*;
- (c) “default notice” means a default notice issued under section 13;
- (d) “Department” means the Department of Energy and Natural Resources;
- (e) “mineral” means a mineral as defined in the *Mines and Minerals Act*;
- (f) “mineral right” means an estate in fee simple in a mineral located in a tract;
- (g) “Minister” means the Minister of Energy and Natural Resources;
- (h) “owner” means the person who is named on a certificate of title as the registered owner of a mineral right;
- (i) “record” means a record as defined in the *Financial Administration Act*;
- (j) “Registrar” means a Registrar under the *Land Titles Act*;
- (k) “taxable mineral right” means a mineral right that is not exempt from taxation pursuant to the regulations;
- (l) “taxation year” means a calendar year;
- (m) “tract” means the land described in a certificate of title.

Liability for tax **2(1)** A tax in respect of each taxable mineral right, calculated by the Minister in accordance with the regulations, shall be paid to the Crown in right of Alberta in respect of each taxation year.

(2) The tax in respect of a taxation year shall be paid in accordance with the regulations on or before the prescribed date for payment.

Tax statement **3(1)** The Minister, on or before the prescribed date, shall send to the owner of a taxable mineral right a tax statement in the prescribed form stating the tax payable in respect of the taxable mineral right for a taxation year.

(2) Liability for tax under this Act is not affected by an error, omission or misdescription in a tax statement or by the non-receipt of a tax statement by the owner.

(3) If the Minister, as a result of receiving new information or corrected information, determines that the amount of tax calculated in respect of a taxable mineral right for a taxation year was incorrect, he may recalculate the tax in accordance with that information and send a new tax statement to the owner.

(4) If the Minister determines that there is an error in a tax statement, he may send a corrected tax statement to the owner.

(5) A tax statement under subsection (3) or (4) may be sent to the owner

(a) at any time if any misrepresentation has been made that is attributable to neglect, carelessness or wilful default, or if fraud has been committed in supplying any information under this Act, or

(b) in any other case, not more than 4 years after the end of the taxation year in respect of which it is sent.

(6) A tax statement under subsection (1), (3) or (4) shall be sent to the owner at his most recent address according to the records of the Department.

(7) If an owner has not received a tax statement within 14 days after the prescribed date under subsection (1), he may apply to the Minister for a copy of the relevant tax statement and the Minister shall provide him with a copy in accordance with the regulations.

Appeals

4(1) If the tax and any interest or penalties for a taxation year in respect of a taxable mineral right have been paid, the owner or a prescribed person may appeal the amount of the tax calculated by the Minister as payable for that taxation year.

(2) An appeal under subsection (1) shall be commenced by serving the Minister with a notice of appeal not later than the prescribed date.

Appeal board

5(1) The Minister shall appoint an appeal board not later than the prescribed date to hear the appeals made in respect of a taxation year.

(2) The appeal board may

(a) dismiss the appeal, or

(b) allow the appeal and

(i) vary the amount of the tax payable,

(ii) refer the matter back to the Minister for reconsideration and recalculation, or

(iii) order that no tax is payable.

(3) After hearing an appeal, the appeal board may order the taxpayer to pay or the Minister to refund any or all of the tax, interest or penalties.

(4) Proceedings before the appeal board shall be held in camera on request made to the board by the appellant.

Exemption from payment

6 Notwithstanding anything in this Act or the regulations, no tax is payable in respect of a taxable mineral right if the amount of that tax is less than the prescribed amount.

Records

7(1) A person required to do so by the regulations shall keep records in accordance with the regulations.

(2) The records shall be kept

(a) at the person's place of business in Alberta,

(b) if the person has no place of business in Alberta, at a place in Alberta prescribed by the regulations, or

(c) subject to any terms and conditions the Minister may impose, at a place in Alberta or elsewhere approved in writing by the Minister.

(3) The records shall be kept until the expiration of the 5-year period following the end of the taxation year to which the information contained in the records relates unless

(a) in the case of any particular records, the Minister consents in writing to their destruction before the end of the 5-year period, or

(b) the regulations authorize their destruction before the end of the 5-year period.

(4) Notwithstanding subsection (3), if the Minister is of the opinion that it is necessary for the administration of this Act, he may, by a direction sent by registered mail or served personally, require any person required to keep records to retain those records for any longer period that is specified in the direction.

(5) The records that are required to be kept by a person shall be made available by that person for inspection by the Minister or a person authorized by the Minister whether or not those records are in that person's possession.

Return of information

8 The Minister may, by a direction in writing, require any person required to keep records to submit to him, within the time stated in the direction, a written return showing in detail any information required by the direction if it pertains to any matter related to the calculation of tax payable on a mineral right for a taxation year.

Inspection of records

9(1) The Minister may apply ex parte to the Court of Queen's Bench for an order that the Minister or a person authorized by the Minister may, for any purpose related to the administration of this Act,

(a) enter at all reasonable times into any place where a business of a person required to keep records under this Act specified in the application or of an agent or employee of that person is carried on,

(b) examine or seize and take away a record that is part of the records of that person required to be kept under this Act,

(c) examine or seize and take away a record that, in the opinion of the Minister or person authorized by the Minister, will assist

him in determining the accuracy of the records that are required to be kept under this Act, and

(d) require a person at the place of business to give the Minister or person authorized by the Minister all reasonable assistance in carrying out his powers under clauses (b) and (c),

and the Court, on being satisfied that an order is necessary for the proper administration of this Act, may make any order it considers appropriate.

(2) The Minister or any person authorized by the Minister may make copies of records seized under subsection (1) and may, in lieu of returning the original of a record, provide the person from whom it was seized or his agent or employee with a copy of the record.

Communications
of records or
information

10(1) Except as provided under this Act, no person shall communicate or allow to be communicated any record or information obtained under this Act to a person not legally entitled to that information or allow any person not legally entitled to that record or information to have access to any record or information obtained under this Act.

(2) A person who knowingly receives records or information obtained under this Act holds the records or information subject to the same restrictions under subsection (1) that apply to the person from whom the records or information were obtained.

(3) Notwithstanding any other Act or law, no Minister of the Crown and no person who is or was employed or engaged in the administration or enforcement of this Act shall be required, other than in proceedings relating to the administration or enforcement of this Act, to give evidence relating to any record or information that is obtained under this Act or to produce anything containing that record or information.

Offences

11(1) A person who contravenes section 7 or 10 or a direction by the Minister under section 7(4) or 8 is guilty of an offence and liable to a fine of not more than \$5000.

(2) If a corporation is guilty of an offence under this section, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided under subsection (1), whether or not the corporation has been prosecuted or convicted.

Application
of payment

12(1) A payment made on account of tax with respect to a mineral right shall be applied

- (a) first, on the interest and penalties charged, if any,
- (b) 2nd, on the tax in arrears, if any, and
- (c) 3rd, on the current tax.

(2) Subject to subsection (1), if a person pays tax on account of 2 or more taxable mineral rights and does not specify the amount of the

payment to be applied to the tax payable in respect of each taxable mineral right, the Minister may apply the payment to reduce the tax payable in respect of any 1 or more of the taxable mineral rights.

Default notice

13(1) When the tax with respect to a mineral right is 90 days in arrears, the Minister may

(a) serve the owner with a default notice advising him that unless all tax, interest 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 service of the default notice, his certificate of title may be cancelled with respect to that mineral right and a new certificate of title issued vesting ownership of the mineral right in the Crown, and

(b) mail a copy of the default notice to each person shown by memorandum on the certificate of title as having an interest in the mineral right at his most recent address as shown in the records of the Department and the Land Titles Office.

(2) A default notice is deemed to have been served on an owner if it is sent by ordinary mail to the most recent address of that owner as shown on the records of the Department and the Land Titles Office.

Enforcement
of tax

14(1) The Minister, not more than 30 days after serving a default notice under section 13, shall send to the Registrar a tax arrears notification stating

(a) the name and address of the person on whom the default notice was served, and

(b) the description of the mineral right to which the default notice relates.

(2) The Registrar shall endorse a memorandum of the tax arrears notification on each certificate of title affected.

(3) On notification by the Minister that all taxes, interest and penalties outstanding under this Act have been paid to the Minister within 90 days after the mailing of the default notice under section 13, the Registrar shall discharge the tax arrears notification in respect of each certificate of title.

(4) Unless the taxes, interest and penalties have been paid, the Minister, after the mailing of a default notice under section 13 and not less than 30 days before a notice is sent under subsection (5), shall publish in 1 issue of The Alberta Gazette a "Notice of Intention to Assume Title to Mineral Right" in the prescribed form.

(5) If at the expiration of 90 days after the date of the service of the default notice under section 13(1)(a)

(a) the taxes, interest and penalties due and owing with respect to the mineral right have not been paid, and

(b) a notice has been published under subsection (4),

the Minister may send the Registrar a notice directing cancellation of the certificate of title.

(6) On receipt of the notice under subsection (5), the Registrar shall cancel the certificate of title of the owner with respect to the taxable mineral right and issue a certificate of title to that taxable mineral right in the name of the Crown as owner.

Title vests
in the Crown

15(1) When the certificate of title to a mineral right is cancelled under section 14(6), the title to the mineral right vests, free and clear of all estates, interests, liens and encumbrances, in the Crown in right of Alberta as represented by the Minister.

(2) When the title to a mineral right vests in the Crown in right of Alberta under subsection (1), any taxes, interest and penalties due and owing with respect to the mineral right are discharged.

Charge on
mineral right

16 Notwithstanding any statute, judgment or order, any tax, interest or penalty evidenced by a memorandum of a tax arrears notification on a certificate of title constitutes a charge on a taxable mineral right and cannot be discharged except under section 14(3) or by the vesting of the mineral right in the Crown under section 15.

Ownership of
wells, mines and
quarries

17(1) When a mineral right vests in the Crown in right of Alberta under section 15, there is also vested in the Crown, free and clear of all interests, charges and liens,

(a) any well in the tract and the installations and equipment, including casing, incidental to the well, if the well was used at any time prior to the vesting for the production of the mineral from the mineral right so vested or for any purpose incidental to that production, and

(b) any mine or quarry in the tract, if the mine or quarry was used at any time prior to the vesting for the mining or quarrying of the mineral from the mineral right so vested.

(2) Subsection (1) applies whether or not

(a) the well or its installations, equipment or casing or the mine or quarry, as the case may be, was the property of the former owner of the mineral right, and

(b) any default notice or other notice was sent or delivered to any person who owned or had an interest, charge or lien on the well or its installations, equipment or casing or the mine or quarry, as the case may be, immediately before the vesting.

Multiple
ownership

18(1) If a person is registered as owner under the *Land Titles Act* of a specified undivided interest of less than the whole in a taxable mineral right, tax is payable and any proceedings authorized with respect to the taxable mineral right may be taken with respect to the interest of that person in the taxable mineral right in the same manner as if that person owned the taxable mineral right in the whole of the tract and without regard to any other owner of an interest in the taxable mineral right in the same tract.

(2) If more than 1 person is registered under the *Land Titles Act* as owner jointly or in common

(a) of a taxable mineral right, or

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

all those persons shall be regarded as 1 owner for the purposes of this Act.

Tax certificate **19** An employee of the Department authorized by the Minister for the purpose shall,

(a) if requested to do so by any person, make a search in the records of the Department in respect of a taxable mineral right, and

(b) if required by any person and on receipt of the prescribed fee, issue a certificate showing whether or not all taxes, interest and penalties, if any, in respect of the taxable mineral right have been paid.

Change of ownership **20** The Registrar, in each month, shall provide the Minister with a copy of any certificate of title granted in respect of a mineral right during the preceding month.

Extension of time **21(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 has not been done within, at or before that time, 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 the order is as valid as if it had been done at or before or within the time fixed by or under this Act.

Acquisition by the Crown **22(1)** If

(a) the Crown in right of Alberta becomes, or before the commencement of this Act has become, the owner of a mineral right otherwise than pursuant to this Act or the *Freehold Mineral Taxation Act*,

(b) the Crown in right of Alberta is bound by an instrument executed by a predecessor in title to the Crown that grants the right to recover the mineral that is the subject of the mineral right,

(c) the instrument provides that the person to whom the right is granted is liable to the grantor for all or part of the taxes that would be payable under this Act if this Act applied to the mineral right, and

(d) the mineral right would, if this Act applied to it, be liable to taxation under this Act in a taxation year,

the Minister may send a tax statement to the holder of the instrument pursuant to section 3 in respect of that taxation year as if the mineral right were taxable under this Act, together with a demand for the payment to the Crown in right of Alberta of an amount equal to the tax or the portion of the tax for which the holder would have been liable to the grantor if the mineral right were taxable under this Act in that taxation year.

(2) If a tax statement referred to in subsection (1) is sent to the holder of the instrument, sections 3 to 12 apply to the tax statement and to the holder of the instrument as if the mineral right were taxable under this Act and as if the holder were the owner of the mineral right.

(3) If the holder of the instrument fails to pay the amount demanded by the Minister pursuant to subsection (1) within the time prescribed in the demand, the Minister has the same rights under the instrument in relation to the failure that the grantor of the instrument would have if the mineral right were taxable under this Act and the holder of the instrument failed to pay, in accordance with the instrument, all or part of the taxes payable under this Act.

Regulations

23(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the calculation and payment of the tax payable in respect of a mineral right or class of mineral rights;
- (b) exempting a mineral right or class of mineral rights from all or any of the provisions of this Act;
- (c) respecting the circumstances under which no tax is payable in respect of a mineral right or class of mineral rights;
- (d) respecting the imposition of interest and penalties;
- (e) respecting the payment of interest by the Crown on overpayments;
- (f) respecting the circumstances under which the Minister may waive or reduce the tax payable in respect of a taxable mineral right on any condition he may prescribe;
- (g) respecting appeals under section 4, the appointment and remuneration of members of an appeal board under section 5 and the practices and procedures of the appeal board;
- (h) respecting records to be kept by any person under this Act;
- (i) respecting the filing of returns;
- (j) prescribing those persons required to give the Minister information and the information they are required to give;
- (k) respecting those persons required to keep records under section 7(1) and the records they are required to keep;
- (l) respecting the communication of and access to records or information obtained under this Act;

(m) respecting any value required for the purposes of calculating tax under this Act, including prescribing the circumstances under which the Minister may determine that value;

(n) respecting the provision of copies of tax statements;

(o) prescribing anything required to be prescribed under this Act.

(2) A regulation made under this Act shall, if it so provides, be effective with reference to a period before it was made.

(3) A regulation made under this Act may, if it so provides, confer or impose a power or duty on the Minister for any purpose under the regulation.

Waiver of interest or penalties

24 The Minister may waive or reduce the interest or penalties payable in respect of a taxable mineral right.

Forms

25 The Minister may prescribe forms to be used under this Act.

Delegation

26 The Minister may delegate to any person any or all of the powers and duties conferred or imposed on him under this Act.

Application of Act

27(1) This Act applies to the 1983 and subsequent taxation years.

(2) The *Freehold Mineral Taxation Act* does not apply to a taxation year to which this Act applies.

Repeal

28 The *Freehold Mineral Taxation Act* is repealed on Proclamation.

In accordance with section 4(1) of the Interpretation Act, this Bill comes into force on the date it receives Royal Assent.