

1984 BILL 43

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 43

ALBERTA INCOME TAX AMENDMENT ACT, 1984

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 43

1984

ALBERTA INCOME TAX AMENDMENT ACT, 1984

(Assented to _____, 1984)

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 amended by this Act.*

2(1) *Section 1(1) is amended*

(a) *in clause (o) by striking out "Act" and substituting "Act, unless any provision of this Act provides otherwise";*

(b) *by adding the following after clause (p):*

(p.1) "new Act" means the *Alberta Corporate Income Tax Act*;

(c) *by adding the following after clause (v):*

(v.1) "refundable tax credit" means a tax credit to which an individual is entitled under section 10, 12 or 12.1;

(d) *by repealing clause (x) and substituting the following:*

(x) "taxable income" means

(i) in the case of a taxpayer, other than a corporation to which subclause (ii) applies, taxable income as determined in accordance with and for the purposes of the federal Act, and

(ii) in the case of a corporation to which the new Act applies, taxable income as determined in accordance with and for the purposes of the federal Act except that, in applying section 111 of the federal Act to the calculation of taxable income of a corporation for a taxation year to which this Act applies, where the amounts that the corporation desires to deduct pursuant to section 111 of the federal Act are non-capital losses, net capital losses, restricted farm losses or farm losses determined for the 1983 and subsequent taxation years of the corporation, section 111 of the federal Act shall be read as entitling the corporation to deduct only its non-capital losses, net capital losses, restricted farm losses and farm losses determined for the 1983 and subsequent taxation years as determined under the new Act and not as determined under the federal Act;

Explanatory Notes

1 This Bill amends chapter A-31 of the Revised Statutes of Alberta 1980.

2 Section 1(1)(o) and (x) presently read:

1(1) In this Act,

(o) "loss" means a loss as determined in accordance with and for the purposes of the federal Act;

(x) "taxable income" means taxable income as determined in accordance with and for the purposes of the federal Act subject to variation on objection or on appeal, if any, in accordance with the federal Act;

- (2) *Subsection (1)(b) applies after April 19, 1983.*
- (3) *Subsection (1)(c) applies to 1983 and subsequent taxation years.*
- 3 *The following is added after section 12.1:*

12.2 The aggregate of all royalty tax credits paid under this Act shall

- (a) be applied by the Provincial Treasurer to reduce non-renewable resource revenue, as defined in the *Alberta Heritage Savings Trust Fund Act*, and
- (b) be excluded from the total amounts used to determine the transfers required to be made to the Alberta Heritage Savings Trust Fund pursuant to section 5 of the *Alberta Heritage Savings Trust Fund Act* or any Special Act referred to in that section and enacted before or after the commencement of this section, notwithstanding anything in those Acts.

4(1) *Section 17 is amended*

- (a) *by repealing subsection (1) and substituting the following:*

17(1) The Provincial Treasurer shall, with all due dispatch, examine each return required to be filed under this Act and assess the tax for the taxation year and the interest and penalties, if any, payable and shall determine

- (a) the amount of tax, if any, deemed by section 6 to have been paid on account of the tax under this Act for the year,
- (b) the amount of the refund, if any, to which a trust or corporation is entitled pursuant to section 8 or 9 for the taxation year, and
- (c) the amount of the refundable tax credit, if any, to which an individual is entitled for the year.

- (b) *in subsections (1.1) and (1.2) by striking out “or restricted farm loss” wherever it occurs and substituting “, restricted farm loss or farm loss”;*

- (c) *by repealing subsection (1.3) and substituting the following:*

(1.3) For greater certainty, where the Provincial Treasurer makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year under this Act or, in the case of a corporation, under this Act or under the new Act, subject to the taxpayer's rights of objection and appeal in respect of the determination and subject to any redetermination by the Provincial Treasurer under this Act or, in the case of a corporation, under this Act or under the new Act, the determination is binding on both the Provincial Treasurer and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year.

3 Application of royalty tax credits.

4 Section 17(1), (1.1), (1.2), (1.3), (4) and (7) presently read:

17(1) The Provincial Treasurer shall, with all due dispatch, examine each return required to be filed under this Act and assess the tax for the taxation year and the interest and penalties, if any, payable.

(1.1) Where the Provincial Treasurer ascertains the amount of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year and that amount is different from the amount reported by the taxpayer in his return of income for that year, the Provincial Treasurer shall, at the request of the taxpayer, determine, with all due dispatch, the amount of the taxpayer's non-capital loss, net capital loss or restricted farm loss, as the case may be, and shall send a notice of determination to the person by whom the return was filed.

(1.2) The provisions of paragraphs 56(1)(l) and 60(o), Division I and Division J of the federal Act, as they relate to an assessment or reassessment and to assessing tax and reassessing tax, are applicable with all necessary modifications to a determination or redetermination and to determining and redetermining amounts under this Division, except that subsections (1) and (2) of this section are not applicable to determinations made under subsection (1.1) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year may be made by the Provincial Treasurer only at the request of the taxpayer.

(1.3) For greater certainty, where the Provincial Treasurer makes a determination of the amount of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year, as the case may be, subject to the taxpayer's rights of objection and appeal in respect of the determination and subject to any redetermination by the Provincial Treasurer, the determination is binding on both the Provincial Treasurer and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year.

(4) The Provincial Treasurer may at any time assess tax, interest or penalties under this Act or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for a taxation year and may

(d) by repealing subsection (4) and substituting the following:

(4) The Provincial Treasurer may, at any time, assess tax, interest or penalties under this Act or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for the taxation year and may determine the entitlement to and the amount, if any, of a taxpayer's refundable tax credit, and may

(a) at any time, if the taxpayer or person filing the return

(i) has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Provincial Treasurer a waiver in the prescribed form within 4 years from the day of mailing of a notice of an original assessment or a notification that no tax is payable for a taxation year,

(b) within 7 years from the day referred to in clause (a)(ii), if

(i) an assessment or reassessment of the tax of the taxpayer was required pursuant to subsection (7) or (7.1) or would have been required if the taxpayer had claimed an amount by filing the prescribed form referred to in those subsections on or before the day referred to in those subsections, or

(ii) there is reason, as a consequence of

(A) the assessment or reassessment of another taxpayer's tax pursuant to this clause or subsection (7) or (7.1), or

(B) in the case of a corporation, the assessment or reassessment under the new Act of the taxpayer's tax for a taxation year to which the new Act applies,

to assess or reassess the taxpayer's tax for any relevant year, and

(c) in any case other than those described in clauses (a) and (b), within 4 years from the day referred to in clause (a)(ii),

reassess or make additional assessments, or assess tax, interest or penalties under this Act and determine the entitlement to and the amount, if any, of the refundable tax credits, as the circumstances require, except that a reassessment, additional assessment or assessment may be made under clause (b) after 4 years from the day referred to in clause (a)(ii) only to the extent that it may reasonably be regarded as relating to the assessment or reassessment referred to in clause (b).

(a) at any time, if the taxpayer or some person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Provincial Treasurer a waiver in the prescribed form within 4 years from the day of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year,

and

(b) within 4 years from the day referred to in clause (a)(ii) in any other case,

reassess or make additional assessments or assess tax, interest or penalties as the circumstances require.

(7) Where a taxpayer has filed the return required by section 15 for a taxation year and, within 1 year from the day on or before which he was required by section 15 to file the return for that year, has amended the return by filing with the Provincial Treasurer a prescribed form claiming a deduction from income under section 111 of the federal Act in respect of non-capital losses, net capital losses or restricted farm losses sustained in the taxation year immediately following that year, the Provincial Treasurer shall reassess the taxpayer's tax for the year.

(e) by repealing subsection (7) and substituting the following:

(7) Where a taxpayer, other than a corporation to which subsection (7.1) applies, has filed for a particular taxation year the return required by section 15 and an amount is subsequently claimed by him or on his behalf for the year as

(a) a deduction under paragraph 3(e) of the federal Act, by virtue of his death in a subsequent taxation year and the consequent application of section 71 of the federal Act in respect of an allowable capital loss for the year,

(b) a deduction under section 41 of the federal Act in respect of his listed-personal-property loss for a subsequent taxation year,

(c) a deduction under section 110 of the federal Act in respect of a gift made in a subsequent taxation year or under section 111 of the federal Act in respect of a loss for a subsequent taxation year, or

(d) a deduction under subsection 127.3(1) of the federal Act in respect of his unused scientific research tax credit for a subsequent taxation year

by filing with the Provincial Treasurer a prescribed form amending the return, on or before the day on which the taxpayer is, or would be if a tax under this Act were payable by him for that subsequent taxation year, required by section 15 to file a return for that subsequent taxation year, the Provincial Treasurer shall reassess the taxpayer's tax for any relevant taxation year, other than a taxation year preceding the particular taxation year, in order to take into account the deduction claimed.

(7.1) Where a corporation has filed for a particular taxation year the return required by section 15 and an amount is subsequently claimed by it for the year as a deduction by virtue of the application of section 111 of the federal Act in respect of a loss determined under the new Act for a subsequent taxation year by filing with the Provincial Treasurer a prescribed form amending the return, on or before the day on or before which the corporation is required by section 36 of the new Act to file a return of income for that subsequent taxation year, the Provincial Treasurer shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the deduction claimed.

(2) Subsection (1)(a), (b) and (c) apply to the 1983 and subsequent taxation years.

(3) Subsection (1)(d) and (e) apply after April 19, 1983, except that where the subsequent taxation year referred to in section 17(7), as enacted by subsection (1)(e), is a taxation year ending after 1982, the prescribed form referred to in section 17(7) may be filed for the subsequent taxation year at any time on or before the later of

(a) the day on or before which it would be required by section 17(7) to be filed, and

(b) April 17, 1984.

5(1) The following is added after section 23:

23.1(1) Where, at any time, the Provincial Treasurer determines that as a consequence of the operation of section 6, 8, 9, 10, 12 or 12.1, an amount has been refunded or paid to a taxpayer for a taxation year

(a) in excess of the amount to which he was entitled as a refund, or

(b) in excess of the amount of the refundable tax credit to which he was entitled,

the following rules apply:

(c) the excess shall be deemed to be an amount that became payable by the taxpayer on the day on which the amount was refunded or the refundable tax credit was paid, as the case may be, and

(d) the taxpayer shall pay interest at the rate prescribed for the purposes of subsection 161(1) of the federal Act on the excess from the day it became payable to the date of payment.

(2) The Provincial Treasurer may, at any time, assess a taxpayer in respect of an amount payable by him by virtue of subsection (1) and the provisions of this Act are applicable, with any necessary modifications, in respect of an assessment made under this section as though it had been made under section 17.

(2) Subsection (1) applies with respect to amounts refunded or paid after 1983.

6(1) Section 25 is amended

(a) by repealing subsection (1) and substituting the following:

25(1) If, at any time after the day on or before which a return is required to be filed under section 15 for a taxation year,

(a) the amount of tax payable for the year exceeds

(b) the aggregate of all amounts each of which is an amount paid at or before that time on account of tax payable and applied as at that time by the Provincial Treasurer against the taxpayer's liability for an amount payable for the year,

the person liable to pay the tax shall pay interest on that excess for the period after April 19, 1983 during which it is outstanding at the rates per annum prescribed for the purposes of subsection 161(1) of the federal Act that are in effect from time to time during the period.

5 Interest on excess refunds.

6 Section 25(1) and (9) presently read:

25(1) If the amount paid on account of tax payable by a taxpayer under this Act for a taxation year before the expiration of the time allowed for filing the return for that year is less than the amount of tax payable for the year under this Act, the person liable to pay the tax shall pay interest at the rate per year prescribed for the purposes of subsection 161(1) of the federal Act on the difference between those 2 amounts from the expiration of the time for filing the return to the day of payment.

(9) When the taxpayer is entitled to deduct under section 111 of the federal Act in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), for the purpose of computing interest under subsection (1) or (2) on tax or a part or instalment of tax for the taxation year for any portion of the period in respect of which the interest is payable on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 of the federal Act in respect of that loss.

(b) *by repealing subsection (9) and substituting the following:*

(9) For the purpose of computing interest under subsection (1) or (2) on tax or a part or an instalment of tax for a taxation year,

(a) the tax payable by the taxpayer shall be deemed to be the amount that it would have been if none of the following amounts, namely,

(i) any amount deducted under paragraph 3(e) of the federal Act by virtue of his death in a subsequent taxation year and the consequent application of section 71 of the federal Act in respect of an allowable capital loss for the year,

(ii) any amount deducted under section 41 of the federal Act in respect of his listed-personal-property loss for a subsequent taxation year,

(iii) any amount excluded from his income for the year by virtue of section 49 of the federal Act in respect of the exercise of an option in a subsequent taxation year,

(iv) any amount deducted under section 110 of the federal Act in respect of a gift made in a subsequent taxation year or under section 111 of the federal Act in respect of a loss for a subsequent taxation year, or

(v) any amount deducted under subsection 127.3(1) of the federal Act in respect of his unused scientific research tax credit for a subsequent taxation year,

were so excluded or deducted for the year, as the case may be, and

(b) the amount by which the tax payable by the taxpayer for the year is reduced by virtue of the exclusion or deduction, as the case may be, of an amount described in clause (a)(i) to (v) shall be deemed to have been paid by the taxpayer on account of his tax payable for the year on the later of

(i) the day on which his return under section 15 was filed for that subsequent taxation year, and

(ii) the day on or before which he is, or would be if a tax under this Act were payable by him for that subsequent taxation year, required to file a return under section 15 for that subsequent taxation year.

(2) *Subsection (1)(a) applies after April 19, 1983.*

(3) *Subsection (1)(b) applies where the subsequent taxation year referred to in section 25(9), as enacted by subsection (1)(b), ends after 1982, except that in its application to a subsequent taxation year ending before April 20, 1983, the amount determined under section*

25(9)(b) shall be deemed to have been paid by the taxpayer on the first day immediately following the subsequent taxation year.

7(1) Section 28 is amended

(a) by repealing subsection (1)(b) and substituting the following:

(b) shall, with all due dispatch, make such a refund after mailing the notice of assessment if application for it has been made in writing by the taxpayer within

(i) the 7 year period referred to in section 17(4)(b), where that clause applies, and

(ii) in any other case, the 4 year period referred to in section 17(4)(c).

(b) in subsection (3)

(i) by striking out “overpayment is” and substituting “overpayment for a taxation year is”;

(ii) by repealing clauses (b) and (c) and substituting the following:

(b) the day on or before which the return for the year was required to be filed or would have been required to be filed if tax were payable for the year, and

(c) the day when the return for the year was filed,

(c) by adding the following after subsection (3):

(3.1) If, at any particular time, interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied, the following rules apply:

(a) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount, in this subsection referred to as “the amount payable”, that became payable under this Act by the taxpayer at the particular time;

(b) the taxpayer shall pay interest, at the rate prescribed for the purposes of subsection 161(1) of the federal Act, on the amount payable for the period beginning at the particular time and ending on the date of payment;

(c) the Provincial Treasurer may, at any time, assess the taxpayer in respect of the amount payable and, where the Provincial Treasurer makes that assessment, the provisions of this Act apply, with any necessary modifications, in respect of the assessment as though it had been made under section 17.

7 Section 28(1)(b), (2), (3), (6) and (7) presently read:

28(1) When the return required to be filed by a taxpayer for a taxation year is made within 4 years from the end of the year, the Provincial Treasurer

(b) shall make such a refund after mailing the notice of assessment if application for it has been made in writing by the taxpayer within 4 years from the end of the year.

(2) Instead of making a refund that might otherwise be made under this section, the Provincial Treasurer may, when the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify the taxpayer of that action.

(3) When an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at the rate per year prescribed for the purposes of subsection 164(3) of the federal Act shall be paid or applied thereon for the period commencing with the latest of

(a) the day when the overpayment arose,

(b) the day on or before which the return in respect of which the tax was paid was required to be filed, or

(c) the day when the return was actually filed,

and ending with the day of refunding or application, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

(6) For the purposes of this section, "overpayment" means

(a) the amount by which all amounts paid on account of tax, interest and penalties exceed all amounts payable on account of tax, interest and penalties,

(b) the amount of the renter assistance credit to which an individual is entitled less any amounts deducted under section 10(14), or

(c) the amount of the royalty tax credit to which an individual is entitled less any amounts applied under section 12(17).

(7) When a taxpayer is entitled to deduct under section 111 of the federal Act in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year") and the amount of the tax payable for the taxation year is relevant in determining an overpayment for the purpose of computing interest under subsection (3) for any portion of a period ending on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 of the federal Act in respect of that loss.

(d) by repealing subsection (6) and substituting the following:

(6) For the purposes of this section, “overpayment” of a taxpayer for a taxation year means

(a) the amount by which all amounts paid on account of his tax, interest and penalties under this Act for the year exceed all amounts payable by him on account of tax, interest and penalties for the year, or

(b) the amount of the refundable tax credits to which a taxpayer is entitled for the year less, in the case of the renter assistance credit, any amount deducted under section 10(14) and, in the case of royalty tax credit, any amount deducted under section 12(17).

(e) by repealing subsection (7) and substituting the following:

(7) For the purpose of computing interest under subsection (3), the portion of any overpayment of the tax payable by a taxpayer, other than a corporation to which subsection (7.1) applies, for a taxation year that arose as a consequence of

(a) the deduction of an amount under paragraph 3(e) of the federal Act, by virtue of his death in a subsequent taxation year and the consequent application of section 71 of the federal Act in respect of an allowable capital loss for the year,

(b) the deduction of an amount under section 41 of the federal Act in respect of his listed-personal-property loss for a subsequent taxation year,

(c) the exclusion of an amount from his income for the year by virtue of section 49 of the federal Act in respect of the exercise of an option in a subsequent taxation year,

(d) the deduction of an amount under section 110 of the federal Act in respect of a gift made in a subsequent taxation year or under section 111 of the federal Act in respect of a loss for a subsequent taxation year, or

(e) the deduction of an amount under subsection 127.3(1) of the federal Act in respect of his unused scientific research tax credit for a subsequent taxation year,

shall be deemed to have arisen on the later of

(f) the day on which his return under section 15 was filed for that subsequent taxation year, and

(g) the day on or before which the taxpayer is, or would be if tax under this Act were payable by him for that subsequent taxation year, required to file his return under section 15 for that subsequent taxation year.

(7.1) For the purpose of computing interest under subsection (3), the portion of any overpayment of the tax payable by a corporation to which section 17(7.1) applies for a taxation

year that arose as a consequence of the deduction of amounts by the application of section 111 of the federal Act, as made applicable for the purposes of this Act by section 1(1)(x) in respect of losses for subsequent taxation years determined under the new Act, shall be deemed to have arisen on the later of

(a) the day on which its return for the year under section 36 of the new Act was filed for that subsequent taxation year, and

(b) the day on or before which the corporation is required to file its return under section 36 of the new Act for that subsequent taxation year.

(2) *Subsection (1)(a) applies after April 19, 1983.*

(3) *Subsection (1)(b) and (c) apply with respect to interest paid or applied after April 19, 1983.*

(4) *Subsection (1)(d) applies to 1983 and subsequent taxation years.*

(5) *Subsection (1)(e) applies where the subsequent taxation year referred to in section 28(7) or (7.1), as enacted by subsection (1)(e), ends after 1982, except that in its application to a subsequent taxation year ending before April 20, 1983, the portion of any overpayment of the tax payable by a taxpayer, referred to in section 28(7) or (7.1), shall be deemed to have arisen on the first day immediately following the subsequent taxation year.*

8 *Section 3 is deemed to have come into force on April 1, 1984.*

In accordance with section 4(1) of the Interpretation Act, this Bill, except section 3, comes into force on the date it receives Royal Assent.

