

1987 BILL 46

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Second Session, 21st Legislature, 36 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 46**

**HOTEL ROOM TAX ACT**

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THE PROVINCIAL TREASURER

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 46*

## **BILL 46**

1987

### **HOTEL ROOM TAX ACT**

*(Assented to , 1987)*

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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) “accommodation” means lodging that is provided for a consideration in a hotel, motel, apartment building, hostel, lodging house, boarding house, club or other similar establishment, but does not include the following:

(i) lodging that is occupied by the same individual continuously for a period of 28 days or more;

(ii) lodging that is provided in an establishment in which there are fewer than 4 bedrooms available for rent separately;

(iii) a room that does not contain a bed and that is used for displaying merchandise, holding meetings or receptions or entertaining;

(iv) lodging that is provided in a social care facility, a nursing home or a hospital;

(v) lodging that is provided by a registered charity within the meaning of the *Income Tax Act* (Canada) other than in an establishment owned or operated by a registered charity that is normally used for lodging in connection with a course of instruction;

(vi) lodging that is provided to an employee by an employer who is not in the business of selling lodging in an establishment owned or managed by or on behalf of the employer;

(vii) other lodging that is exempted by the regulations;

(b) “Court” means the Court of Queen’s Bench;

(c) “documents” includes money, securities and any of the following whether computerized or not: books, records, letters, telegrams, vouchers, invoices, accounts and statements, financial or otherwise;

(d) “dwelling-house” means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes

(i) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway, and

(ii) a unit that is designed to be mobile and to be used as a permanent or temporary residence that is being used as a permanent or temporary residence;

(e) “judge” means a judge of the Court;

(f) “officer” means

(i) a member of the Royal Canadian Mounted Police,

(ii) a police officer,

- (iii) a special constable appointed under the *Police Act*, and
- (iv) any other person appointed by the Provincial Treasurer as an officer for the purposes of this Act;

(g) “operator” means a person who sells or offers for sale accommodation in Alberta;

(h) “person” includes a partnership, an Indian band and a Metis settlement association;

(i) “purchase price” means the consideration that is given for accommodation, and if the accommodation provided consists of lodging together with 1 or more meals, transportation or other goods or services or the consideration is other than money the purchase price is the price that is usually charged for or, in the Provincial Treasurer’s opinion, reasonably attributable to the lodging alone;

(j) “purchaser” means a person who acquires accommodation

- (i) for his own use, or
- (ii) for use by another person.

**Tax on purchaser** **2(1)** A purchaser shall pay a tax to the Provincial Treasurer at the rate of 5% of the purchase price of the accommodation.

(2) An operator shall collect, as an agent of the Provincial Treasurer for the collection of tax, the tax payable under this Act from the purchaser when the purchase is made.

(3) If the Crown in right of Alberta is a purchaser, it shall pay an amount equal to the tax it would pay if it were a natural person, which amount shall be treated as an amount of tax paid under this Act.

(4) Notwithstanding subsection (1), no tax is payable in respect of accommodation purchased for its own use by a country or state other than Canada, a political subdivision of that country or state, an agency of that country, state or political subdivision, or an accredited person representing that country, state or political subdivision in Canada.

**Remitting tax** **3** An operator who collects tax paid under section 2 shall remit it to the Provincial Treasurer in the manner and at the times prescribed in the regulations.

**Assessment of tax** **4(1)** The Provincial Treasurer may assess or reassess any tax payable by a purchaser under this Act within 3 years from the day the tax became payable, except that, if the purchaser has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed a fraud in making a return or in supplying any information under this Act or the regulations or in omitting to disclose any information, the Provincial Treasurer may assess or reassess tax imposed by this Act at any time he considers reasonable.

(2) Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(3) The Provincial Treasurer is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding a return or information so delivered, or if no return or information has been delivered, assess the tax payable under this Act.

Assessment  
of penalty

**5(1)** The Provincial Treasurer may assess against an operator who fails to collect or remit tax that he is required by this Act to collect and remit a penalty in an amount equal to the amount of tax that he failed to collect or remit.

(2) No penalty imposed under subsection (1) shall be imposed in respect of tax that should have been collected and remitted earlier than 3 years immediately preceding the day of the assessment under subsection (1), except that, if an operator has made a misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed a fraud in making a return or in supplying any information under this Act or the regulations or in omitting to disclose any information, the Provincial Treasurer may impose the penalty provided for in subsection (1) for tax that should have been collected and remitted earlier than 3 years prior to the date of the assessment under subsection (1).

Effect of  
assessment

**6(1)** A notice of an assessment made under section 4 or 5 may be served by sending it to the person against whom the assessment is made at his last address known to the Provincial Treasurer or by serving the notice on him personally.

(2) Unless it is varied or vacated on an objection or appeal,

(a) an assessment made under section 4 or 5 is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it, and

(b) the amount assessed in an assessment made under section 4 or 5 shall, for the purposes of collection and recovery, be deemed to be a tax owing under this Act and to be conclusively established as a debt due to Her Majesty in right of Alberta.

(3) Every person assessed under section 4 or 5 shall, within 30 days of the service of the notice of assessment, pay the amount assessed against him whether or not an objection to or appeal from the assessment is outstanding.

Interest

## **7 Interest is payable**

(a) by an operator in respect of an amount of tax that he fails to remit in accordance with this Act and the regulations,

(b) by a purchaser in respect of an amount of tax assessed against him under section 4 and that he fails to pay in accordance with this Act and the regulations, and

(c) by an operator in respect of a penalty he is liable to pay under section 5 and that he fails to pay in accordance with this Act and the regulations,

and the interest is payable over the period of time, at the rate and in the manner prescribed in the regulations.

Certificate  
of payment

**8(1)** A trustee in bankruptcy, assignee, liquidator, administrator, receiver, receiver-manager or any other similar person, in this section referred to as the “responsible representative”, administering, winding up, controlling or otherwise dealing with a property or business of a person who is an operator shall, before distributing any property over which he has control in his capacity as the responsible representative, obtain a certificate from the Provincial Treasurer certifying that all amounts

(a) for which the operator is liable under this Act up to the date of the certificate, and

(b) for the payment of which the responsible representative is or can reasonably be expected to become liable in his capacity as the responsible representative

have been paid or that security for the payment of the amounts has been accepted by the Provincial Treasurer.

(2) If a responsible representative distributes property over which he has control in his capacity as the responsible representative without obtaining a certificate under subsection (1) in respect of the amounts referred to in that subsection, the responsible representative is personally liable for the payment of those amounts to the extent of the value of the property distributed, and the Provincial Treasurer may assess the responsible representative for the amounts in the same manner and with the same effect as if it were an assessment under this Act of the operator for whose property or business he is responsible.

Amounts  
recoverable  
as debts

**9** Taxes, penalties and interest payable under this Act are recoverable by Her Majesty in right of Alberta in an action in debt.

Notice of  
objection

**10(1)** A person who objects to a notice of assessment under section 4 or 5 may, within 90 days of the day of mailing of the notice of assessment, serve on the Provincial Treasurer a notice of objection in the prescribed form setting out the reasons for the objection and the relevant facts.

(2) A notice of objection under this section shall be served by being sent by certified mail or registered letter addressed to the Provincial Treasurer.

(3) The Provincial Treasurer may accept a notice of objection under this section notwithstanding that it was not served in the manner required by subsection (2).

(4) On receipt of a notice of objection the Provincial Treasurer shall with all due dispatch reconsider the assessment and shall

(a) vacate, confirm or vary the assessment and notify the objector of his decision by certified mail or registered letter, or

(b) serve a new notice of assessment.

Notice of appeal

**11(1)** A person who has served a notice of objection under section 10 may appeal to the Court to have the assessment vacated or varied after

(a) the Provincial Treasurer has confirmed the assessment or served a new notice of assessment under section 10(4), or

(b) 90 days have elapsed after service of the notice of objection and the Provincial Treasurer has not acted under section 10(4),

but no appeal under this section may be instituted after the expiration of 90 days from the day a notification or notice under section 10(4) was mailed to the objector.

(2) An appeal to the Court shall be instituted by serving on the Provincial Treasurer a notice of appeal and by filing a copy of the notice of appeal with the clerk of the Court.

(3) A notice of appeal shall be served on the Provincial Treasurer by being sent by certified mail or registered letter addressed to the Provincial Treasurer.

(4) The notice of appeal shall be attached to the notice of objection and, for the purposes of section 14, shall be deemed to be a statement of claim.

Reply to notice of appeal

**12(1)** The Provincial Treasurer shall, within 60 days from the day the notice of appeal is received or within any further time that the Court may either before or after the expiration of that time allow, serve on the appellant and file in the Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of any further allegations of fact and of any applicable statutory provisions and any reasons he intends to rely on.

(2) The Court may strike out a notice of appeal or any part of the notice for failure to comply with section 11 and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(3) The Court may

(a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply, or

(b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time that it considers appropriate.

(4) If a notice of appeal is struck out for failure to comply with section 11 and a new notice of appeal is not filed as and when permitted by the Court, the Court may dismiss the appeal.

(5) If a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the Court within the time ordered, the Court may dispose of the appeal ex parte or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true.

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| Powers of Court        | <p><b>13(1)</b> On the filing of the material referred to in sections 11 and 12(1), (2) and (3) the matter shall be deemed to be an action in the Court.</p> <p>(2) A fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in any manner and on any terms that the Court may direct.</p> <p>(3) The Court may</p> <ul style="list-style-type: none"> <li>(a) dismiss the appeal, or</li> <li>(b) allow the appeal, and <ul style="list-style-type: none"> <li>(i) vacate the assessment,</li> <li>(ii) vary the assessment,</li> <li>(iii) restore the assessment, or</li> <li>(iv) refer the assessment back to the Provincial Treasurer for reconsideration.</li> </ul> </li> </ul> <p>(4) The Court may, in delivering judgment on an appeal, order payment or repayment of tax, interest, penalties or costs by the appellant or the Provincial Treasurer.</p>  |
| Practice and procedure | <p><b>14</b> Except as provided in the regulations, the practice and procedure of the Court, including the right of appeal and the practice and procedure relating to appeals to the Court of Appeal or the Supreme Court of Canada, apply to every matter deemed to be an action under section 13, and every judgment and order given or made in each such action may be enforced in the same manner and by like process as a judgment or order given or made in an action commenced in the Court.</p>   |
| Irregularities         | <p><b>15</b> An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of a person in the observation of a directory provision of this Act.</p>  |
| Demand for information | <p><b>16(1)</b> The Provincial Treasurer may, for any purpose related to the administration or enforcement of this Act or the regulations, by a notice served personally or by registered letter or certified mail</p> <ul style="list-style-type: none"> <li>(a) demand that an operator, or</li> <li>(b) when an operator is a partnership or corporation, demand that a partner or the president or another officer or manager, secretary or any director, agent or representative of the partnership or corporation,</li> </ul> <p>provide or produce any information or additional information or any document within a reasonable period of time stipulated in the notice.</p> <p>(2) The Provincial Treasurer may, for any purpose related to the administration or enforcement of this Act or the regulations, by a notice served personally or by registered letter or certified mail, demand that</p> <ul style="list-style-type: none"> <li>(a) a person holding an amount for or paying or liable to pay any amount to an operator, or</li> </ul> |



(b) a partner, president or other officer, director or agent of any person holding an amount for or paying or liable to pay any amount to an operator

provide or produce any information or additional information or any document within the reasonable period of time stipulated in the notice.

(3) The Provincial Treasurer may, by a notice served personally or by registered letter or certified mail, require the production by any person, or by his agent, of any document in the possession or in the control of that person or his agent within a reasonable period of time stipulated in the notice, for the purpose of determining what tax, if any, is payable or collectible under this Act by any person.

(4) If a person is served with a demand under subsection (1), (2) or (3) and he does not comply with the demand, the Provincial Treasurer, on 2 days' notice to the person, may apply to a judge and the judge may order the person to provide or produce the information or document, subject to the conditions the judge considers appropriate, if he is satisfied that

(a) the information or documents demanded are in the possession of or under the control of the person, and

(b) the information or documents demanded are relevant to the administration or enforcement of this Act or the regulations.

Powers of  
Provincial  
Treasurer

**17** The Provincial Treasurer may

(a) require an operator or purchaser, in a particular case,

(i) to keep any record,

(ii) to make any return, or

(iii) to comply with a specified method of accounting,

for a purpose related to the administration of this Act or the regulations;

(b) prescribe the form of any agreement or other document or form used in the administration of this Act;

(c) extend the time for making a return under this Act.

Records

**18** Every operator shall keep records in accordance with the regulations.

Inspection  
and audit

**19(1)** An officer may, at all reasonable times, for any purpose related to the administration of this Act,

(a) inspect, audit or examine the records of a person required to keep records under this Act and any document of that person or of any other person that relates or may relate to the information that is or should be in the records of the person required to keep records under this Act or to any amount payable by or to him under this Act, and

(b) require the production for inspection, audit or examination of all records or documents that are or may be relevant to the inspection, audit or examination,

and for those purposes the officer may, if he has reasonable grounds to believe that records or documents described in clause (a) or (b) are likely to be found in any premises or place,

(c) subject to subsection (3), enter into the premises or place, and

(d) require the owner or manager of the premises or place and any other person on the premises or at the place to give him all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and, for that purpose, require the owner or manager to attend at the premises or place with him.

(2) If, on an ex parte application by the Provincial Treasurer, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that there are in any premises or place other than a dwelling-house records or documents described in subsection (1)(a) or (b), and

(b) entry into the premises or place is necessary for the administration of this Act,

he may issue a warrant authorizing an officer named in the warrant to enter the premises or place and to exercise any of the powers referred to in subsection (1), subject to the conditions specified in the warrant.

(3) If the premises or place referred to in subsection (1)(c) is a dwelling-house, an officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (4).

(4) If, on ex parte application by the Provincial Treasurer, a judge is satisfied by information on oath

(a) that there are reasonable grounds to believe that a dwelling-house is the premises or place referred to in subsection (1)(c),

(b) that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, and

(c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry into it will be refused,

he may issue a warrant authorizing an officer named in the warrant to enter that dwelling-house subject to the conditions specified in the warrant but, if the judge is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration of this Act, he shall

(d) order the occupant of the dwelling-house to provide reasonable access to the officer to any records or documents that are being or should be kept in the dwelling-house, and

(e) make any other order that is appropriate in the circumstances to carry out the purposes of this Act

to the extent that access has been or may be expected to be refused and that the records or documents are being kept or may be expected to be kept in the dwelling-house.

(5) In executing a warrant issued under this section, the officer named in the warrant shall not use force unless he is specifically authorized to do so in the warrant.

Search warrant

**20(1)** A judge may, on ex parte application by the Provincial Treasurer, issue a warrant in writing authorizing any person named in the warrant to enter and search any building, receptacle or place for any document or thing that may afford evidence as to the commission of an offence under this Act and to seize and, as soon as practicable, bring the document or thing before, or make a report in respect of it to, a judge, who shall deal with it in accordance with this section.

(2) An application under subsection (1) shall be supported by information on oath establishing the facts on which the application is based.

(3) A judge shall issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act has been committed,

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found, and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

(4) A warrant issued under subsection (1) shall refer to the offence for which it is issued, shall identify the building, receptacle or place to be searched and the person alleged to have committed the offence and shall be reasonably specific as to the document or thing to be searched for and seized.

(5) Any person who executes a warrant under subsection (1) may seize, in addition to the document or thing referred to in subsection (1), any other document or thing that he believes on reasonable grounds affords evidence of the commission of an offence under this Act and shall as soon as practicable bring the document or thing before, or make a report in respect of it to, a judge, who shall deal with it in accordance with this section.

(6) Subject to subsection (7), if any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of it is made to a judge, the judge shall, unless the Provincial Treasurer waives retention, order that it be retained by the Provincial Treasurer, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

(7) If any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of it is made to a judge, the judge may, of his own motion or on summary application by a person with an interest in the document or thing, on 3 clear days' notice of the application to the Deputy Attorney General, order that the document or thing be returned to the person from whom it was

seized or to the person who is otherwise legally entitled to it if the judge is satisfied that the document or thing

(a) will not be required for an investigation or a criminal proceeding, or

(b) was not seized in accordance with the warrant or this section.

(8) The person from whom a document or thing is seized pursuant to this section is entitled, at all reasonable times and subject to any reasonable conditions that are imposed by the Provincial Treasurer, to inspect the document or thing and to obtain 1 copy of the document at the expense of the Provincial Treasurer.

Copies **21(1)** If any book, record, paper or other document has been seized, examined or produced under section 16, 19 or 20, the person by whom it is seized or examined or to whom it is produced or any officer of the Treasury Department may make, or cause to be made, 1 or more copies.

(2) A document purporting to be certified by the Provincial Treasurer or a person authorized by the Provincial Treasurer to be a copy made pursuant to this section shall be admitted in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Hindering officer **22** No person shall hinder, molest or interfere with any person doing anything that he is authorized by or pursuant to section 16 or 19 to 21 to do or prevent or attempt to prevent any person doing that thing and, notwithstanding any other law to the contrary, a person shall, unless he is unable to do so, do everything he is required by or pursuant to section 16 or 19 to 21 to do.

Administration of Act **23** The Provincial Treasurer shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act.

Security for amounts owing **24(1)** The Provincial Treasurer may, if he considers it advisable in a particular case, accept security for payment of debts due to Her Majesty in right of Alberta under this Act by way of mortgage or other charge of any kind on property of the person liable for the debt or any other person or by way of guarantee from other persons.

(2) If a person who has furnished security under subsection (1) requests in writing that the Provincial Treasurer surrender the security, the Provincial Treasurer shall surrender the security to the extent that the value of the security exceeds the aggregate of amounts payable under this Act by that person at that time.

Offence re documents and records **25** Any person who  
(a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, statement, record or other document delivered or made under this Act or the regulations,  
(b) destroys, alters, mutilates or disposes of the records of a person required to keep records under this Act,

- (c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in the omitting of material particular to those records,
- (d) wilfully evades or attempts to evade compliance with this Act or the regulations, or
- (e) conspires with any person to commit an offence described in clauses (a) to (d)

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable to a fine of not more than 300% of the tax sought to be evaded or to that fine and imprisonment for not more than 2 years.

|                             |  |
|-----------------------------|--|
| Failure to file return      | <b>26</b> A person who fails to deliver a return, or provide or produce information or a document as and when required by this Act or the regulations is guilty of an offence and liable to a fine in an amount determined by the judge for each day of default.   |
| Failure to pay or remit tax | <b>27</b> A person who contravenes section 2 or 3 is guilty of an offence and, in addition to any other penalty provided by this Act, is liable to a fine of not more than 300% of the tax required to be paid, collected or remitted, as the case may be, under section 2 or 3.   |
| General penalty             | <p><b>28</b> A person who contravenes a provision of this Act or the regulations for which a penalty is not otherwise provided is guilty of an offence and is liable</p> <ul style="list-style-type: none"> <li>(a) for a first offence, to a fine of not more than \$1000,</li> <li>(b) for a 2nd offence, to a fine of not more than \$2500, and</li> <li>(c) for a 3rd or subsequent offence, to a fine of not more than \$5000.</li> </ul>   |
| Limitation period           | <b>29</b> A prosecution for an offence under this Act or the regulations may be commenced within 4 years from the date of the contravention but not afterward.   |
| Regulations                 | <p><b>30(1)</b> The Lieutenant Governor in Council may make regulations</p> <ul style="list-style-type: none"> <li>(a) respecting the collection and remission of tax under this Act;</li> <li>(b) prescribing lodging or classes of lodging as not being accommodation for the purposes of this Act;</li> <li>(c) authorizing the Provincial Treasurer to enter into agreements with operators for the purpose of collecting tax under this Act;</li> <li>(d) prescribing the rate of interest and the manner of calculation of interest payable for the purposes of section 7;</li> <li>(e) prescribing any commission to be paid to operators for services related to the collection and remission to the Provincial Treasurer of tax under this Act;</li> <li>(f) authorizing the Provincial Treasurer to require the bonding of operators to secure the collection of tax under this Act and to prescribe the amount and form of the bonds, and providing for any other matter in connection with the bonds;</li> </ul> |

- (g) prescribing duties of operators in relation to the collection of tax under this Act;
- (h) respecting returns to be made to the Provincial Treasurer including the person required to make them;
- (i) respecting records to be kept under this Act;
- (j) prescribing anything required by this Act to be prescribed by regulation;
- (k) defining any word used in the Act or regulations and not defined in the Act.

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

Transitional

**31** *No tax is payable under this Act in respect of accommodation purchased before November 1, 1987 if the operator agreed before March 21, 1987 to provide the accommodation to the purchaser.*

Coming  
into force

**32** *This Act is deemed to have come into force on June 1, 1987.*