

BILL 26

2005

CORPORATE TAX STATUTES AMENDMENT ACT, 2005

(Assented to _____, 2005)

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

Part 1 Alberta Corporate Tax Act

Amends RSA 2000 cA-15

1 The *Alberta Corporate Tax Act* is amended by this Part.

2 Section 20(6)(e) is amended by striking out “if the reference in that subsection to paragraph 18(1)(l.1) were struck out”.

3(1) Section 26 is amended by adding the following after subsection (1.2):

(1.21) For the purposes of this Division, where a partnership exists, the following rules apply:

- (a) the partnership is deemed to be a separate person;
- (b) the determination of what constitutes partnership property of the partnership shall be made in accordance with the *Partnership Act*, notwithstanding that the partnership itself may be governed by the law of another jurisdiction.

(1.22) For the purposes of this Division, where at any time, any right or interest of any nature whatsoever or howsoever described or part thereof in any production from a petroleum or natural gas well in Alberta was disposed of to a partnership and became partnership property of the partnership, the right or interest or part thereof is deemed to have been disposed of to the partnership at that time and not to any member of the partnership.

(1.23) For the purposes of this Division, where any right or interest of any nature whatsoever or howsoever described or part thereof in any production from a petroleum or natural gas well in Alberta that was partnership property of a partnership, is disposed of at any time by that partnership, the right or interest or part thereof is deemed to have been disposed of by the partnership and not by any member of the partnership.

(2) Subsection (1) is deemed to be effective after April 6, 1986, except with respect to property disposed of pursuant to the terms of a contract, other than an option, entered into and enforceable on or before April 7, 1986.

4 Section 35(3) is amended by striking out “a corporation becomes” and substituting “a corporation referred to in subsection (1)(a) becomes”.

5 Section 37 is amended

(a) in subsection (1)(b) by adding “or an assessment was issued” after “was filed”;

(b) by repealing subsection (3) and substituting the following:

(3) Notwithstanding subsection (1), when a corporation has failed to comply with section 36.2, the corporation is liable to a penalty equal to the aggregate of

(a) 5% of the aggregate of any increase in tax and reduction in a refundable credit for that taxation year that was unpaid at the end of the 90-day period referred to in section 36.2, and

- (b) the product obtained when 1% of the aggregate of any increase in tax and reduction in a refundable credit for that taxation year that was unpaid at the end of the 90-day period referred to in section 36.2 is multiplied by the number of complete months, not exceeding 12, in the period between the date on which the information, amended return or return was required to be filed under section 36.2 and the date on which it was filed,

unless the Provincial Minister exercised the powers in section 43(1.2)(c), (d) or (e) pursuant to section 43(1.21) within 12 months from the end of the 90-day period referred to in section 36.2(1).

6 Section 39(3)(b) is amended by striking out “and” at the end of subclause (iii), by adding “and” at the end of subclause (iv) and by adding the following after subclause (iv):

- (v) if, as a consequence of an assessment action as defined in section 43(1.1), the Provincial Minister reassesses the corporation’s tax for the year to take into account the exclusion or deduction and subclauses (iii) and (iv) do not apply, the day on which the reassessment is issued.

7 The following is added after section 39.2:

Period where interest not payable

39.3 Notwithstanding any other provision of this Act, if the Provincial Minister notifies a corporation that the corporation is required to pay a specified amount under this Act and the corporation pays the specified amount in full before the end of the period that the Provincial Minister specifies in the notice, interest is not payable on the specified amount for the period.

8(1) Section 43 is amended

- (a) in subsection (3.1)

(i) **by striking out** “39 or 39.01 of the *Mines and Minerals Act*, the Minister of Resource Development” **and substituting** “38 or 39 of the *Mines and Minerals Act*, the Minister responsible for that Act”;

(ii) **by striking out** “26(1)(c)(i) or (ii)” **and substituting** “26(1.01)(a) or (b)”;

(b) **in subsection (3.3) by striking out** “section 39 or 39.01” **and substituting** “section 38 or 39”.

(2) Subsection (1)(a)(ii) is deemed to have come into force on January 1, 2003.

9 Section 47 is amended

(a) by adding the following after subsection (4.2):

(4.21) Notwithstanding subsection (4), where

- (a) a reassessment is issued pursuant to section 43(1.2) or (1.21) in response to an assessment action,
- (b) all or part of the assessment action resulted from a response to a notice of objection filed with another jurisdiction by a large corporation within the meaning assigned by subsection 225.1(8) of the federal Act, and
- (c) the corporation did not file a notice of objection with the Provincial Minister as required by section 48(1.01),

the interest payable under this section on any overpayment resulting from the reassessment shall be reduced by the lesser of

- (d) 5% of the interest as otherwise calculated, and
- (e) \$10 000.

(4.22) Notwithstanding section 43(1), the Provincial Minister may reassess interest at any time to give effect to subsection (4.21).

(b) in subsection (6) by striking out “and” at the end of clause (f), by adding “and” at the end of clause (g) and by adding the following after clause (g):

(h) if, as a consequence of an assessment action as defined in section 43(1.1), the Provincial Minister reassesses the corporation’s tax for the year to take into account the exclusion or deduction and clauses (f) and (g) do not apply, the day on which the reassessment is issued.

10 Section 48 is amended

(a) by adding the following after subsection (1):

(1.01) Notwithstanding subsection (1), a corporation that is a large corporation in a taxation year within the meaning assigned by subsection 225.1(8) of the federal Act that objects to an assessment under this Act must serve on the Provincial Minister a notice of objection in the prescribed form on or before the day that is 90 days after the day of mailing of the notice of assessment.

(b) in subsection (1.1)(a) by striking out “47(4.4)” and substituting “47(4.22) or (4.4)”;

(c) by repealing subsection (1.111).

11(1) Section 49.1 is amended

(a) in subsection (1) by striking out “and the corporation is not entitled by virtue of the application of subsection 61.3(3) of the federal Act to deduct an amount under this Act by virtue of the application of section 61.3 of the federal Act” and substituting “and the corporation is prevented by subsection 61.3(3) of the federal Act from deducting an amount under section 61.3 of the federal Act as it applies for the purposes of this Act”;

(b) by adding the following after subsection (2.1):

(2.2) Where a corporation has transferred property, either directly or indirectly, by means of a trust or any other means, to

a person with whom the corporation was not dealing at arm's length, the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

- (a) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair

market value at that time of the consideration given for the property, and

- (b) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Provincial Minister has made an assessment under subsection (3) for that amount or not) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

- (c) **in subsection (3) by adding** “with respect to a corporation” **after** “been made”.

(2) Subsection (1) is effective with respect to transfers of property on or after the day this section comes into force.

12 Section 56(1)(f) is amended by striking out “Minister of Resource Development” **and substituting** “Minister responsible for the *Mines and Minerals Act*”.

13 Section 67(1) is amended by striking out “Department of Revenue” **and substituting** “Department of Finance”.

14 Section 82(4) is amended by striking out “Department of Revenue” **and substituting** “Department of Finance”.

15 Section 85(5) is repealed.

16(1) Section 119 is amended

- (a) in subsection (2.1) by striking out** “39 or 39.01 of the *Mines and Minerals Act*, the Minister of Resource Development” **and substituting** “38 or 39 of the *Mines and Minerals Act*, the Minister responsible for that Act”;
- (b) in subsection (2.1) by striking out** “106(1)(a)(i) or (ii)” **and substituting** “106(1.01)(a) or (b)”;
- (c) in subsections (2.2) and (2.3) by striking out** “39 or 39.01 of the *Mines and Minerals Act*” **and substituting** “38 or 39 of the *Mines and Minerals Act*”;
- (d) in subsection (3) by striking out** “106(1)(a)” **and substituting** “106(1.01)”.

(2) Subsection (1)(b) and (d) are deemed to have come into force on January 1, 2003.

17 In the following provisions, “Minister of Revenue” is struck out wherever it occurs and “Provincial Minister” is substituted:

section 14;
section 14.3;
section 16.2;
section 39.2;
section 41;
section 43;
section 44.1;
section 44.2;
section 47(2);
section 48(1.1);
section 49;
section 60.1;
section 61(3.2);
section 67(2);
section 82(4).

Part 2
Blue Cross Statutes
Amendment Act, 2004

18 The *Blue Cross Statutes Amendment Act, 2004* is amended by this Part.

19(1) Section 1(8) is amended in the new section 12.1 by adding the following after subsection (1):

(1.1) If in respect of a taxation year the Corporation is entitled to a refund in accordance with the regulations because

- (a) the amount of instalments paid by the Corporation in a taxation year was greater than the actual payment required under the regulations, or
- (b) under the regulations the Corporation would have been entitled to a refund if it had been required to pay tax under the *Alberta Corporate Tax Act* or the *Income Tax Act* (Canada), or both,

the refund may be paid out of the General Revenue Fund.

Part 3
Coming into Force

20 Sections 9(a) and 10 come into force on Proclamation.

Explanatory Notes

Part 1
Alberta Corporate Tax Act

1 Amends chapter A-15 of the Revised Statutes of Alberta 2000.

2 Section 20 presently reads in part:

(6) The net amount available for a taxation year in respect of the corporation's unsuccessored pool is the amount determined by the formula

(e) any amount that would be deemed to have been payable in the year by a trust to the corporation as beneficiary of the trust under subsection 104(29) of the federal Act if the reference in that subsection to paragraph 18(1)(l.1) were struck out, exceeds the aggregate of

3 Section 26 presently reads in part:

(1.2) For the purposes of subsection (1)(h)(i), a right or interest or part of a right or interest is deemed not to be owned by a partnership unless there was in existence on August 24, 1982 a

written agreement of partnership together with any other evidence that, in the opinion of the Provincial Minister, is sufficient to establish that the right or interest or part of the right or interest was intended by each of the members of the partnership to be owned by the partnership and not by the members.

4 Section 35 presently reads in part:

(3) Where, at any time (in this subsection referred to as "that time"), a corporation becomes or ceases to be exempt from tax under this Act on its taxable income otherwise than by reason of paragraph 149(1)(t) of the federal Act, as it applies for the purposes of this Act, the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time is deemed to have ended immediately before that time, a new taxation year of the corporation is deemed to have begun at that time and, for the purpose of determining the corporation's fiscal period after that time,

the corporation is deemed not to have established a fiscal period before that time;

- (b) for the purpose of computing the corporation's income for its first taxation year ending after that time, the corporation is deemed to have claimed or deducted, under sections 20, 138 and 140 of the federal Act, as they apply for the purposes of this Act, in computing its income for its taxation year ending immediately before that time, the greatest amount that could have been claimed or deducted for that year as a reserve under those sections;*
- (c) the corporation is deemed to have disposed, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before that time, of each property that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;*
- (d) for the purposes of applying section 23 of this Act and sections 37, 65 to 66.4, 66.7 and 111 of the federal Act, as they apply for the purposes of this Act, to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time;*
- (e) where, immediately before the disposition time, the corporation's cumulative eligible capital in respect of a business exceeds the total of*

 - (i) 3/4 of the fair market value of the eligible capital property in respect of the business, and*
 - (ii) the amount otherwise deducted under paragraph 20(1)(b) of the federal Act, as it applies for the purposes of this Act, in computing the corporation's income from*

the business for the taxation year that ended immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) of the federal Act, as it applies for the purposes of this Act, in computing the corporation's income from the business for the taxation year that ended immediately before that time.

5 Section 37 presently reads in part:

37(1) A corporation that has failed to file a return for a taxation year as and when required by this Act is liable to a penalty equal to the aggregate of

(a) an amount equal to 5% of the amount by which the aggregate of

(i) the tax for the year that was unpaid when the return was required to be filed, and

(ii) the amounts paid or applied to the corporation under section 26.4 for the year

exceeds the aggregate of

(iii) the royalty tax credit to which the corporation is entitled for the year, and

(iv) the amounts paid by the corporation under section 38(8) for the year on or before the day on which the return was required to be filed,

and

(b) the product obtained when 1% of the amount by which the aggregate of clause (a)(i) and (ii) exceeds the aggregate of clause (a)(iii) and (iv) is multiplied by the number of complete months, not exceeding 12, in the period between the date on which the return was required to be filed and the date on which the return was filed.

(3) Notwithstanding subsection (1), when a corporation has failed to comply with section 36.2, the corporation is liable to a penalty equal to the aggregate of

- (a) 5% of the aggregate of any increase in tax and reduction in a refundable credit for that taxation year that was unpaid at the end of the 90-day period referred to in section 36.2, and*
- (b) the product obtained when 1% of the aggregate of any increase in tax and reduction in a refundable credit for that taxation year that was unpaid at the end of the 90-day period referred to in section 36.2 is multiplied by the number of complete months, not exceeding 12, in the period between the date on which the information, amended return or return was required to be filed under section 36.2 and the date on which it was filed.*

6 Section 39 presently reads in part:

(3) For the purpose of computing interest under subsection (1) or (2) on tax or a part of an instalment of tax for a taxation year and for the purpose of section 73.1,

- (b) the amount by which the tax payable by the corporation for the year is reduced as a consequence of the deduction or exclusion of amounts described in clause (a) is deemed to have been paid by the corporation on account of tax payable for the year on the day that is the latest of*
 - (i) the first day immediately following that subsequent taxation year,*
 - (ii) the day on which the corporation's return under section 36 for that subsequent taxation year was filed,*

- (iii) *if an amended return for the taxation year or a prescribed form amending its return for the year was filed under this Act by virtue of the application of subsection 49(4) of the federal Act or section 44 of this Act, the day on which the amended return or prescribed form was filed, and*
- (iv) *if, as a consequence of a request, the Provincial Minister reassessed the corporation's tax for the year to take into account the exclusion or deduction, the day on which the request was made.*

7 Period where interest not payable.

8 Section 43 presently reads in part:

(3.1) Subject to subsection (3.2), if in a particular taxation year a corporation is notified that, pursuant to section 39 or 39.01 of the Mines and Minerals Act, the Minister of Resource Development has recalculated or made additional calculations that change an amount referred to in section 26(1)(c)(i) or (ii) for a previous taxation year in respect of which the normal reassessment period has expired, the Provincial Minister, notwithstanding subsection (1) and within the normal reassessment period for the particular taxation year, may

- (a) *assess, reassess or make additional assessments of tax, interest or penalties with respect to the previous taxation year, and*
- (b) *determine or redetermine the entitlement to and the amount, if any, of the royalty tax credit of the corporation for the previous taxation year.*

9 Section 47 presently reads in part:

(4.2) Interest required to be paid or applied under subsection (4) shall be paid out of or charged to the General Revenue Fund.

(6) For the purpose of computing interest under subsection (4), the portion of any overpayment of the tax payable by a corporation for a taxation year that arose as a consequence of

- (a) the deduction of an amount under this Act by virtue of the application of section 41 of the federal Act in respect of the corporation's listed-personal-property loss for a subsequent taxation year,*
- (b) the exclusion of an amount from the corporation's income for the year under this Act by virtue of the application of section 49 of the federal Act in respect of the exercise of an option in a subsequent taxation year, or*
- (c) the deduction of an amount under this Act by virtue of the application of section 111 of the federal Act in respect of a loss for a subsequent taxation year*

is deemed to have arisen on the day that is the latest of

- (d) the first day immediately following that subsequent taxation year,*
- (e) the day on which the corporation's return under section 36 for that subsequent taxation year was filed,*
- (f) if an amended return for the taxation year or a prescribed form amending the corporation's return for the year was filed under this Act by virtue of the application of subsection 49(4) of the federal Act or section 44 of this Act, the day on which the amended return or prescribed form was filed, and*
- (g) if, as a consequence of a request, the Provincial Minister reassessed the*

corporation's tax for the year to take into account the deduction or exclusion, the day on which the request was made.

10 Section 48 presently reads in part:

48(1) A corporation that objects to an assessment under this Act may serve on the Provincial Minister a notice of objection in the prescribed form setting out the reasons for the objection and all relevant facts, on or before the day that is 90 days after the day of mailing of the notice of assessment.

(1.1) Notwithstanding subsection (1), where at any time the Minister of Revenue assesses tax, interest or penalties or other amounts payable under this Act by, or makes a determination or redetermination in respect of, a corporation

- (a) under section 41(1.1), (1.11) or (8), 43(1)(b)(i), (1.2), (3.1), (3.3), (4), (4.1) or (5), 44, 47(4.4) or 72.1(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister of Revenue for reconsideration and reassessment,*

(1.111) Unless the corporation has taxable income of nil or a loss for the taxation year, if a corporation that was a large corporation in a taxation year within the meaning assigned by subsection 225.1(8) of the federal Act files a valid objection pursuant to subsection 165(1.11) of the federal Act (the "federal notice of objection") to an assessment with respect to a taxation year made under the federal Act (the "federal assessment"), but does not object within the time required by this Act to an assessment under this Act with respect to that taxation year that is based on the same issues as the federal assessment (the "Alberta parallel assessment"),

- (a) the corporation is deemed to have filed a notice of objection pursuant to subsection (1.11) of this section to the Alberta parallel*

assessment on the last day on which the notice of objection could have been filed under this Act, and

- (b) *the federal notice of objection is deemed to be the objection filed pursuant to subsection (1.11) of this section, with such modifications for the relief sought as are appropriate for the determination of any amount of a change in a balance within the meaning of section 43(6) of this Act or a balance of undeducted outlays or other amounts of the corporation under this Act.*

11 Section 49.1 presently reads in part:

49.1(1) If property is transferred at any time by a corporation to a person with whom the corporation does not deal at arm's length at that time and the corporation is not entitled by virtue of the application of subsection 61.3(3) of the federal Act to deduct an amount under this Act by virtue of the application of section 61.3 of the federal Act in computing its income for a taxation year because of the transfer or because of the transfer and one or more other transactions, the person is jointly and severally liable with the corporation to pay an amount of the corporation's tax under this Act for the year equal to the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the corporation under any other provisions of this Act.

(3) The Provincial Minister may at any time assess a person in respect of any amount payable because of this section, and the provisions of this Part apply, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 41 or 43.

12 Section 56 presently reads in part:

56(1) The Lieutenant Governor in Council may make regulations

- (f) authorizing the Minister of Resource Development to determine any component or value in the calculation of a royalty tax credit under Part 6 or a royalty credit under Part 11.*

13 Section 67 presently reads in part:

67(1) If any document has been seized, inspected, examined, audited or provided under sections 63 to 65, the person by whom it is seized, inspected, examined or audited or to whom it is provided or any officer of the Department of Revenue may make, or cause to be made, one or more copies of it and, in the case of an electronic document, make or cause to be made a print-out of the electronic document.

14 Section 82 presently reads in part:

(4) An affidavit of an officer of the Department of Revenue setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document or a print-out of an electronic document made by or on behalf of the Minister of Revenue or some person exercising the powers of the Minister of Revenue or by or on behalf of a corporation is evidence of the nature and contents of the document.

15 Section 85 presently reads in part:

(5) The amount of a corporation's attributed royalty income carry forward, if any, under section 20(3)(a)(ii) from its taxation year immediately preceding the first taxation year to which this Act applies is deemed to be the amount which that

corporation would have been able to carry forward under section 8.4(5) of the old Act if the old Act had continued to apply to the first taxation year to which the new Act applies.

16 Section 119 presently reads in part:

(2.1) Subject to subsection (2.2), if in a particular taxation year an individual is notified that, pursuant to section 39 or 39.01 of the Mines and Minerals Act, the Minister of Resource Development has recalculated or made additional calculations that change an amount referred to in section 106(1)(a)(i) or (ii) for a previous taxation year in respect of which the period referred to in subsection (2)(b) has expired, the Provincial Minister, notwithstanding subsection (2), within the period referred to in subsection (2)(b) for the particular taxation year, may

- (a) assess, reassess or make additional assessments of interest or penalties under this Part with respect to the previous taxation year, and*
- (b) determine or redetermine the entitlement to and the amount of the royalty credit or tax refund under this Part, if any, of the individual for the previous taxation year.*

(2.2) The Provincial Minister may assess, reassess or make additional assessments, determinations or redeterminations under subsection (2.1) only to the extent that they are reasonably related to

the recalculation or additional calculation under section 39 or 39.01 of the Mines and Minerals Act referred to in subsection (2.1).

(2.3) If as a result of a notice of objection filed under section 48 or an appeal under section 50, the Provincial Minister has vacated or varied an assessment, reassessment, determination or redetermination made under subsection (2.1) in respect of a taxation year, the Provincial Minister

may, notwithstanding subsection (2), exercise any of the Provincial Minister's powers described in subsection (2.1) in respect of any other taxation year to the extent that the exercise of the powers is reasonably related to the recalculation or additional calculation under section 39 or 39.01 of the Mines and Minerals Act referred to in subsection (2.1).

(3) Notwithstanding that more than 3 years have passed since the date of mailing a notice of an original assessment of interest or penalties payable by an individual for a taxation year, or of a determination of the entitlement to a royalty credit or tax refund under this Part for the year, if a collection agreement is in effect under the Alberta Income Tax Act or a tax collection agreement is in effect under the Alberta Personal Income Tax Act and the amounts referred to in section 106(1)(a) of this Act for the year are revised on a reassessment under the federal Act for the year, the Provincial Minister, within 12 months of the reassessment under the federal Act,

- (a) may reassess or make additional assessments of interest or penalties under this Part, or*
- (b) may redetermine the amount of the royalty credit or tax refund, if any, to which the individual is entitled for the year.*

17 Changes references from “Minister of Revenue” to “Provincial Minister”.

Part 2
Blue Cross Statutes Amendment Act, 2004

18 Amends chapter 5 of the Statutes of Alberta, 2004.

19 The unproclaimed section 12.1 of the ABC Benefits Corporation Act presently reads:

12.1(1) If the Corporation is exempt from the payment of income tax under the Income Tax Act (Canada) or the Alberta Corporate Tax Act with respect to a taxation year, it must, in accordance with the regulations, pay to the Crown in right of Alberta an amount in lieu of tax with respect to that year.

(2) Subsection (1) applies with respect to 2005 and subsequent taxation years.

**Part 3
Coming into force**

20 Coming into force.