

Bill 43

BILL 43

2005

ALBERTA RESOURCE REBATE 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 Personal Income Tax Act

Amends RSA 2000 cA-30

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

2 Section 1(1)(r) is amended by adding “or Division 4.1” after
“Division 4”.

3 The following is added after section 35:

Division 4.1 Alberta Resource Rebate

Alberta Resource Rebate

35.1(1) In this Division,

- (a) “eligible individual” means an individual who is an eligible individual as defined in section 122.6 of the federal Act in respect of a qualified dependant and who

has filed a notice referred to in subsection 122.62(1) of the federal Act on or before December 31, 2006;

- (b) “individual” means an individual, other than a trust or an individual referred to in subsection (2);
- (c) “qualified dependant” means a qualified dependant as defined in section 122.6 of the federal Act as of January 1, 2006 or, in circumstances determined in the regulations, as of a prescribed later date, and
 - (i) includes a minor
 - (A) who dies in 2005 but who would otherwise be a qualified dependant as defined in section 122.6 of the federal Act, or
 - (B) who under the regulations is determined to be a qualified dependant,
 - but
 - (ii) does not include a child referred to in section 35.2(1)(b);
- (d) “refund of an overpayment” means a refund of an amount deemed under section 35.2(1) to be an overpayment.

(2) An individual who, on September 1, 2005, was serving a conditional sentence or serving a sentence of imprisonment for the commission of an offence under an Act or regulation of Canada or of a province of Canada or under an enactment of Alberta is not an individual under subsection (1)(b).

(3) Where a refund of an overpayment is received at a correctional institution through the mail addressed to or intended for an individual referred to in subsection (2), the director or a person authorized by the director may withhold the refund from that individual and return the refund to the Provincial Minister.

(4) In subsection (3),

- (a) “correctional institution” means a correctional institution as defined in the *Corrections Act*;
- (b) “director” means the director as defined in the *Corrections Act*.

Overpayments

35.2(1) An individual is deemed to have made an overpayment on account of the individual’s liability under this Act for the 2005 taxation year if

- (a) the individual has filed a return in Canada for the 2004 taxation year on or before December 31, 2006, is at least 18 years of age on December 31, 2005 and was resident in Alberta on September 1, 2005,
- (b) the individual is a child who is the subject of a temporary guardianship order or permanent guardianship order or agreement or a youth who is the subject of a custody agreement or a family enhancement agreement under the *Child, Youth and Family Enhancement Act* as of the date determined in the regulations,
- (c) the individual, other than a minor, died in 2005 but was resident in Alberta at the time of death, or
- (d) the individual is of a class determined in the regulations and meets the conditions determined in the regulations.

(2) The amount that an individual is deemed to have overpaid is as follows:

- (a) in the case of an individual who is not an eligible individual, \$400;
- (b) in the case of an individual who is an eligible individual in respect of one or more qualified dependants, \$400 plus \$400 for each qualified dependant.

(3) For the purposes of subsection (2)(b), the eligible individual of a minor child resident in Alberta who dies in 2005 is the person who was the eligible individual at the time of the minor’s death.

(4) A refund of an overpayment in respect of a child referred to in subsection (1)(b) shall be held and administered in accordance with section 128.1 of the *Child, Youth and Family Enhancement Act*.

(5) An individual is entitled to a refund of an overpayment under only one of the clauses in subsection (1).

(6) If an individual receives a refund of an overpayment to which the individual is not entitled, the individual shall repay the amount to the Provincial Minister.

(7) The Lieutenant Governor in Council may make regulations

- (a) specifying additional provisions of the federal Act that apply, with or without modifications, in respect of an overpayment;
- (b) establishing rules to determine if an individual was resident in Alberta for the purposes of this Division;
- (c) determining the date for the purpose of subsection (1)(b);
- (d) determining classes of individuals for the purpose of subsection (1)(d);
- (e) respecting conditions for the purpose of subsection (1)(d);
- (f) determining minors to be qualified dependants for the purpose of section 35.1(1)(c)(i)(B);
- (g) respecting the collection, use and disclosure of personal information necessary for the purpose of determining eligibility for a refund and administering the payment of refunds provided under this Division;
- (h) respecting circumstances for which a date later than January 1, 2006 may be prescribed for the purpose of determining whether a person is a qualified dependant;
- (i) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the purpose and intent of this Division.

Debtor in arrears

35.3(1) In this section,

- (a) “debtor in arrears” means a debtor who, according to the records of the Director, has arrears owing with respect to a maintenance order filed with the Director under the *Maintenance Enforcement Act*;
- (b) “Director” means the Director of Maintenance Enforcement under the *Maintenance Enforcement Act*.

(2) Subject to subsections (3) and (4), a refund of an overpayment

- (a) cannot be charged or given as security,
- (b) cannot be assigned except under the *Bankruptcy and Insolvency Act* (Canada),
- (c) cannot be garnished or attached,
- (d) is exempt from execution or seizure,
- (e) cannot be retained by way of deduction or set-off under the *Financial Administration Act* (Alberta), and
- (f) is exempt, despite section 54(1), from the application for the purposes of this Act of subsection 164(2) of the federal Act.

(3) Notwithstanding this Act, the refund of an overpayment under section 35.2 to an individual who, as of a date determined by the Director, is a debtor in arrears may, at the request of the Director, be paid to the Director, and payment of the refund to the Director is deemed to be a payment of the refund to the debtor in arrears.

(4) The Director must credit the refund of an overpayment paid to the Director under subsection (3) in accordance with the *Maintenance Enforcement Act*.

General

35.4(1) A refund of an overpayment and costs relating to the refund as determined in accordance with a tax collection

agreement are payable from the taxes, interest, penalties and other amounts collected under this Act.

(2) Notwithstanding section 52, section 161 of the federal Act, as it applies to this Act, does not apply to a refund of an overpayment.

(3) Notwithstanding section 54(1), subsection 164(3) of the federal Act, as it applies to this Act, does not apply to a refund of an overpayment.

(4) Notwithstanding section 57, no appeal lies in respect of the determination of the entitlement of an individual to a refund of an overpayment.

(5) Notwithstanding anything in this Act, no assessment, determination or decision may be made on or after June 30, 2007 with respect to the entitlement of an individual to a refund of an overpayment.

Part 2

Child, Youth and Family Enhancement Act

Amends RSA 2000 cC-12

4 The *Child, Youth and Family Enhancement Act* is amended by this Part.

5 The following is added after section 128:

Alberta Resource Rebate

128.1(1) In this section, “director” means the director designated by the Minister as the director for the purpose of this section.

(2) Where a child who is the subject of a temporary guardianship order or a permanent guardianship order or agreement, or a youth who is the subject of a custody agreement or a family enhancement agreement, is entitled to a refund of an amount deemed under section 35.2 of the *Alberta Personal Income Tax Act* to be an overpayment, the refund shall be held and administered by the director.

(3) Notwithstanding section 34(4), the director is a trustee for the purposes of section 7 of the *Minors' Property Act* and shall administer refunds referred to in subsection (2) in accordance with the regulations made under subsection (4).

(4) The Lieutenant Governor in Council may make regulations

- (a) notwithstanding the *Trustee Act*, respecting the manner in which refunds under section 35.2 of the *Alberta Personal Income Tax Act* are to be administered by the director, including the circumstances and manner in which interest may be payable;
- (b) respecting the disposition of refunds in the event that a child cannot be located after the child attains the age of 18 years.

Part 3 Fiscal Responsibility Act

Amends RSA 2000 cF-15

6 The *Fiscal Responsibility Act* is amended by this Part.

7 Section 1 is amended by adding the following after clause (b):

- (b.01) “Alberta 2005 Resource Rebates” means the refund of overpayments paid under Part 1, Division 4.1 of the *Alberta Personal Income Tax Act*;

8 Section 2(2) is amended

(a) in clause (a) by striking out “or” at the end of subclause (iii), adding “or” at the end of subclause (iv) and adding the following after subclause (iv):

- (v) for the fiscal year 2005-06, any amounts paid or payable for the cost of Alberta 2005 Resource Rebates from amounts allocated from the Alberta Sustainability Fund under section 2.1(2)(h),

(b) in clause (b) by striking out “under section 2.1(2)(c) and (d)” **and substituting** “under section 2.1(2)(c) and (d), and for the fiscal year 2005-06, section 2.1(2)(h),”.

9 Section 2.1(2) is amended by adding the following after clause (g):

(h) for the fiscal year 2005-06 and subject to subsection (3), amounts required to offset the cost of Alberta 2005 Resource Rebates to Albertans may be allocated from the Alberta Sustainability Fund.

10 Section 4(2) is amended by adding the following after clause (e):

(f) commitments made for the fiscal year 2005-06 for the cost of Alberta 2005 Resource Rebates to Albertans under section 2.1(2)(h).

Explanatory Notes

Part 1

Alberta Personal Income Tax Act

1 Amends chapter A-30 of the Revised Statutes of Alberta 2000.

2 Section 1(1)(r) presently reads:

1(1) In this Act,

(r) “refundable tax credit” means a tax credit under Part 1, Division 4;

3 Alberta Resource Rebate.

Part 2

Child, Youth and Family Enhancement Act

4 Amends chapter C-12 of the Revised Statutes of Alberta 2000.

5 Alberta Resource Rebate.

Part 3 Fiscal Responsibility Act

6 Amends chapter F-15 of the Revised Statutes of Alberta 2000.

7 New definition.

8 Section 2 presently reads in part:

2(1) Actual expense for a fiscal year must not be more than actual revenue for that year.

(2) For the purposes of subsection (1),

(a) actual expense does not include

(iv) any amounts paid or payable for the cost of a settlement with a First Nation from amounts allocated from the Alberta Sustainability Fund under section 2.1(2)(g),

and

(b) actual revenue includes any amounts allocated from the Alberta Sustainability Fund under section 2.1(2)(c) and (d) but does not include any amounts allocated to the Alberta Sustainability Fund under section 2.1(2)(a).

9 Section 2.1(2) presently reads in part:

(2) Within the General Revenue Fund amounts may be allocated to and from the Alberta Sustainability Fund as follows:

- (c) subject to subsection (3), if for a fiscal year actual non-renewable resource revenue is less than non-renewable resource revenue for fiscal policy purposes, the difference may be allocated from the Alberta Sustainability Fund;*
- (e) subject to subsection (3), amounts paid or payable for the cost of a public emergency or disaster declared by the Lieutenant Governor in Council may be allocated from the Alberta Sustainability Fund;*
- (f) subject to subsection (3), amounts paid or payable under the Natural Gas Price Protection Act may be allocated from the Alberta Sustainability Fund;*
- (g) subject to subsection (3), amounts paid or payable for the cost of a settlement with a First Nation may, with approval of the Lieutenant Governor in Council, be allocated from the Alberta Sustainability Fund.*

10 Section 4(2) presently reads:

(2) The following are not commitments for the purposes of subsection (1):

- (a) an increase in program expense during a fiscal year that is required because of a public emergency or disaster declared by the Lieutenant Governor in Council;*
- (b) an increase in the amount authorized to be spent under a supply vote under section 24(2) of the Financial Administration Act and an*

increase in any other expense that is offset by additional revenue received for the specific purpose of that expense;

- (c) an increase in amounts paid or payable for the fiscal year under the Natural Gas Price Protection Act from amounts*

*allocated from the Alberta Sustainability
Fund under section 2.1(2)(f);*

- (d) an increase in expenses paid or payable from
amounts allocated from the Capital Account
under section 2.2(2)(c);*
- (e) commitments made for the fiscal year for the
cost of a settlement with a First Nation.*