

2007 Bill 9

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Third Session, 26th Legislature, 56 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 9**

**TOURISM LEVY AMENDMENT ACT, 2007**

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THE MINISTER OF FINANCE

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 9

2007

### TOURISM LEVY AMENDMENT ACT, 2007

(Assented to \_\_\_\_\_, 2007)

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

#### **Amends RSA 2000 cT-5.5**

**1 The *Tourism Levy Act* is amended by this Act.**

**2 Section 1(1)(a)(vi) is repealed and the following is substituted:**

- (vi) lodging that is provided to an employee
  - (A) by an employer who is not in the business of selling lodging, and
  - (B) in an establishment that is
    - (I) owned by the employer, or
    - (II) managed by or on behalf of the employer;

**3 The following is added after section 3:**

#### **Refund of overpayment of tourism levy**

**3.1(1)** An operator who has collected from a purchaser a tourism levy in an amount greater than required under section 2

## Explanatory Notes

**1** Amends chapter T-5.5 of the Revised Statutes of Alberta 2000.

**2** Section 1(1)(a)(vi) presently reads:

*1(1) In this Act,*

*(a) “accommodation” means lodging that is provided for consideration in a hotel, motel, apartment building, hostel, lodging house, boarding house, bed and breakfast, club or other similar establishment in Alberta, including the right to use lodging acquired with the purchase of a prepaid vacation package, but does not include the following:*

*(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;*

**3** Refund of overpayment of tourism levy.

shall refund the overpayment to the purchaser within the time specified by the Minister in a written notice to the operator.

(2) An operator who refunds an overpayment of a tourism levy under subsection (1) that the operator had previously remitted to the Minister may deduct the amount of the refunded overpayment from the next remittance of a tourism levy that is payable to the Minister under section 3.

(3) If an operator fails or refuses to refund an overpayment of a tourism levy to a purchaser under subsection (1),

- (a) the Minister may refund the overpayment to the purchaser, and
- (b) if the operator had not previously remitted to the Minister the amount of the overpayment, the overpayment is deemed to be a tourism levy and the Minister may assess the operator for the amount of the overpayment in accordance with section 5 as if the amount of the overpayment were a tourism levy.

(4) Section 8 does not apply to an overpayment of a tourism levy.

**4 Section 6.1 is repealed and the following is substituted:**

**Late filing penalty**

**6.1(1)** If a person fails to file a return as and when required by this Act or the regulations, the Minister may assess against the person a penalty as follows:

- (a) for a return that is filed within 4 days from the required filing date, \$25 for each day of default;
- (b) for a return that is filed after 4 days from the required filing date, the lesser of
  - (i) the amount of unpaid tourism levy as at the required filing date, and
  - (ii) \$25 for each day of default

to a maximum of \$1000.

**4** Section 6.1 presently reads:

*6.1 If a person fails to file a return as and when required by this Act or the regulations, the Minister may, by serving a notice of assessment on the person, assess against the person a penalty that is equal to the greater of*

*(a) the amount of unpaid tourism levy as at the required filing date, and*

*(b) \$25 for each day of default*

*to a maximum of \$1000.*

(2) Despite subsection (1)(b)(i), the amount of a penalty under subsection (1)(b) may not be less than \$100.

**5 The following is added after section 7:**

**Notice of assessment**

**7.1** The Minister shall notify a person of an assessment under this Act by serving a notice of assessment on the person.

**Small amount owing**

**7.2(1)** Notwithstanding the *Financial Administration Act*, if a notice of assessment indicates an amount owing or a refund of less than the amount prescribed by regulation under subsection (3), the Minister may

- (a) in the case of an amount owing, not collect it, or
- (b) in the case of a refund, not pay it unless specifically requested by the person to whom the amount is payable.

(2) A request under subsection (1)(b) must be made no later than the day on which all rights of objection and appeal with respect to the assessment expire.

(3) The Minister may by regulation prescribe the amount for the purposes of subsection (1).

**6 The following is added after section 8:**

**Penalty in addition to overpayment**

**8.1** Where an operator

- (a) has collected from a purchaser a tourism levy in an amount greater than required, and
- (b) fails or refuses to refund the overpayment to the purchaser in accordance with section 3.1,

the Minister may assess against the operator a penalty that is equal to the amount of the overpayment, to a maximum of \$500.

**5** Notice of assessment and small amounts owing.

**6** Penalty in addition to a refund of an overpayment.

**7 The following is added after section 10:**

**Amounts in jeopardy**

**10.1(1)** In this section, “judge” means a judge of the Court.

(2) Where, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed against a person would be jeopardized by a delay in the collection of it, the judge shall, on the terms the judge considers reasonable in the circumstances, authorize the Minister to file a certificate under section 9 notwithstanding that the 30 days referred to in section 7(2) has not yet elapsed.

(3) Where a judge is satisfied that the receipt of a notice of assessment by a person in respect of an amount assessed against the person would likely jeopardize the collection of that amount, an authorization under subsection (2) may be granted by the judge notwithstanding that the notice of assessment in respect of that amount has not been served on the person at or before the time the application is made.

(4) Statements contained in an affidavit filed in support of an application under this section may be based on belief with the grounds for it.

(5) An authorization granted under this section in respect of a person must be served on the person by the Minister within 72 hours after it is granted except where the judge orders the authorization to be served at some other time specified in the authorization, and where a notice of assessment has not been served on the person at or before the time of the application, the notice of assessment must be served together with the authorization.

(6) For the purpose of subsection (5), service on a person must be effected by

- (a) personal service on the person, or
- (b) service in accordance with directions, if any, of a judge.



**7** Amounts in jeopardy.

(7) Where service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

(8) Where a judge has granted an authorization under this section in respect of a person, the person may, on 6 clear days' notice to the Deputy Minister of Justice and Deputy Attorney General, apply to a judge to review the authorization.

(9) An application under subsection (8) must be made

- (a) within 30 days from the day on which the authorization was served on the person in accordance with this section, or
- (b) within any further time a judge may allow, on being satisfied that the application was made as soon as practicable.

(10) An application under subsection (8) may, on the application of the person, be heard in private if the person establishes to the satisfaction of the judge that the circumstances of the case justify private proceedings.

(11) On an application under subsection (8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make any other order the judge considers appropriate.

(12) Where any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect to it, a judge may give any direction with regard to it that, in the judge's opinion, is appropriate.

(13) No appeal lies from an order of a judge made pursuant to subsection (11).

## **8 Section 19 is amended**

- (a) **in subsection (3) by striking out** "filed in respect of an objection under section 16(1)(a)" **and substituting** "under section 16(1) in respect of a notice of assessment";

**8** Section 19(3) and (3.1) presently read:

*(3) The Court may, in an appeal of a decision with respect to a notice of objection filed in respect of an objection under section 16(1)(a),*

- (b) in subsection (3.1) by striking out “filed in respect of an objection under section 16(1)(b)” and substituting “under section 16(1) in respect of a notice of refusal, suspension or cancellation”.

**9 Section 30 is repealed and the following is substituted:**

**Service, etc.**

**30(1)** Except where this Act provides otherwise, where a notice or other document is to be served on or is to be sent or given to a person by the Minister or an officer under this Act, the notice or document may be served on or sent or given to

- (a) a person other than a corporation or cooperative,
  - (i) by being mailed to the person by ordinary or registered mail addressed to the person to whom the notice or document is directed at that person’s last address known to the Minister,
  - (ii) by personal service, or
  - (iii) if the person has provided the Minister with a fax number, by fax to that number,
- (b) a corporation,
  - (i) in accordance with section 256 of the *Business Corporations Act*,

- (a) *dismiss the appeal, or*
- (b) *allow the appeal, and*
  - (i) *vacate the assessment,*
  - (ii) *vary the assessment,*
  - (iii) *restore the assessment, or*
  - (iv) *refer the assessment back to the Minister for reconsideration.*

*(3.1) The Court may, in an appeal of a decision with respect to a notice of objection filed in respect of an objection under section 16(1)(b),*

- (a) *dismiss the appeal, or*
- (b) *allow the appeal and direct, as the case may be, that subject to the terms or conditions the Court considers appropriate,*
  - (i) *registration be granted,*
  - (ii) *the suspension be removed, or*
  - (iii) *the registration be reinstated.*

**9** Section 30 presently reads:

*30(1) Where a notice or other document is to be served on or is to be sent or given to a person by the Minister or an officer under this Act, the notice or document may be served on or sent or given to*

- (a) *a person other than a corporation,*
  - (i) *by being mailed to the person by ordinary or registered mail addressed to the person to whom the notice or document is directed at that person's last address known to the Minister, or*
  - (ii) *by personal service,*
- (b) *a corporation,*
  - (i) *in accordance with section 256 of the Business Corporations Act, or*
  - (ii) *by registered mail addressed to the corporation at the corporation's last address known to the Minister,*

*and*

- (c) *a cooperative,*

- (ii) by registered mail addressed to the corporation at the corporation's last address known to the Minister, or
- (iii) if the corporation has provided the Minister with a fax number, by fax to that number,

and

- (c) a cooperative,
  - (i) in accordance with section 347 of the *Cooperatives Act*,
  - (ii) by registered mail addressed to the cooperative at the cooperative's last address known to the Minister, or
  - (iii) if the cooperative has provided the Minister with a fax number, by fax to that number.

**(2)** If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than the person's own name, the notice or document,

- (a) for the purposes of being mailed or faxed, may be addressed to the name or style under which the person carries on business, and
- (b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

**(3)** If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

- (a) for the purposes of being mailed or faxed, may be addressed to the partnership name, and
- (b) for the purposes of personal service, is deemed to have been served if it
  - (i) has been served on one of the partners, or

- (i) in accordance with section 347 of the Cooperatives Act, or*
- (ii) by registered mail addressed to the cooperative at the cooperative's last address known to the Minister.*

*(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than the person's own name, the notice or document,*

- (a) for the purposes of being mailed, may be addressed to the name or style under which the person carries on business, and*
- (b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.*

*(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,*

- (a) for the purposes of being mailed, may be addressed to the partnership name, and*
- (b) for the purposes of personal service, is deemed to have been served if it*
  - (i) has been served on one of the partners, or*
  - (ii) is left with an adult person employed at the place of business of the partnership.*

- (ii) has been left with an adult person employed at the place of business of the partnership.

**10 The following provisions are amended by striking out “5, 6.1, 8, 14(3)” wherever it occurs and substituting “3.1, 5, 6.1, 8, 8.1, 14(3)”:**

section 7;  
section 16(1);  
section 21.

**11(1) Section 2 is deemed to have come into force on June 1, 1987.**

**(2) Section 4 is deemed to have come into force on April 1, 2005.**



**10** References to sections 3.1 and 8.1 added.

**11** Coming into force.





