

2007 Bill 35

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Third Session, 26th Legislature, 56 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 35**

## **ALBERTA PERSONAL INCOME TAX AMENDMENT ACT, 2007**

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MR. ROGERS

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 35*  
*Mr. Rogers*

## **BILL 35**

2007

### **ALBERTA PERSONAL INCOME TAX 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 cA-30**

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

**2 Section 11(1) is repealed and the following is substituted:**

#### **Charitable and other gifts**

**11(1)** For the purpose of computing the tax payable under this Act for a taxation year by an individual, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

$$A \times B + [12.75\% \times (D - E) + 21\% \times (C - B - (D - E))]$$

where

A is the specified percentage for the year;

B is the lesser of \$200 and amount C;

C is the amount of the individual's total gifts for the year used to claim a deduction by the individual for the year for the purposes of section 118.1 of the federal Act;

## Explanatory Notes

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

**2** Section 11(1) presently reads:

*11(1) For the purpose of computing the tax payable under this Act for a taxation year by an individual, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula*

$$(A \times B) + [12.75\% \times (C - B)]$$

*where*

*A is the specified percentage for the year;*

*B is the lesser of \$200 and amount C;*

*C is the amount of the individual's total gifts for the year used to claim a deduction by the individual for the year for the purposes of section 118.1 of the federal Act.*

D is the part, if any, of amount C that was made before January 1, 2007;

E is the lesser of B and D.

**3(1) Section 12(1) is amended in the description of D by striking out “\$5000” and substituting “\$10 000”.**

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**3** Section 12(1) presently reads:

*12(1) For the purpose of computing the tax payable under this Act for a taxation year by an individual, there may be deducted the amount determined by the formula*

$$A \times [(B - C) + D]$$

*where*

*A is the specified percentage for the year;*

*B is the amount determined in the description of B in subsection 118.2(1) of the federal Act;*

*C is the lesser of \$1865 and 3% of the individual's income for the taxation year;*

*D is the total of all amounts each of which is, in respect of a dependant of the individual (within the meaning assigned by subsection 118(6) of the federal Act, other than a child of the individual who has not attained the age of 18 years before the end of the taxation year), the lesser of \$5000 and the amount determined by the formula*

$$E - F$$

*where*

*E is the amount determined in the description of E in subsection 118.2(1) of the federal Act;*

*F is the lesser of \$1865 and 3% of the dependant's income for the taxation year.*

**4(1) Section 13(1) is repealed and the following is substituted:**

**Credit for mental or physical impairment**

**13(1)** This section applies where

- (a) an individual has one or more severe and prolonged impairments in physical or mental functions,
- (b) the effects of the impairment or impairments are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted where the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a basic activity of daily living or are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that
  - (i) is essential to sustain a vital function of the individual,
  - (ii) is required to be administered at least 3 times each week for a total duration averaging not less than 14 hours a week, and
  - (iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired,
- (c) in the case of an impairment in physical or mental functions the effects of which are such that the individual's ability to perform a single basic activity of daily living is markedly restricted or would be so restricted but for therapy referred to in clause (b), a medical practitioner has certified in prescribed form that the impairment is a severe and prolonged impairment in physical or mental functions the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy referred to in clause (b), where the medical practitioner is a medical doctor, or in the case of
  - (i) a sight impairment, an optometrist,
  - (ii) a speech impairment, a speech-language pathologist,

**4** Section 13(1) presently reads:

*13(1) This section applies where*

- (a) an individual has a severe and prolonged mental or physical impairment,*
- (b) the effects of the impairment are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that*
  - (i) is essential to sustain a vital function of the individual,*
  - (ii) is required to be administered at least 3 times each week for a total duration averaging not less than 14 hours a week, and*
  - (iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired,*
- (c) in the case of*
  - (i) a sight impairment, a medical doctor or an optometrist,*
  - (i.1) a speech impairment, a medical doctor or a speech-language pathologist,*
  - (ii) a hearing impairment, a medical doctor or an audiologist,*
  - (iii) an impairment with respect to an individual's ability in feeding or dressing, or in walking, a medical doctor or an occupational therapist,*
  - (iv) an impairment with respect to an individual's ability in perceiving, thinking and remembering, a medical doctor or a psychologist, and*
  - (v) an impairment not referred to in any of subclauses (i) to (iv), a medical doctor*

*has certified in prescribed form that the impairment is a severe and prolonged mental or physical impairment the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy referred to in clause (b),*

- (iii) a hearing impairment, an audiologist,
  - (iv) an impairment with respect to an individual's ability in feeding or dressing himself or herself, an occupational therapist,
  - (v) an impairment with respect to an individual's ability in walking, an occupational therapist, or after February 22, 2005, a physiotherapist, and
  - (vi) an impairment with respect to an individual's ability in mental functions necessary for everyday life, a psychologist,
- (d) in the case of one or more impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted, a medical practitioner has certified in prescribed form that the impairment or impairments are severe and prolonged impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted and that the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a single basic activity of daily living, where the medical practitioner is, in the case of
- (i) an impairment with respect to the individual's ability in feeding or dressing himself or herself, or in walking, a medical doctor or an occupational therapist, and
  - (ii) in the case of any other impairment, a medical doctor,
- (e) the individual has filed for a taxation year with the Minister the certificate described in clause (c) or (d), and
- (f) no amount in respect of remuneration for an attendant or care in a nursing home, in respect of the individual, is included in calculating a deduction under section 12 (otherwise than because of paragraph 118.2(2)(b.1) of



- (d) the individual has filed for a taxation year with the Provincial Minister the certificate described in clause (c), and*
- (e) no amount in respect of remuneration for an attendant or care in a nursing home in respect of the individual is included in calculating a deduction under section 12 (otherwise than because of paragraph 118.2(2)(b.1) of the federal Act) for the year by the individual or by any other person.*

the federal Act) for the year by the individual or by any other person.

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**5(1) The following is added after section 13:**

**Child adoption credit**

**13.1(1)** In this section,

- (a) “adoption period”, in respect of an eligible child of an individual, means the period that
  - (i) begins at the earlier of the time that the eligible child’s adoption file is opened with a provincial ministry responsible for adoption (or with an adoption agency licensed by a provincial government) and the time, if any, that an application related to the adoption is made to a Canadian court, and
  - (ii) ends at the later of the time an adoption order is issued by, or recognized by, a government in Canada in respect of that child, and the time that the child first begins to reside permanently with the individual;
- (b) “eligible adoption expense”, in respect of an eligible child of an individual, means an amount paid for expenses incurred during the adoption period in respect of the adoption of that child, including
  - (i) fees paid to an adoption agency licensed by a provincial government,
  - (ii) court costs and legal and administrative expenses related to an adoption order in respect of that child,
  - (iii) reasonable and necessary travel and living expenses of that child and the adoptive parents,
  - (iv) document translation fees,
  - (v) mandatory fees paid to a foreign institution,

**5** Child adoption credit.

- (vi) mandatory expenses paid in respect of the immigration of that child, and
  - (vii) any other reasonable expenses related to the adoption required by a provincial government or an adoption agency licensed by a provincial government;
- (c) “eligible child” of an individual means a child who has not attained the age of 18 years at the time that an adoption order is issued or recognized by a government in Canada in respect of the adoption of that child by that individual.

(2) For the purpose of computing the tax payable under this Part by an individual for the taxation year that includes the end of the adoption period in respect of an eligible child of the individual, there may be deducted the amount determined by the formula

$$A \times B$$

where

A is the specified percentage for the year, and

B is the lesser of

- (a) \$10,000, and
- (b) the amount determined by the formula

$$C - D$$

where

C is the total of all eligible adoption expenses in respect of the eligible child, and

D is the total of all amounts each of which is the amount of a reimbursement or any other form of assistance (other than an amount that is included in computing the individual’s income and that is not deductible in computing the individual’s taxable income) that any individual is or was entitled to receive in respect of an amount included in computing the value of C.



**(3)** Where more than one individual is entitled to a deduction under this section for a taxation year in respect of the adoption of an eligible child, the total of all amounts so deductible shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that child if that individual were the only individual entitled to deduct an amount for the year under this section, and if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**6(1) Section 16(1) is amended**

**(a) by striking out “\$400” and substituting “\$600”;**

**(b) by striking out “\$120” and substituting “\$180”.**

**(2) This section applies to the 2007 taxation year and subsequent taxation years.**

**6** Section 16(1) presently reads:

*16(1) For the purpose of computing the tax payable under this Act for a taxation year by an individual, there may be deducted an amount determined by the formula*

*A x B*

*where*

*A is the specified percentage for the year;*

*B is the total of the products obtained when*

- (a) \$400 is multiplied by the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution, and*
- (b) \$120 is multiplied by the number of months in the year (other than months described in clause (a)), each of which is a month during which the individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program.*

**7 Section 21 is repealed and the following is substituted:**

**Deduction for taxable dividends**

**21** Section 121 of the federal Act applies for the purposes of this Act except that

- (a) for the 2006 taxation year
    - (i) the reference in paragraph (a) to “2/3” is to be read as “30%”, and
    - (ii) the reference in paragraph (b) to “11/18” is to be read as “24.17%”,
  - (b) for the 2007 taxation year
    - (i) the reference in paragraph (a) to “2/3” is to be read as “27.5%”, and
    - (ii) the reference in paragraph (b) to “11/18” is to be read as “25.78%”,
  - (c) for the 2008 taxation year
    - (i) the reference in paragraph (a) to “2/3” is to be read as “22.5%”, and
    - (ii) the reference in paragraph (b) to “11/18” is to be read as “29%”,
- and
- (d) for the 2009 taxation year and subsequent taxation years
    - (i) the reference in paragraph (a) to “2/3” is to be read as “17.4%”, and
    - (ii) the reference in paragraph (b) to “11/18” is to be read as “32.2%”.

**8(1) Section 36.1(2)(b)(i) is amended by adding “13.1,” after “12,”.**

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**



**7** Section 21 presently reads:

*21 Section 121 of the federal Act applies for the purposes of this Act except that the reference to “2/3” is to be read as a reference to “32%”.*

**8** Section 36.1(2)(b) presently reads:

*(2) Where an individual is resident in Canada throughout part of a calendar year and throughout another part of the calendar year is*

**9(1) Section 37(a) is amended by adding “13.1,” after “12,”.**

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**10(1) Section 39 is amended by striking out “8 to 13” and substituting “8 to 13.1”.**

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**11(1) Section 40(2) is amended by striking out “8 to 13” and substituting “8 to 13.1”.**

*non-resident, for the purpose of computing the individual's tax payable under this Act for the year,*

*(b) the individual is allowed only*

*(i) such of the deductions under sections 10, 11, 12, 15, 16, 18 and 19 as can reasonably be considered wholly applicable, and*

*(ii) such part of the deductions permitted under sections 8, 9, 13 and 20 as can reasonably be considered applicable*

*to the period or periods in the year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year.*

**9** Section 37(a) presently reads:

*37 Despite sections 8 to 20, for the purpose of computing an individual's tax payable under this Act for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the individual is allowed only*

*(a) such of the deductions as the individual is entitled to under sections 10, 11, 12, 15, 16, 18 and 19 as can reasonably be considered wholly applicable to the taxation year, and*

**10** Section 39 presently reads:

*39 Despite sections 8 to 13 and 15 to 23, for the purposes of computing tax payable under this Act for a taxation year by an individual referred to in section 6(3), the amount that may be deducted under those sections must not exceed the portion of such amount determined by the formula*

$$A \times \frac{C}{D}$$

*where*

*A is the total of those credits under sections 8, 9, 11, 12, 13, 15, 16, 17, 18, 19 and 20 that the individual is entitled to claim;*

*C and D are the individual's amounts for the year as described in section 6(3)*

**11** Section 40 presently reads:

*40(1) Despite sections 8, 9, 11, 12, 13, 15, 16, 17, 18, 19 and 20, for the purposes of computing tax payable under this Act for a taxation*

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**12(1) Section 41(1) is amended by adding “13.1,” before “15”.**

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

year by an individual referred to in section 6(4), the amount that may be deducted under those provisions must not exceed the portion of such amount determined by the formula

$$A \times \frac{(C-D)}{C}$$

where

*A* is the total of those credits under sections 8, 9, 11, 12, 13, 15, 16, 17, 18, 19 and 20 that the individual is entitled to claim, and

*C* and *D* are the individual's amounts for the year as described in section 6(4).

(2) Despite sections 8 to 13 and 15 to 23, for the purposes of computing tax payable under this Act for a taxation year by an individual referred to in section 6(6), the amount that may be deducted under those sections must not exceed the portion of such amount determined by the formula

$$A \times \frac{C}{D}$$

where

*A* is the total of those credits under sections 8, 9, 11, 12, 13, 15, 16, 17, 18, 19 and 20 that the individual is entitled to claim, and

*C* and *D* are the individual's amounts for the year as described in section 6(6).

## **12** Section 41 presently reads:

*41(1) Sections 8, 9, 10 and 12 of this Act, section 13 of this Act with respect to the application of subsections 118.3(2) and (3) of the federal Act and sections 15, 16 and 20 of this Act do not apply for the purpose of computing the tax payable under this Act for a taxation year by an individual who at no time in the year is resident in Canada unless all or substantially all of the individual's income for the year is included in computing the individual's taxable income earned in Canada for the year.*

*(2) For an individual referred to in section 6(5), the amount that may be deducted under subsection (1) for the year must not exceed the portion of such amount determined by the formula*

$$A \times \frac{C}{D}$$

where

**13(1) Section 42 is amended by adding “13.1,” after “10,”.**

**(2) This section applies to the 2005 taxation year and subsequent taxation years.**

**14 Section 44(1) is amended by striking out “and 13(2)” and substituting “, 13(2) and 13.1(2)”.**

*A* is the total of those credits under sections 8, 9, 11, 12, 13, 15, 16, 18, 19 and 20 that the individual is entitled to claim, and

*C* and *D* are the individual's amounts for the year as described in section 6(5).

**13** Section 42 presently reads:

*42* In computing an individual's tax payable under this Act, the following provisions must be applied in the following order:

sections 8, 9, 19, 10, 13, 17, 15, 16, 20(2), 20(1), 12, 11, 18, 21, 22, 27, 23, 24 and 25.

**14** Section 44(1) presently reads:

*44(1)* Each of the amounts referred to in sections 8(1)(a), (b), (c), (d) and (e), 9, 10, 12(1) and 13(2) and the amounts expressed in dollars in section 16 are to be adjusted so that the amount to be used under those provisions for the taxation year is the total of

(a) the amounts that would, but for subsection (3), be the amounts to be used under those provisions for the immediately preceding taxation year, and

(b) the product obtained by multiplying

(i) the amounts referred to in clause (a)

by

(ii) the amount, adjusted in such manner as may be prescribed and rounded to the nearest one-thousandth or, where the result obtained is equidistant from 2 consecutive one-thousandths, to the higher one-thousandth, that is determined by the formula

$$\frac{A}{B} - 1$$

where

*A* is the Consumer Price Index for Alberta for the 12-month period that ended on the last September 30 before that year, and

*B* is the Consumer Price Index for Alberta for the 12-month period immediately preceding the period mentioned in the description of *A*.

**15 Section 51 is amended by adding the following after subsection (1):**

**(1.1)** Where at any time the Provincial Minister ascertains the tax consequences to an individual by reason of section 85.1(7) with respect to a transaction, the Provincial Minister

- (a) shall, in the case of a determination pursuant to section 85.1(7), or
- (b) may, in any other case,

determine any amount that is relevant, for the purposes of computing the income, taxable income, taxable income earned in Canada or amount taxable in Alberta of, tax, refundable tax credit or other amount payable by, or amount refundable to, the individual under this Act, and where such a determination is made, the Provincial Minister shall send to the individual, with all due dispatch, a notice of determination stating the amount so determined.

**16(1) The following is added after section 85:**

**Part 4.1  
Tax Avoidance**

**Application of Part**

**85.01(1)** In addition to applying to the 2001 taxation year and subsequent taxation years, this Part applies to matters under the old Act.

- (2) In this Part, “this Act” includes the old Act.

**Anti-avoidance rules**

**85.1(1)** In this section and section 51(1.1),

- (a) “tax benefit” means a reduction, avoidance or deferral of tax or other amount payable under this Act or the regulations or an increase in a refund of tax or other amount under this Act or the regulations, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act or the regulations but for a tax treaty, or an increase in a refund of tax or



**15** Section 51 presently reads:

*51(1) Sections 150.1, 151, 152 and 153 of the federal Act apply for the purposes of this Act.*

*(2) Even if the normal reassessment period as defined in subsection 152(3.1) of the federal Act for an individual in respect of a taxation year has elapsed, if the tax payable under Part I of the federal Act by the individual for the year is reassessed, the Provincial Minister must reassess or make additional assessments or assess tax, interest, penalties or other amounts under this Act, as the circumstances require, and determine the amount of the refundable tax credit, if any, to which the individual is entitled for the year.*

*(3) If the Provincial Minister is entitled under this Act to reassess or make an additional assessment or assess tax, interest, penalties or other amounts, the Provincial Minister may also determine the entitlement to and the amount, if any, of refundable tax credits as the circumstances require, and any limitations on that reassessment, additional assessment or assessment apply to the determination.*

**16** Anti-avoidance rules.

other amount under this Act or the regulations that is a result of a tax treaty;

- (b) “tax consequences” to a person means the amount of the person’s
  - (i) income, taxable income, taxable income earned in Canada or amount taxable in Alberta, or
  - (ii) any amount, other than an amount referred to in subclause (i), that is payable or refundable to the person under this Act or the regulations or that is relevant for the purposes of determining any other amount referred to in this section;
- (c) “transaction” includes an arrangement or event.

**(2)** Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

**(3)** An avoidance transaction is any transaction

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
- (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered

- (c) to have been undertaken or arranged primarily for bona fide purposes other than for one or more of the following:
  - (i) to obtain a tax benefit;
  - (ii) to reduce, avoid or defer tax, or another amount payable as or in respect of tax, under any other federal or provincial Act or regulation;



- (iii) to increase a refund of tax, or of another amount in respect of tax, under any other federal or provincial Act or regulation,

or

- (d) to be a transaction that
  - (i) would, if this Act were read without reference to this section, result, directly or indirectly, in a misuse of the provisions of any one or more of
    - (A) this Act or the regulations,
    - (B) the *Income Tax Regulations* (Canada) as they apply for the purposes of this Act,
    - (C) the *Income Tax Application Rules* (Canada) as they apply for the purposes of this Act,
    - (D) a tax treaty, or
    - (E) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation,

or

- (ii) would result directly or indirectly in any abuse having regard to the provisions referred to in subclause (i), other than this section, read as a whole.

**(4)** Without limiting subsection (2),

- (a) any deduction, exemption or exclusion made in computing income, taxable income, taxable income earned in Canada, amount taxable in Alberta or tax payable or any part of it may be allowed or disallowed in whole or in part,
- (b) any deduction, exemption or exclusion referred to in clause (a) or any income, loss or other amount, or part of it, may be allocated to any person,



- (c) the nature of any payment or other amount may be recharacterized,
- (d) the tax effects that would otherwise result from the application of other provisions of this Act or the regulations may be ignored, and
- (e) the amount of any refundable tax credits may be disallowed in whole or in part

in determining the tax consequences to a person in a manner that is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

**(5) Where with respect to a transaction**

- (a) a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, or
- (b) a notice of determination pursuant to section 51(1.1) has been sent to a person with respect to the transaction,

any person, other than a person referred to in clause (a) or (b), is entitled, within 180 days after the day of mailing of the notice, to request in writing that the Provincial Minister make an assessment, reassessment or additional assessment applying subsection (2) or make a determination applying section 51(1.1) with respect to that transaction.

**(6)** Notwithstanding any other provision of this Act, the tax consequences to any person, following the application of this section, shall be determined only through a notice of assessment, reassessment, additional assessment or determination pursuant to section 51 involving the application of this section.

**(7)** On receipt of a request by a person under subsection (5), the Provincial Minister shall, with all due dispatch, consider the request, and notwithstanding subsection 152(4) of the federal Act as it applies for purposes of this Act, assess, reassess or make an additional assessment or determination pursuant to section 51(1.1) with respect to that individual, except that an



assessment, reassessment, additional assessment or determination may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (5).

**(2) This section is deemed to have come into force on September 13, 1988 and applies to transactions occurring after that date.**









