

2010 Bill 25

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Third Session, 27th Legislature, 59 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 25**

## **FREEHOLD MINERAL RIGHTS TAX AMENDMENT ACT, 2010**

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THE MINISTER OF ENERGY

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 25

2010

### FREEHOLD MINERAL RIGHTS TAX AMENDMENT ACT, 2010

(Assented to \_\_\_\_\_, 2010)

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

#### Amends RSA 2000 cF-26

**1 The *Freehold Mineral Rights Tax Act* is amended by this Act.**

#### **2 Section 1 is amended**

(a) by repealing clause (a);

(b) by adding the following after clause (b):

(b.1) “Court” means the Court of Queen’s Bench;

#### **3 Section 3 is amended**

(a) in subsection (1) by striking out “in the prescribed form”;

(b) by adding the following after subsection (5):

(5.1) Where a recalculation or correction referred to in subsection (3) or (4) is made as a result of an audit or examination under section 7(5) and the audit or examination is commenced in the 4th year as calculated under subsection (5)(b), the 4-year period referred to in subsection (5)(b) is extended by one year.

## Explanatory Notes

**1** Amends chapter F-26 of the Revised Statutes of Alberta 2000.

**2** Section 1 presently reads in part:

*1 In this Act,*

*(a) “appeal board” means the appeal board appointed under section 5(1);*

**3** Section 3 presently reads in part:

*3(1) The Minister, on or before the prescribed date, shall send to the owner of a taxable mineral right a tax statement in the prescribed form stating the tax payable in respect of the taxable mineral right for a taxation year.*

*(5) A tax statement under subsection (3) or (4) may be sent to the owner*

*(a) at any time if any misrepresentation has been made that is attributable to neglect, carelessness or wilful default, or if*

(c) by repealing subsection (6).

**4 Section 3.1(1)(b) is amended by adding** “under section 3(5.1) or otherwise” **after** “that period”.

**5 Section 4 is repealed and the following is substituted:**

**Notice of objection to tax**

**4(1)** If the tax and any interest or penalties for a taxation year in respect of a taxable mineral right have been paid, the owner or a prescribed person may object to the amount of the tax calculated by the Minister as payable for that taxation year by serving on the Minister, not later than the prescribed date, a notice of objection, in the form established by the Minister, setting out the reasons for the objection and the relevant facts.

**(2)** On receipt of a notice of objection under subsection (1) the Minister shall recalculate the amount of tax and any interest or penalties and shall

- (a) confirm or vary the amount, or
- (b) order that no amount is payable,

and give notice of the Minister’s decision to the owner or prescribed person.

*fraud has been committed in supplying any information under this Act, or*

*(b) in any other case, not more than 4 years after the end of the taxation year in respect of which it is sent.*

*(6) A tax statement under subsection (1), (3) or (4) must be sent to the owner at the owner's most recent address according to the records of the Department.*

**4** Section 3.1(1) presently reads in part:

*3.1(1) In this section,*

*(b) "recalculation period" means, in relation to any tax under this Act in respect of a taxable mineral right, the 4-year period under section 3(5)(b) to recalculate that tax, including any extension of that period permitted by this Act;*

**5** Section 4 presently reads:

*4(1) If the tax and any interest or penalties for a taxation year in respect of a taxable mineral right have been paid, the owner or a prescribed person may appeal the amount of the tax calculated by the Minister as payable for that taxation year.*

*(2) An appeal under subsection (1) shall be commenced by serving the Minister with a notice of appeal not later than the prescribed date.*

**(3)** Notwithstanding subsection (2), if the owner or prescribed person indicates in the notice of objection that the owner or prescribed person wishes to appeal immediately to the Court and waives recalculation by the Minister, the Minister may on receipt of the notice of objection consent to an immediate appeal by serving a notice of consent on the owner or prescribed person.

**(4)** Subject to subsection (5), the owner or prescribed person who has served a notice of objection under subsection (1) may appeal to the Court in accordance with section 5 the amount of the tax calculated by the Minister as payable for the taxation year if

- (a) the Minister has confirmed or varied the amount under subsection (2)(a),
- (b) the Minister has consented to an immediate appeal under subsection (3), or
- (c) more than 90 days has elapsed from the date that the notice of objection was served on the Minister and the Minister has not acted under subsection (2).

**(5)** No owner or prescribed person may institute an appeal referred to in subsection (4) after 90 days has elapsed from the date that

- (a) a notice of the Minister's decision under subsection (2), or
- (b) a notice of the Minister's consent under subsection (3),

was served on the owner or prescribed person.

**6 Section 5 is repealed and the following is substituted:**

**Appeal to Court**

**5(1)** An appeal to the Court must be instituted by serving a notice of appeal on the Minister and filing a copy of the notice of appeal with the clerk of the Court.

**6** Section 5 presently reads:

*5(1) The Minister shall appoint an appeal board not later than the prescribed date to hear the appeals made in respect of a taxation year.*

*(2) The appeal board may*

*(a) dismiss the appeal, or*

**(2)** The notice of appeal must have attached to it the notice of objection served under section 4(1) or 8.1(2) and, for the purposes of section 5.2, is deemed to be a statement of claim.

**(3)** The Minister shall, within 90 days from the day that 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

(a) admitting or denying the facts alleged, and

(b) containing a statement

(i) of any further allegations of fact, and

(ii) of any applicable statutory provisions and any reasons the Minister intends to rely on.

**(4)** The Court may strike out a notice of appeal or any part of the notice for failure to comply with subsection (2) 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.

**(5)** 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.

**(6)** If a notice of appeal is struck out for failure to comply with subsection (2) and a new notice of appeal is not filed as and when permitted by the Court, the Court may dismiss the appeal.

**(7)** 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.



*(b) allow the appeal and*

*(i) vary the amount of the tax payable,*

*(ii) refer the matter back to the Minister for reconsideration and recalculation, or*

*(iii) order that no tax is payable.*

*(3) After hearing an appeal, the appeal board may order the taxpayer to pay or the Minister to refund any or all of the tax, interest or penalties.*

*(4) Proceedings before the appeal board shall be held in private on request made to the board by the appellant.*

### **Powers of Court**

**5.1(1)** On the filing of the material referred to in section 5(1) to (5), the matter is deemed to be an action in the Court.

**(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 directs.

**(3)** The Court may

- (a) dismiss the appeal, or
- (b) allow the appeal and
  - (i) vary the amount of the tax, interest or penalty payable, or
  - (ii) order that no tax, interest or penalty is payable, and order the Minister to refund any or all of the tax, interest or penalty.

### **Practice and procedure**

**5.2** 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 5.1, and every judgment or order given or made in each such action may be enforced in the same manner and by the same process as a judgment or order given or made in an action commenced in the Court.

## **7 Section 7 is amended**

- (a) in subsection (3) by striking out “5-year” wherever it occurs and substituting “6-year”;**
- (b) in subsection (4) by striking out “sent by registered mail or served personally, require any person required to keep records” and substituting “in writing given to any person required to keep records, require that person”;**
- (c) by repealing subsection (5) and substituting the following:**

**7** Section 7 presently reads in part:

*7(3) The records shall be kept until the expiration of the 5-year period following the end of the taxation year to which the information contained in the records relates unless*

- (a) in the case of any particular records, the Minister consents in writing to their destruction before the end of the 5-year period, or*
- (b) the regulations authorize their destruction before the end of the 5-year period.*

(5) The Minister or any persons conducting an audit or examination on the Minister's behalf may, for the purpose of auditing or examining records that are required to be kept under this Act, at any reasonable time enter any place where a business is carried on by a person required to keep records under this Act.

(6) A person having possession of any records referred to in subsection (5) shall, for the purposes of an audit or examination under that subsection,

- (a) provide access to the place referred to in subsection (5) by the Minister or any persons conducting the audit or examination on the Minister's behalf,
- (b) give all reasonable assistance to the Minister or those persons,
- (c) provide or make available information and records required by the Minister or those persons, including information and records in the possession of agents or employees of that person and located elsewhere, and answer questions relating to that information or those records, and
- (d) provide a copy of any information or records required by the Minister or those persons.

**8 Section 8 is repealed and the following is substituted:**

**Return of information**

**8(1)** The Minister may, by direction in writing, require any person required to keep records under section 7 to submit to the Minister, within the time stated in the direction,

- (a) a written return showing in detail any information required by the direction if it relates to or is incidental to the calculation of tax payable on a mineral right for a taxation year, or
- (b) a written return containing or pertaining to any records if the records

*(4) Notwithstanding subsection (3), if the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by a direction sent by registered mail or served personally, require any person required to keep records to retain those records for any longer period specified in the direction.*

*(5) The records that are required to be kept by a person shall be made available by that person for inspection by the Minister or a person authorized by the Minister whether or not those records are in that person's possession.*

**8** Section 8 presently reads:

*8 The Minister may, by a direction in writing, require any person required to keep records to submit to the Minister, within the time stated in the direction, a written return showing in detail any information required by the direction if it pertains to any matter related to the calculation of tax payable on a mineral right for a taxation year.*

- (i) relate to or are incidental to the calculation of tax payable on a mineral right for a taxation year, and
- (ii) are sufficiently described in the direction to enable them to be identified.

(2) The Minister may waive compliance with a direction given under subsection (1) to the extent that the direction relates to records that are no longer required to be retained under section 7 and have been destroyed.

(3) The person to whom a direction is given under subsection (1) shall comply with the direction but may comply with a direction under subsection (1)(b) by permitting any person designated by the Minister to audit the records to which the direction relates and, on the request of that person, to take them away for further examination or copying.

(4) Any record taken away under subsection (3) must be returned to the person from whom it was taken within 21 days after it was taken or within any longer period that the Court directs for cause or if agreed to by the person who is entitled to its return.

(5) An application to the Court under subsection (4) must be made on notice to the person from whom the record was taken.

(6) A document purporting to be certified by an employee of the Department responsible for its custody to be a copy of a record made pursuant to subsection (3) is admissible in evidence in any judicial proceeding and is, in the absence of evidence to the contrary, proof of the contents of the record without proof of the employee's signature or appointment or of the employee's responsibility for custody of the document.

#### **Failure to comply with Minister's direction**

**8.1(1)** If a person fails to comply with a direction of the Minister under section 8(1), the Minister may, by sending the person a notice of the assessment, assess a penalty against the person, in an amount not to exceed the amount established in the regulations, for each day of default.

(2) Subject to subsection (3), a person who objects to being assessed a penalty under subsection (1) may, within 90 days



after the notice under subsection (1) is sent, serve on the Minister a notice of objection, in the form established by the Minister, setting out the reasons for the objection and the relevant facts.

**(3)** A notice of objection may not be served under subsection (2) unless the penalty assessed under subsection (1) has been paid.

**(4)** On receipt of a notice of objection, the Minister shall reconsider the assessment of the penalty and

- (a) confirm or vary the amount of the penalty, or
- (b) order that no penalty is payable,

and shall give notice of the Minister's decision to the person who served the notice of objection.

**(5)** Notwithstanding subsection (4), if a person indicates in the notice of objection served on the Minister under subsection (2) that the person wishes to appeal immediately to the Court and waives reconsideration by the Minister, the Minister may consent to an immediate appeal by serving a notice of consent on the person.

**(6)** Subject to subsection (7), a person who has served a notice of objection under subsection (2) may appeal to the Court in accordance with section 5 to have the assessment of the penalty vacated or varied if

- (a) the Minister has confirmed or varied the amount of the penalty under subsection (4)(a),
- (b) the Minister has consented to an immediate appeal under subsection (5), or
- (c) more than 90 days has elapsed from the date that the notice of objection was served on the Minister and the Minister has not acted under subsection (4).

**(7)** No owner or prescribed person may institute an appeal referred to in subsection (6) after 90 days has elapsed from the date that





- (a) a notice of the Minister's decision under subsection (4),  
or
  - (b) a notice of the Minister's consent under subsection (5),
- was served on the owner or prescribed person.

**9 Section 9(1) is amended by striking out “of Queen’s Bench”.**

**10 Section 11 is amended**

- (a) in subsection (1) by striking out “\$5000” and substituting “\$100 000”;
- (b) by adding the following after subsection (2):
  - (3) A person who pays a penalty assessed under section 8.1 in respect of a contravention referred to in subsection (1) may not be charged under this Act with an offence in respect of that contravention.

**11 The following is added after section 12:**

**Certificate of amount or penalty not paid**

**12.1(1)** Where all or part of an amount that is payable in respect of a penalty assessed under section 8.1 has not been paid, the Minister may issue a certificate stating the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court.

(3) When a certificate issued under subsection (1) is filed in the Court,

- (a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate, together with interest, to the day of payment, and

**9** Consequential to adding definition of “Court”.

**10** Section 11 presently reads:

*11(1) A person who contravenes section 7 or 10 or a direction by the Minister under section 7(4) or 8 is guilty of an offence and liable to a fine of not more than \$5000.*

*(2) If a corporation is guilty of an offence under this section, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided under subsection (1), whether or not the corporation has been prosecuted or convicted.*

**11** Certificate of amount or penalty not paid.

- (b) proceedings may be taken to enforce payment of the amount owing as stated in the certificate in the same manner as if the certificate were a judgment of the Court.

**12 Section 14(4) is amended by striking out “prescribed form” and substituting “form established by the Minister”.**

**13 Section 18 is repealed.**

**14 Section 19(b) is amended by striking out “and on receipt of the prescribed fee”.**

**12** Section 14(4) presently reads:

*(4) Unless the taxes, interest and penalties have been paid, the Minister, after the mailing of a default notice under section 13 and not less than 30 days before a notice is sent under subsection (5), shall publish in one issue of The Alberta Gazette a “Notice of Intention to Assume Title to Mineral Right” in the prescribed form.*

**13** Section 18 presently reads:

*18(1) If a person is registered as owner under the Land Titles Act of a specified undivided interest of less than the whole in a taxable mineral right, tax is payable and any proceedings authorized with respect to the taxable mineral right may be taken with respect to the interest of that person in the taxable mineral right in the same manner as if that person owned the taxable mineral right in the whole of the tract and without regard to any other owner of an interest in the taxable mineral right in the same tract.*

*(2) If more than one person is registered under the Land Titles Act as owner jointly or in common*

*(a) of a taxable mineral right, or*

*(b) of a specified undivided interest of less than the whole in a taxable mineral right,*

*all those persons shall be regarded as one owner for the purposes of this Act.*

**14** Section 19 presently reads:

*19 An employee of the Department authorized by the Minister for the purpose shall,*

*(a) if requested to do so by any person, make a search in the records of the Department in respect of a taxable mineral right, and*

**15 Section 21(1) is amended by striking out “by order”.**

**16 The following is added after section 22:**

**Service of documents**

**22.1** Subject to section 13, where a notice or other document is to be served on or is to be sent or given to a person under this Act, the notice or document may be served on the person or sent or given to the person by

- (a) personal service,
- (b) registered or regular mail to the person’s most recent address according to the records of the Department, or
- (c) any other method specified in the regulations.

**17 Section 23(1) is amended**

- (a) **in clause (d) by adding** “payable to the Crown under this Act, the circumstances in which penalties may be imposed, the amount of penalties, the persons liable to pay penalties and the time by which penalties must be paid” **after** “penalties”;
- (b) **in clause (f) by striking out** “condition that the Minister may prescribe” **and substituting** “terms and conditions that the Minister may impose”;
- (c) **by repealing clause (g) and substituting the following:**

- (b) *if required by any person and on receipt of the prescribed fee, issue a certificate showing whether all taxes, interest and penalties, if any, in respect of the taxable mineral right have been paid.*

**15** Section 21(1) presently reads:

*21(1) If anything to be done within a number of days or at or before a time fixed by or under this Act cannot be or has not been done within, at or before that time, the Minister may from time to time by order appoint a further or other time for doing it, whether the time at or before or within which it ought to have been done has or has not arrived or expired, as the case may be.*

**16** Service of documents.

**17** Section 23(1) presently reads in part:

*23(1) The Lieutenant Governor in Council may make regulations*

- (d) *respecting the imposition of interest and penalties;*
- (f) *respecting the circumstances under which the Minister may waive or reduce the tax payable in respect of a taxable mineral right on any condition that the Minister may prescribe;*
- (m) *respecting any value required for the purposes of calculating tax under this Act, including prescribing the circumstances under which the Minister may determine that value;*

- (g) respecting the application of provisions of this Act or regulations where more than one person is registered under the *Land Titles Act* as an owner of a taxable mineral right or an interest in a taxable mineral right, including regulations authorizing any assessment, taxation or proceedings authorized under this Act to be made, levied or taken with respect to an owner's interest in a taxable mineral right as if that owner owned the taxable mineral right in the whole of the tract and without regard to any other owner of an interest in that taxable mineral right;
- (g.1) respecting service of documents;
- (d) in clause (m) by striking out** "circumstances under which the Minister may determine that value" **and substituting** "values that may be established by the Minister";
- (e) by adding the following after clause (n):**
  - (n.1) governing the development, use and retention of documents and information in electronic form by
    - (i) the Department, and
    - (ii) persons dealing with the Department

under this Act, including, without limitation, regulations

  - (iii) requiring that documents or types or classes of documents be in an approved electronic format and respecting the manner in which that format is determined or approved,
  - (iv) governing the methods and means of transmission of approved electronic documents or classes of approved electronic documents, including the establishment of rules, procedures and guidelines for their transmission,
  - (v) governing the means by which the identity and authority of persons who create, submit or send approved electronic documents are verified, and





- (vi) respecting electronic signatures on approved electronic documents and the legal effect of such signatures;
- (n.2) providing that a provision in a regulation made under any of clause (n.1)(iii) to (vi) supersedes and applies in place of another enactment of Alberta in respect of the same subject-matter;
- (n.3) governing the legal effect and enforceability of approved electronic documents, certified copies of approved electronic documents and endorsements made on approved electronic documents, including
  - (i) giving an approved electronic document the same effect as if it were in writing and signed, and
  - (ii) exempting an approved electronic document from any requirement at law that a document must be in writing or signed;
- (n.4) authorizing the Minister to refuse to accept electronic documents that are not approved electronic documents or do not meet the requirements of or created under the regulations under clauses (n.1) to (n.3) in respect of the documents;
- (n.5) authorizing the Minister to establish rules respecting the acknowledgment of receipt of approved electronic documents;
- (n.6) authorizing the Minister to exempt a document or type or class of document from any requirement of or created under a regulation under clauses (n.1) to (n.5), subject to any terms and conditions the Minister considers appropriate;

**18 Section 25 is repealed.**

**19 Sections 3 to 11 of this Act apply in respect of the 2011 taxation year and subsequent taxation years.**

**18** Section 25 presently reads:

*25 The Minister may prescribe forms to be used under this Act.*

**19** Application.

**RECORD OF DEBATE**

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
Stage	Date	Member	From	To
Stage	Date	Member	From	To