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c 21 Land Transfer Tax Amendment Act, 1985

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CHAPTER 21

An Act to amend the Land Transfer Tax Act*Assented to December 31st, 1985*

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

1.—(1) Clause 1 (1) (d) of the *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by inserting after “therein” in the second line “a structure to be constructed on land as part of an arrangement relating to a conveyance of land”.

(2) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 1, is further amended by relettering clause (ja) as clause (jb) and by adding thereto the following clause:

(ja) “single family residence” means,

(i) a unit or proposed unit under the *Condominium Act*, or R.S.O. 1980,
c. 84

(ii) a structure or part of a structure,

that is designed for occupation as the residence of one family, including dependants or domestic employees of a member of the family, whether or not rent is paid for the occupation of any part of such residence, and whether or not the land on which the residence is situated is zoned for residential use, and “single family residence” includes any such residence that is to be constructed as part of the arrangement relating to a conveyance of land, but does not include any such residence constructed or to be constructed on agricultural land where the transferor with respect to the land conveyed meets the eligibility requirements for a farm tax reduction rebate contained in clause 4 (b) or (c) of Ontario Regulation 716/83 made under the *Ministry of Agriculture and Food Act*.

R.S.O. 1980,
c. 270

2.—(1) Subsection 2 (1) of the said Act is repealed and the following substituted therefor:

Tax imposed

- (1) Every person who tenders for registration in Ontario,
- (a) a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person; or
 - (b) a conveyance that is a conveyance only of unrestricted land and upon which is endorsed, or to which is attached, a certification by the Minister, or by some person authorized by the Minister in writing to make the certification, that all of the land being conveyed is unrestricted land,

shall, before the conveyance is registered, pay a tax computed,

- (c) at the rate of one-half of 1 per cent of the value of the consideration for the conveyance up to and including \$55,000, and at the rate of 1 per cent upon the remainder of the value of the consideration; plus
- (d) where the value of the consideration for the conveyance exceeds \$250,000 and the conveyance is a conveyance of land that contains at least one and not more than two single family residences, at the rates described in clause (c) plus an additional tax of one-half of 1 per cent of the amount by which the value of the consideration exceeds \$250,000.

Apportionment
of
consideration

- (1a) Where, in respect of a conveyance of land,
- (a) subsection (2) does not apply;
 - (b) the value of the consideration for the conveyance exceeds \$250,000; and
 - (c) a part of the land being conveyed is not used for residential purposes,

the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the land used in connection with a single family residence, and the person tendering the conveyance for registration is, notwithstanding subsection (1), liable to the additional tax of one-half of 1 per cent only upon the amount by which the value of the consider-

ation determined by the Minister to be attributable to land used in connection with a single family residence exceeds \$250,000.

(2) Subsection 2 (6) of the said Act is repealed and the following substituted therefor:

(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, notwithstanding subsection (1) or (2), liable to a tax computed at the rate of 1 per cent of such amount so determined plus any amount of tax required to be calculated under clause (1) (d), or subsection (1a) on the amount so determined, whichever is the less, and is liable to a tax computed at the rate of 20 per cent of the amount of the value of the consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed.

Apportionment
of
consideration

3. Subsection 4 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3, is repealed and the following substituted therefor:

(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person and, where the value of the consideration exceeds \$250,000, whether the land being conveyed contains at least one and not more than two single family residences and shall contain such other information as the Minister may prescribe to be disclosed.

Contents of
affidavit
as to
consideration

4. Subsection 6 (1) of the said Act is amended by inserting after "non-resident person" in the sixth line "or falsely states whether the land being conveyed contains at least one and not more than two single family residences".

5.—(1) Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5, is further amended by adding thereto the following subsection:

Idem

R.S.O. 1980,
c. 270

(1a) Where a person has paid an amount under this Act as tax on a conveyance of land that contains a single family residence and that single family residence ceases to be a single family residence because the transferee meets the eligibility requirements for a farm tax reduction rebate contained in clause 4 (b) or (c) of Ontario Regulation 716/83 made under the *Ministry of Agriculture and Food Act*, the Minister may, upon receipt of satisfactory evidence that the transferee meets those requirements, authorize the Treasurer to refund to the transferee the tax paid by the transferee calculated under clause 2 (1) (d), but no refund shall be made unless it is applied for within three years after the date of registration of the conveyance.

(2) Clause 7 (2) (a) of the said Act is amended by inserting after “subsection 2 (1)” in the second line “or (1a)”.

6. Subsection 11 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 6, is amended by striking out “ninety” in the third line and inserting in lieu thereof “180”.

7.—(1) Subsection 12 (5) of the said Act is repealed and the following substituted therefor:

Reply to
notice of
appeal

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

(2) Subsection 12 (10) of the said Act is repealed and the following substituted therefor:

(10) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made, Extension of time

(a) in respect of a notice of objection under subsection 11 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 11 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

8. Section 13 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 8, is further amended by adding thereto the following subsection:

(1aa) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory. Security for tax

9.—(1) Subsection 16 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by inserting after “subsection 2 (1)” in the forty-second line “or (1a)”.

(2) Subsection 16 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by inserting after “subsection 2 (1)” in the fifth line “or (1a)”.

(3) Subsection 16 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by adding at the end thereof “or (1a)”.

10.—(1) This Act, except section 6 and subsection 7 (2), comes into force on the day following the day it receives Royal Assent and applies to every conveyance tendered for registra- Commencement and application

tion on or after that day notwithstanding that a conveyance in registerable form was executed and delivered prior to that day.

Idem

(2) Section 6 and subsection 7 (2) shall be deemed to have come into force on the 15th day of February, 1984.

Short title

11. The short title of this Act is the *Land Transfer Tax Amendment Act, 1985*.