

1987

## c 11 Mining Tax Amendment Act, 1987

Ontario

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## CHAPTER 11

**An Act to amend the Mining Tax Act***Assented to February 12th, 1987*

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**1.—(1) Clause 1 (a) of the *Mining Tax Act*, being chapter 269 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(a) “assessment” includes a reassessment.

**(2) Section 1 of the said Act is amended by adding thereto the following clause:**

(aa) “associated corporations” has the meaning given to that expression by section 256 of the *Income Tax Act* (Canada). R.S.C. 1952,  
c. 148

**(3) Clause 1 (b) of the said Act is repealed and the following substituted therefor:**

(b) “Deputy Minister” means the Deputy Minister of Revenue.

**(4) Clauses 1 (c) and (d) of the said Act are repealed and the following substituted therefor:**

(c) “exploration and development expenditures” means any outlay or expense made or incurred that is,

(i) for the purpose of determining the existence, location, extent or quality of a mineral substance in Ontario,

(ii) for the purpose of bringing a mine in Ontario into production,

(iii) for the purpose of developing a mine in Ontario after the mine comes into production, including sinking or constructing a mine shaft,

mine haulage way or similar underground work designed for continuing use, and any extension thereof, or

(iv) any outlay or expense referred to in subclause (i), (ii) or (iii) made or incurred pursuant to an agreement whereby the outlay or expense represents consideration for the acquisition of,

(A) interest in a mine or in a right to mine a property, or

(B) shares of the capital stock of a corporation or any interest in or right to acquire such shares,

but, for greater certainty, shall not include,

(v) any consideration given for any mine, right to mine a property or any share or interest therein or right thereto, except as provided by subclause (iv), or

(vi) any outlay or expense described in subclause (iv) to the extent that the outlay or expense was, by virtue of that subclause, an exploration and development expenditure of another operator;

(ca) “fair market value” means the amount that could be expected to be realized on a sale in the open market by a willing seller to a willing buyer;

(cb) “hedging” means the fixing of a price for output of a mine before delivery by means of a forward sale or a futures contract on a recognized commodity exchange, or the purchase or sale forward of a foreign currency related directly to the proceeds of the output of a mine, but does not include speculative currency hedging except to the extent that the hedging transaction determines the final price and proceeds for the output;

(cc) “mine” means any opening in the ground, any working of the ground and any tailings source from or by which any mineral substance is taken, and comprises the mining claim, mining location and the whole parcel of land in which any such tailings source does or did exist or such workings are or have been carried on in Ontario;

- (d) “mineral substance” means every type and kind of ore, rock, mineral and tailings, whether organic or inorganic, but does not include diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, non-auriferous sand or gravel, or natural gas or petroleum, or sodium chloride recovered by solution method;
- (da) “mining assets” means the plant, equipment, machinery and buildings acquired for the purpose of the extraction of mineral substances from the ground and ancillary activities, but does not include processing assets or social assets.

**(5) Clauses 1 (e) and (f) of the said Act are repealed and the following substituted therefor:**

- (e) “Minister” means the Minister of Revenue;
- (f) “Ministry” means the Ministry of Revenue.

**(6) Clause 1 (g) of the said Act is repealed.**

**(7) Clauses 1 (h), (i), (j), (k) and (l) of the said Act are repealed and the following substituted therefor:**

- (h) “operator” includes,
  - (i) a person who has the right to work a mine and win mineral substances therefrom, personally or through agents or servants or together with one or more other persons, and
  - (ii) a person who has the right to receive a share of the proceeds or the profits of a mine or who has an interest in a mine, whether as a member of a joint venture, as a member of a partnership, or as a beneficiary of a trust that has the right to work the mine and win mineral substances therefrom, but does not include any person whose only right or interest is the right to receive royalties;
- (i) “output” means,
  - (i) the mineral substances raised, taken or obtained from any mine in Ontario, if those mineral substances are sold as such, or

- (ii) the product of a processing operation, where the mineral substances are raised, taken or gained from any mine in Ontario, if the processed product is sold;
- (j) “proceeds” means the total consideration that is received or is receivable from another person or persons, in any currency, whether in cash or non-cash form, from the output of the mine, including all by-products sold, or the amount determined in the prescribed manner, and all consideration received or receivable from hedging and future sales or forward sales of the output of the mine, converted at the date of receipt of the consideration to the equivalent in Canadian funds, if receivable in funds of another country;
- (k) “processing” means, with respect to mineral substances, any form of beneficiation, concentrating, smelting, refining, fabricating of metallic mineral substances, manufacturing of non-metallic mineral substances if the manufacturing is carried on in Canada, and any combination thereof;
- (ka) “processing assets” means processing plants, machinery, equipment and structures acquired for the purpose of processing mineral substances and ancillary activities, but does not include,
  - (i) the value of spare parts held in inventory for such assets,
  - (ii) stockpiles or inventories of processed mineral substances,
  - (iii) assets used for the transportation of processed mineral substances to market, or
  - (iv) mining assets or social assets;
- (l) “social asset” means a tangible asset owned by an operator that is incidental to mining and processing operations and that relates directly to the provision of housing, recreational or service facilities, if the asset,
  - (i) is necessary to attract or retain employees, and
  - (ii) is available for the use of all employees.

**(8) Section 1 of the said Act is further amended by adding thereto the following clause:**

(n) "Treasurer" means the Treasurer of Ontario.

**(9) Section 1 of the said Act is further amended by adding thereto the following subsection:**

(2) For the purposes of this Act, in the determination of whether two or more persons are not dealing at arm's length, section 251 of the *Income Tax Act* (Canada) applies with necessary modifications.

Non-arm's  
length

R.S.C. 1952,  
c. 148

**2. Section 2 of the said Act is repealed and the following substituted therefor:**

**2.—(1)** The taxes imposed by this Act shall be deemed to accrue proportionately as the days of each taxation year for which such taxes are imposed pass and the estimated amount of the taxes payable under this Act for a taxation year shall be paid to the Treasurer not later than two months after the end of the taxation year.

When taxes  
accrue and  
when payable

(2) Every operator of a mine shall pay the amount, if any, by which the tax that the operator estimates to be payable in the return required under section 7 exceeds the amount paid under subsection (1), at the time the operator delivers the return under section 7.

Payment of  
balance

**3.—(1) Subsections 3 (1) to (14) of the said Act are repealed and the following substituted therefor:**

(1) Every operator is liable for and shall pay a tax equal to 20 per cent of the amount by which the operator's profit, as determined under subsection (5), for the taxation year from all mines in which the operator has an interest, exceeds the lesser of,

Mining tax

- (a) the proportion of \$500,000 that the number of days in the taxation year is of 365; and
- (b) the aggregate of amounts determined under subsection (3) in respect of each mine in which the operator has an interest.

(2) For the purposes of this section, where two or more associated corporations are operators of one or more mines, the aggregate of the amounts deducted under subsection (1) by such corporations shall not exceed \$500,000.

Associated  
corporations

Part  
interest

(3) The amount determined under this subsection in respect of an operator's interest in a mine is the product of the operator's interest in the mine multiplied by the lesser of,

- (a) \$500,000; and
- (b) if applicable, the amount determined under subsection (4) in respect of the mine.

Part year  
production

(4) Where a mine is out of production in a taxation year for sixty or more consecutive days, the amount determined under this subsection for the purpose of clause (3) (b) is that proportion of \$500,000 that the number of days in the taxation year that the mine has been in production is of 365.

Profit

(5) An operator's profit for the taxation year from all mines in which the operator has an interest is the amount, if any, by which,

- (a) the operator's proceeds for the taxation year from the mines, other than amounts included in the computation of tax payable under this Act for a prior taxation year,

exceeds the aggregate of,

- (b) expenses incurred by the operator in the taxation year that are not otherwise deductible under this subsection, to the extent that the expenses are attributable to the production of output from the mines;
- (c) the operator's operating and maintenance expenses incurred in the taxation year with respect to social assets in Ontario, other than social assets referred to in subsection 4 (2), after deducting therefrom all rents, fees, grants and other payments received by the operator during the taxation year in connection therewith;
- (d) administrative and overhead expenses incurred by the operator in the taxation year, to the extent they are reasonably attributable to the production or sale of output of the mines;
- (e) expenses incurred by the operator in the taxation year in respect of scientific research conducted in Canada or in respect of product use development research conducted in Canada, to the extent the research is related to output of the mines;

- (f) donations made by the operator in the taxation year for charitable, educational or benevolent purposes that are reasonably related to mining operations in Ontario;
- (g) an amount not in excess of the maximum amount deductible by the operator for the taxation year as determined under subsection (7) in respect of exploration and development expenditures;
- (h) an amount not in excess of the operator's allowance for depreciation for the taxation year calculated in accordance with subsection (6);
- (i) expenses and outlays incurred by the operator in the taxation year for the transportation of output from the mine to the point of delivery of the output to its purchaser;
- (j) such reserves and deductions as are prescribed; and
- (k) the operator's prescribed processing allowance for the taxation year.

(6) The operator's allowance for depreciation for a taxation year in respect of depreciable property is,

Calculation  
of  
allowance for  
depreciation

- (a) an amount in respect of processing assets and assets for transporting processed mineral substances to market from the point at which processing is completed, not in excess of the lesser of,
  - (i) 15 per cent of the capital cost of the assets, computed as of the end of the taxation year, and
  - (ii) the undepreciated capital cost of the assets as of the end of the taxation year (before making any deduction calculated under this clause for the taxation year);
- (b) an amount in respect of mining assets, other than mining assets for which an allowance for depreciation is calculated under clause (c), not in excess of the lesser of,
  - (i) the aggregate of 30 per cent of the capital cost, computed as of the end of the taxation year, of mining assets acquired after the 9th day of April, 1974, which have not been used



previously in mining operations and 15 per cent of the capital cost, computed as of the end of the taxation year, of any other mining assets, and

- (ii) the undepreciated capital cost of the mining assets as of the end of the taxation year (before making any deduction calculated under this clause for the taxation year); and
- (c) where a mine is a new mine or a major expansion of an existing mine designated by the Minister for the purpose of this clause, an amount at the option of the operator, instead of the amount calculated under clause (b), in respect of mining assets acquired after the 7th day of March, 1978, and before completion of the project from a person dealing at arm's length for use in the new mine or the major expansion, not exceeding the lesser of,
  - (i) the operator's profit for the taxation year from the new mine or the major expansion calculated in the prescribed manner, and
  - (ii) the undepreciated capital cost of the mining assets as of the end of the taxation year (before making any deduction calculated under this clause for the taxation year).

Exploration  
and  
development  
expenditures

(7) For the purposes of clause (5) (g), the maximum amount deductible by an operator for a taxation year in respect of exploration and development expenditures is the aggregate of,

- (a) exploration and development expenditures incurred in Ontario by the operator to the extent that such expenditures qualified as exploration and development expenditures under this Act at the time they were incurred; and
- (b) exploration and development expenditures incurred by another person to the extent that,
  - (i) such expenditures qualified as exploration and development expenditures under this Act at the time they were incurred by the other person, and
  - (ii) such expenditures qualify to be renounced and have been renounced by the other person

in favour of the operator under subdivision e of Division B of Part I of the *Income Tax Act* (Canada) and have not been deducted by the other person under this Act or in the calculation of taxable income of the other person under Part I of the *Income Tax Act* (Canada),

R.S.C. 1952,  
c. 148

less the aggregate of,

- (c) all amounts deducted under this Act by the operator in any previous taxation year in respect of exploration and development expenditures;
- (d) all amounts allowed as eligible exploration expenses under the *Ontario Mineral Exploration Program Act*;
- (e) the amount of any assistance or benefit from a government, municipality or other public authority in respect thereto, including any grant, subsidy, forgivable loan, investment allowance or other form of assistance or benefit received or receivable by the operator, other than a grant or tax credit under the *Ontario Mineral Exploration Program Act*; and
- (f) all exploration and development expenditures that qualify to be renounced and have been renounced by the operator in favour of another person under subdivision e of Division B of Part I of the *Income Tax Act* (Canada).

R.S.O. 1980,  
c. 346

(8) For the purposes of this section, where an operator has deducted an amount under subsection 127 (5) of the *Income Tax Act* (Canada) in respect of depreciable property or has received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan or any other form of assistance, the capital cost of the property shall be deemed to be the amount by which the aggregate of,

Reduction of  
capital cost

- (a) the capital cost thereof to the operator determined without reference to this subsection; and
- (b) the part, if any, of the assistance that has been repaid by the operator before the disposition thereof by the operator,

exceeds the aggregate of,

R.S.C. 1952,  
c. 148

(c) all amounts deducted under subsection 127 (5) of the *Income Tax Act* (Canada); and

(d) the amount of assistance the operator has received or is entitled to receive in respect of that property before the disposition thereof by the operator.

Non-al-  
lowable  
deductions

(9) No allowance or deduction shall be claimed or made under this section in respect of,

(a) an outlay, loss or replacement of capital, a payment on account of capital or an amount in respect of depreciation, amortization, obsolescence or depletion, unless expressly permitted by this Act;

(b) interest or dividends paid;

(c) royalties for the right to extract mineral substances, or use real property in connection with the extraction of mineral substances, paid to any person other than Her Majesty in Right of Canada or Ontario; and

(d) any income or profits tax and any tax on capital paid to any jurisdiction.

Undepre-  
ciated  
capital cost

(10) The undepreciated capital cost of any depreciable property at any time means the amount by which the aggregate of,

(a) the capital cost of the property acquired before that time; and

(b) all amounts included in profit by virtue of subsection (11) for a taxation year ending prior to that time,

exceeds the aggregate of,

(c) the total of the amounts deducted under this Act before that time as an allowance for depreciation with respect to the property; and

(d) for each disposition of the property or part thereof, the lesser of,

(i) the proceeds of disposition of the property or part, and

(ii) the capital cost of the property or part.

(11) Where, at the end of a taxation year, the aggregate of all amounts determined under clauses (10) (c) and (d) exceeds the aggregate of all amounts determined under clauses (10) (a) and (b), the excess shall be deemed to be proceeds for the purposes of clause (5) (a). Recapture

(12) Where any property is acquired from or transferred to a person not dealing at arm's length with the operator, the capital cost of the property to the purchaser for the purposes of this Act and the proceeds of disposition of the property for the purposes of this Act shall be deemed to be, Where not dealing at arm's length

- (a) the amount or amounts determined in the prescribed manner where the property is depreciable property referred to in subsection (6); and
- (b) fair market value where the property is not depreciable property referred to in subsection (6).

(13) Where output from a mine is sold to a purchaser who does not deal at arm's length with the operator, the amount of the proceeds for the purposes of clause (5) (a) shall be deemed to be the fair market value of the output. Idem

(14) Where any goods or services are obtained or acquired from a supplier who does not deal at arm's length with the operator for an amount that exceeds the fair market value of the goods or services, no amount in excess of the fair market value of the goods or services shall be deductible under subsection (5). Idem

**(2) Subsections 3 (15) and (16) of the said Act are repealed.**

**4.—(1) Subsections 4 (2), (3) and (4) of the said Act are repealed and the following substituted therefor:**

(2) No deduction shall be made under clause 3 (5) (c) for operating and maintenance expenses related to social assets in Ontario that are attributable to a specified uranium undertaking. No deduction for certain operating and maintenance expenses

(3) Notwithstanding subsection 3 (6),

- (a) no deduction shall be made under clause 3 (5) (h) in respect of processing assets not situate in Canada and assets for transporting processed mineral substances to market from the point at which the processing outside Canada is completed that are attributable to the operation of a specified uranium undertaking; Allowance for depreciation

- (b) the deduction allowed under clause 3 (5) (h) in respect of processing assets situate in Canada, assets for transporting processed mineral substances to market from the point at which processing in Canada is completed and mining assets, attributable to the operation of a specified uranium undertaking, shall not be,
- (i) greater than 15 per cent of the capital cost of the assets as of the end of the taxation year, and
  - (ii) less than the lesser of 5 per cent of the capital cost of the assets as of the end of the taxation year and the undepreciated capital cost of the assets as of the end of the taxation year (before making any deduction under clause 3 (5) (h) in respect of the assets for the taxation year); and
- (c) clause 3 (6) (c) does not apply for the purposes of determining an allowance for depreciation with respect to mining assets used in the operation of a specified uranium undertaking.

**(2) Subsection 4 (5) of the said Act is amended by striking out “clause 3 (7) (n)” in the first line and inserting in lieu thereof “clause 3 (5) (g)” and by striking out “subclauses (i) and (ii) of” in the third line.**

**5. Section 5 of the said Act is repealed and the following substituted therefor:**

Duty to give  
notice of  
active  
operation

**5.—(1) The operators of a mine from which any mineral substance is raised, taken or gained shall, within ten days after the commencement of active operation of the mine, give written notice to the Minister that the mine is in active operation, and such notice shall state the name and address of every operator of the mine.**

Notice of  
change

**(2) Every operator of a mine that is in active operation shall forthwith give written notice to the Minister of every change in the operator’s name or address and such notice shall contain an address for service of the operator where notices or demands under this Act may be given or served.**

Service  
of notice

**(3) Any notice or demand required or provided for by this Act shall be deemed to have been properly and sufficiently given or served on the operator if mailed by registered mail to the address for service given by the operator, and in case no**

address for service is given as herein required, the notice or demand shall be sufficiently given or served if mailed by registered mail to any address that the Minister considers most likely to bring the notice or demand to the attention of the operator.

(4) The operators of a mine shall forthwith give written notice to the Minister of every discontinuance of active operation of the mine and of every recommencement thereof after discontinuance.

Notice of  
discon-  
tinuance

(5) For the purposes of this section and section 6, a mine is in active operation when any operator thereof is regularly entitled to receive proceeds from the output of the mine.

Meaning of  
"active  
operation"

**6. Subsection 6 (1) of the said Act is amended by striking out "mine assessor" in the fifth line and inserting in lieu thereof "Minister".**

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

(1) On or before the last day of the month that ends six months following the close of the taxation year, every operator of a mine in Ontario shall, without notice or demand, deliver to the Minister a return containing an estimate of the tax for which the operator is liable and the return shall be verified by a certificate stating that the information included in the return is in agreement with the books required to be kept under this Act, and such certificate shall be signed by a person who has personal knowledge of the affairs of the operator and the mine, but the Minister may require the person who certified the return to verify under oath the return or any part thereof, and any person so required shall forthwith make and file with the Minister an affidavit verifying the truth of the matters and facts contained in the return.

Returns

**(2) Subsection 7 (2) of the said Act is repealed and the following substituted therefor:**

(2) Section 86 of the *Corporations Tax Act*, other than clause (1) (d) and subsection (4) thereof, applies for the purposes of this Act and in the application thereof,

Investigations  
R.S.O. 1980,  
c. 97

(a) references to the corporation liable to pay tax under that Act shall be read as references to the operator under this Act; and

- (b) the reference in clause 86 (2) (a) to “a return as required by section 67” shall be read as “a return as required under this Act”.

**8. Section 8 of the said Act is repealed and the following substituted therefor:**

Notice of  
assessment

**8.—(1)** The Minister shall with all due dispatch examine each return delivered under section 7 together with any other information furnished under this Act and shall assess the tax for the taxation year and the interest and penalties, if any, payable.

Interest on  
unpaid tax

(2) Where the amount paid on account of the tax payable by the operator for a taxation year is less than the amount of tax payable for the taxation year, the operator liable to pay the tax shall pay interest on the difference between,

- (a) the amount of tax payable for the taxation year; and
- (b) the amount paid on account of the tax payable for the taxation year,

from the day on which the estimated amount of the tax payable for the taxation year is required to be paid under subsection 2 (1) to the day of payment of the tax, at the prescribed rate.

Interpretation

(3) For the purposes of subsections (2) and (9), the “amount paid on account of the tax payable” is the amount paid by the operator on account of the tax payable for the taxation year minus any amounts refunded to the operator or any amounts applied to other liability of the operator.

Idem

(4) For the purposes of subsections (2), (3) and (9), the “amount of tax payable” for a taxation year includes any penalty payable by the operator for the taxation year.

Assessments  
and refunds  
R.S.O. 1980,  
c. 97

(5) Subsections 73 (5), (6), (9) and (10), section 74 and subsections 75 (1) and (2) of the *Corporations Tax Act* apply for the purposes of this Act and in the application thereof,

- (a) references to the “corporation” shall be read as references to the “operator”;
- (b) the reference to subsections 73 (5) and (9) of that Act in subsection 74 (2) shall be deemed to be a reference to those subsections as made applicable for the purposes of this Act;

- (c) the reference to “section 67” of that Act in subsection 75 (1) shall be read as “section 7” of this Act; and
- (d) the reference in subsection 75 (1) to special small corporations and to the payment of the balance of tax as required under sub-subclause 70 (2) (b) (i) (B) of that Act shall not be applicable.

(6) Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at the prescribed rate shall be paid or applied thereon for the period commencing with the later of,

Interest on overpayments

- (a) the day on which the overpayment arose; and
- (b) the day on or before which the balance of the tax payable for the taxation year is required to be paid under this Act,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

(7) Where by a decision of the Minister after the filing of an objection under section 10 or of a court it is finally determined that the tax payable under this Act by an operator for a taxation year is less than the amount assessed to which objection was made or from which the appeal was taken and the effect of the decision is that an overpayment has been made for the taxation year, the interest payable under subsection (6) on that overpayment shall be computed at the prescribed rate.

Idem

(8) Where an amount has been paid with respect to the provisions of section 92 of the *Corporations Tax Act*, as made applicable for the purposes of this Act, and the tax payable under this Act for the taxation year as finally determined is less than the payment, the interest payable on that overpayment shall be computed at such rate as is prescribed for the purposes of subsection (7) as though the day on which the overpayment arose is the day upon which the payment was made.

Idem  
R.S.O. 1980,  
c. 97

(9) Except as provided in subsection (8), “overpayment” means the aggregate of all amounts paid on account of tax payable for a taxation year less all amounts payable under this Act, or an amount so paid where no amount is payable under this Act.

Interpretation



Application  
of payments  
received  
R.S.O. 1980,  
c. 97

(10) Subsection 70 (6) of the *Corporations Tax Act* is applicable for the purposes of this Act and, in the application thereof, the references to “a corporation” and “the corporation” shall be read as “an operator” and “the operator”, respectively.

**9. Section 9 of the said Act is repealed and the following substituted therefor:**

Reassessment

**9.—(1)** The Minister may,

- (a) at any time, if the operator filing a return,
  - (i) has made any misrepresentation or committed any fraud in filing the return or supplying any information under this Act, or
  - (ii) has failed to file the financial information with the return required to be filed under section 7, or
  - (iii) has been negligent in supplying any information under this Act, or
  - (iv) has filed with the Minister a waiver in the prescribed form within six years from the day of mailing of the notice of an original assessment; and
- (b) within six years of the day of mailing of the original notice of assessment in any other case,

reassess or make additional assessments, or assess a tax, interest or penalties, as the circumstances require.

Revocation  
of waiver

(2) Where the Minister is authorized to issue an assessment under subsection (1) by reason only that the operator has filed a waiver under subclause (1) (a) (iv), the Minister may not issue an assessment later than one year after the date on which the operator has filed a notice of revocation of the waiver in the prescribed form.

Pension plan  
withdrawals

(3) Notwithstanding subsection (1), where any amount is withdrawn by an operator from an employees' superannuation or pension fund or plan, the Minister may reassess the amount of tax payable by the operator under this Act for a maximum of ten taxation years immediately preceding the taxation year in which the withdrawal is made, and may disallow the deduction of all or any part of the amounts previously deducted by the operator in the calculation of the profit of the mine for

such taxation years with respect to contributions made by the operator and any predecessor thereof to such fund or plan, but in no case shall the total of the amounts disallowed for such taxation years exceed the lesser of the amount withdrawn from the fund or plan and the amount of such contributions to the fund or plan as determined in the prescribed manner.

**10. Section 10 of the said Act is repealed and the following substituted therefor:**

**10.** Sections 77, 78, 79, 80, 81, 82, 83 and 84 of the *Corporations Tax Act* apply for the purposes of this Act, and in the application thereof the following rules apply:

Objections  
and appeals  
R.S.O. 1980,  
c. 97

1. References therein to "a corporation" and "the corporation" shall be read as "an operator" and "the operator", respectively.
2. The reference to section 73 of that Act in subsection 77 (1) and clause 77 (6) (a) shall be read as a reference to sections 8 and 9 of this Act.
3. The reference in subsection 77 (5) to "clause 73 (7) (b) or (c)" shall be deemed to be a reference to clause 9 (1) (b) of this Act.
4. Clause 77 (6) (b) is not applicable for the purposes of this Act.
5. Clause 77 (6) (d) shall be read without reference to the words "if section 85 does not apply".
6. All references therein to sections 77, 78 and 80 of that Act, and subsections thereof as applicable, shall be deemed to be references to those sections and subsections as made applicable by this section.
7. The reference to subsection 73 (10) in section 79 shall be deemed to be a reference to that subsection as made applicable by section 8 of this Act.

**11. Section 11 of the said Act is repealed and the following substituted therefor:**

**11.—**(1) Every operator shall keep at or near the mine, or at such place determined under subsection (3), proper books of account showing,

Books of  
account

- (a) the quantity, weight, value, composition and other particulars of the mineral substances raised, taken or gained from the mine;
- (b) the returns from the processing plant;
- (c) the proceeds from the output of the mine;
- (d) each of the several expenses, payments and allowances deducted pursuant to section 3; and
- (e) any other facts and circumstances necessary or proper for ascertaining the amount of tax imposed by this Act.

Removal of mineral substances from mining premises

(2) No mineral substance raised, taken or gained from any mine shall be removed from the mining premises or processed at any processing plant until the weight of the mineral substance has been ascertained and entered in the books of account required to be kept under subsection (1).

Idem

(3) The Minister may determine the number and character of books required to be kept under subsection (1) and may require that the books of account mentioned in subsection (1) be kept at such place in Ontario as the Minister determines.

Costs

(4) Where the Minister permits books of account to be kept outside of Ontario, all costs incurred by the Minister to examine such books at the place where they are kept shall be reimbursed by the operator and the Minister may forthwith take all remedies available under this Act or at law to recover such costs.

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(5) Subsection 87 (3) of the *Corporations Tax Act* is applicable for the purposes of this Act and, in the application thereof, the reference to "every corporation" shall be read as "every operator".

**12. Section 12 of the said Act is repealed.**

**13. Subsection 13 (1) of the said Act is repealed and the following substituted therefor:**

Entry to mine

(1) Any person authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter upon any mine in Ontario and the operator of the mine shall,

- (a) permit such person to descend all pits and shafts and use all tackle, machinery, appliances and things

belonging to or under the control of the operator that the person considers necessary or expedient for the purposes of carrying out his or her duties under this subsection;

- (b) give to such person free ingress and egress to, from and over all buildings, erections, structures and vessels used in connection with the mine and any processing plant at which mineral substance taken from the mine is processed or in any way modified; and
- (c) permit the person to take such samples or specimens of mineral substance as the person considers necessary for the purpose of determining their value by assay or otherwise.

**14. Sections 15 and 16 of the said Act are repealed and the following substituted therefor:**

**15.** If any doubt or dispute arises as to the liability of an operator to pay the tax or any portion of the tax demanded under this Act, or if owing to special circumstances it is deemed inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper.

Compromising disputes as to liability for tax

**15. Section 18 of the said Act is repealed and the following substituted therefor:**

**18.—(1)** Every operator who fails to pay any tax imposed under this Act or any estimate of tax required to be paid under this Act at the time provided is liable to a penalty of 10 per cent of the amount unpaid plus an additional penalty of 10 per cent of the amount unpaid for each twelve month period that the tax or estimate of tax remains unpaid.

Penalty for failure to pay tax

(2) Every operator who fails to deliver a return as and when required by section 7 shall pay a penalty of,

Penalty

- (a) an amount equal to 10 per cent of the tax that was unpaid when the return was required to be delivered, if the tax payable by the operator for the taxation year that was unpaid at that time was less than \$10,000; and
- (b) \$1,000, if at the time the return was required to be delivered tax payable by the operator equal to \$10,000 or more was unpaid.

Failure to  
complete  
return

(3) Every operator who fails to complete the information required on the return to be delivered under section 7 is liable to a penalty of 1 per cent of the tax payable by the operator under this Act, but such penalty shall not in any case be less than \$20 or more than \$100.

Statements  
or omissions  
in return

(4) Where a person, acting or purporting to act on behalf of an operator, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made, or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this subsection referred to as a "false statement") in a return, certificate, statement or answer (in this subsection referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or the regulations, the operator is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable by the operator under this Act if the operator's profit for the taxation year was computed by adding to the operator's profit for the taxation year as reported by the operator in the return for the year that portion of the understatement of profit for the taxation year that is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by the operator under this Act had the tax payable for the taxation year been assessed on the basis of the information provided in the operator's return for the taxation year.

**16. Section 19 of the said Act is repealed and the following substituted therefor:**

Offences

**19.—**(1) Every operator that fails to deliver a return as and when required by this Act or the regulations is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of not less than \$50 for each day of default.

Idem

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(2) Every person who fails to comply with or contravenes subsection 86 (8) of the *Corporations Tax Act*, as made applicable by subsection 7 (2) of this Act, section 11 or subsection 13 (1), is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of \$25 for each day during which the default or contravention continues.

(3) Sections 89 and 90 of the *Corporations Tax Act* apply for the purposes of this Act. Officers of corporations

**17. Section 20 of the said Act is repealed and the following substituted therefor:**

**20.** Every person who has,

False statements

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer delivered or made as required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of an operator;
- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of an operator;
- (d) wilfully in any manner evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit an offence described by clauses (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on conviction to a fine of not less than \$25 and not more than \$10,000 plus, in an appropriate case, an amount of not more than double the amount of the tax that should have been shown to be payable or that was sought to be evaded, or to imprisonment for a term of not more than two years or to both fine and imprisonment.

**18. Section 21 of the said Act is repealed and the following substituted therefor:**

**21.**—(1) Subsections 92 (1), (2), (4) and (5) and sections 93, 94, 94a, 94b, 94c and 95 of the *Corporations Tax Act* apply with necessary modifications for the purposes of this Act and, without limiting the generality of the foregoing, references therein to “a corporation” and “the corporation” with respect to a person liable to pay an amount under that Act

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shall be read as “an operator” and “the operator” for the purposes of this Act.

Unregistered  
liens  
discharged

(2) Any property of any kind that is, by virtue of any predecessor of this section, subject to a first lien and charge that is not registered in the proper land registry office, is absolutely discharged from such unregistered first lien and charge unless, in the case of real property, in any proceeding a claim has been made or other steps taken by the Minister with respect to such unregistered first lien and charge or, prior to the 1st day of January, 1988, a notice of such first lien and charge has been registered by the Minister in the proper land registry office.

**19. Section 22 of the said Act is amended by striking out “county or district court” in the ninth line and inserting in lieu thereof “District Court”.**

**20. Sections 23 and 24 of the said Act are repealed.**

**21. Subsection 25 (1) of the said Act is repealed and the following substituted therefor:**

Action to  
recover  
tax, etc.

(1) If any tax, interest or penalty imposed by this Act or the reimbursement required under subsection 11 (4) is not paid when due, the same may be recovered with costs from the operator by an action to be tried without a jury at the suit of the Minister in any court of competent jurisdiction.

**22. Section 26 of the said Act is repealed and the following substituted therefor:**

Regulations

**26.—(1) The Lieutenant Governor in Council may make regulations,**

- (a) prescribing rates of interest for the purposes of this Act or a formula for computing those rates and the method of calculating that interest;
- (b) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (c) prescribing anything that by this Act is to be prescribed or is to be determined by the regulations;
- (d) defining any word or expression used in this Act or the regulations made under this Act that has not already been expressly defined in this Act;

- (e) prescribing forms and providing for their use;
- (f) prescribing the manner of determining the profit for the taxation year of an operator who is a member of a partnership or a beneficiary of a trust where the partnership or trust is operating a mine; and
- (g) prescribing the manner of determining and the matters to be taken into account in determining whether there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of clause 3 (6) (c) and the time at which a mine project is completed.

(2) A regulation made under subsection (1) may be made effective retroactively to a date not earlier than the 1st day of January, 1974. Regulation may be retroactive

**23.—(1) Where,**

**Transitional**

- (a) a person has delivered to the Minister, before the 15th day of May, 1986, a written notice of appeal within the time required under subsection 10 (1) of the *Mining Tax Act* as that subsection read immediately before the 15th day of May, 1986; and
- (b) the appeal referred to in clause (a) has not been, before the 15th day of May, 1986,
  - (i) referred to the Mining and Lands Commissioner or the Ontario Municipal Board under subsection 10 (2) of the *Mining Tax Act* as that subsection read immediately before the 15th day of May, 1986, or
  - (ii) set down for hearing and determination by the Divisional Court under subsection 10 (4) of the *Mining Tax Act* as that subsection read immediately before the 15th day of May, 1986,

the written notice of appeal shall be deemed to be a notice of objection served on the Minister for the purposes of the application of sections 8 and 10 of the *Mining Tax Act*, as re-enacted by sections 8 and 10 respectively of this Act.

(2) All references in the provisions of the *Mining Tax Act* as they read immediately before the day this Act receives Royal Assent and which remain applicable in respect of taxation years ending on or before the 31st day of March, 1986, and in Idem



the regulations made under the said Act, to the “mine assessor” shall be deemed to be references to the “Minister”.

*Idem*

(3) In the application of section 9 of the *Mining Tax Act*, as re-enacted by section 9 of this Act,

- (a) where an assessment, reassessment or additional assessment is made on or before the day this Act receives Royal Assent, references in section 9, as re-enacted, to the “Minister” shall be deemed to be references to the “mine assessor”;
- (b) where an assessment, reassessment or additional assessment is made in respect of a taxation year ending before the 1st day of April, 1986, references in subclause 9 (1) (a) (iv) and clause 9 (1) (b) to “six years” shall be read as references to “four years”; and
- (c) subsection 9 (3) applies only in respect of amounts withdrawn from an employees’ superannuation or pension fund or plan after the 31st day of March, 1986.

*Commencement and application*

**24.**—(1) This Act, except as provided in subsections (2) to (7), comes into force on the day it receives Royal Assent.

*Idem*

(2) Section 19 shall be deemed to have come into force on the 1st day of January, 1985.

*Idem*

(3) Subsections 1 (2), (4), (7) to (9) and section 2 of this Act, subsections 3 (1) to (11) of the said Act, as re-enacted by subsection 3 (1) of this Act, subsection 3 (2), section 4 and subsection 7 (1) of this Act shall be deemed to have come into force on the 1st day of April, 1986, and apply in respect of taxation years ending after the 31st day of March, 1986.

*Idem*

(4) Subsection 3 (12) to (14) of the said Act, as re-enacted by subsection 3 (1) of this Act, shall be deemed to have come into force on the 1st day of April, 1986, and apply in respect of acquisitions, transfers, dispositions and sales made after the 31st day of March, 1986.

*Idem*

(5) Section 9 shall be deemed to have come into force on the 1st day of April, 1986, and applies in respect of assessments, reassessments and additional assessments made after the 31st day of March, 1986, in respect of any taxation year.

*Idem*

(6) Subsections 1 (3) and (5) shall be deemed to have come into force on the 15th day of May, 1986.

(7) Section 10 shall be deemed to have come into force on the 15th day of May, 1986, and applies in respect of assessments issued after the 14th day of April, 1986. Idem

**25.** The short title of this Act is the *Mining Tax Amendment Act, 1987*. Short title

