

1988

c 2 Race Tracks Tax Act, 1988

Ontario

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CHAPTER 2

An Act to revise the Race Tracks Tax Act

Assented to January 7th, 1988

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

1. In this Act,

Definitions

“assessment” includes a reassessment;

“bet” means a bet placed under the system known as pari-mutuel wagering upon a race run at a race meeting;

“Minister” means the Minister of Revenue;

“operator” means a person who,

- (a) operates a race course,
- (b) conducts a race meeting, or
- (c) is in any manner the custodian or depository of money that is staked or deposited in the placing of a bet upon a race run at a race meeting;

“person”, in addition to its meaning in the *Interpretation Act*, includes a partnership, an unincorporated association or club and an agricultural society constituted under the *Agricultural Societies Act*;

R.S.O. 1980,
c. 219

R.S.O. 1980,
c. 14

“prescribed” means prescribed by the regulations;

“race meeting” means a series of horse races conducted by an operator;

“regulations” means the regulations made under this Act;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“triator bet” means a bet in which the person placing the bet undertakes to select in the exact order of finish the first three horses to finish in a race.

Tax rate

2. Every person who places a bet in Ontario upon a race run at a race meeting held in Ontario or elsewhere shall pay to Her Majesty in right of Ontario a tax equal to,

- (a) 9 per cent of the amount of money deposited by the person with the operator at the time he or she places a triactor bet; and
- (b) 7 per cent of the amount of money deposited by the person with the operator at the time he or she places a bet other than a triactor bet.

Tax collection

3.—(1) Every operator shall collect the tax under section 2 as agent of Her Majesty in right of Ontario from the person placing the bet by deducting it from the money deposited with the operator by the person placing the bet before recording and applying the money in the placing of the bet.

Duties of an operator

(2) Every operator shall,

- (a) be deemed to hold all amounts the operator collects under this Act in trust for Her Majesty in right of Ontario;
- (b) keep all amounts collected under this Act separate and apart from the operator’s own moneys; and
- (c) remit all amounts collected under this Act to the Treasurer in the manner and at the time prescribed.

Interest on unremitted tax

(3) If an operator fails to remit the tax collected by the operator under this Act to the Treasurer at the time prescribed, the operator is liable to pay to the Treasurer interest on the unremitted tax at the prescribed rate or rates from the day the tax should have been remitted to the day on which the tax is remitted.

Tax return

(4) Every operator required to collect tax under this Act shall submit a return accounting for the tax collected to the Minister for the period and at the time prescribed.

Extended time for making returns

(5) The Minister may enlarge the time for making any return before or after the time prescribed for making it.

(6) No person acting as an agent of Her Majesty in right of Ontario under this section shall thus be made ineligible as a member of the Assembly.

Member of Assembly

4.—(1) Every operator shall keep records and books of account of such nature and in such manner as is prescribed.

Records and books of account

(2) Records and books of account required to be kept under subsection (1) shall be kept,

Location of records and books of account

- (a) at the operator's place of business or residence in Ontario; or
- (b) at a place in Ontario or elsewhere approved in writing by the Minister, under any terms and conditions the Minister may impose.

(3) If, in the opinion of the Minister, an operator fails to keep adequate records and books of account for the purposes of this Act, the Minister may, by notice in writing, require the operator to keep, and the operator shall keep, such records and books of account as are specified in the notice.

Requirement by Minister to keep records

(4) Every operator shall retain all records and books of account, together with every account and voucher necessary to verify the information contained therein, until such time as all prescribed terms or conditions have been met.

Records retention period

5.—(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 any premises or place where an operator carries on business or keeps books and records and may,

Investigations

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates to or may relate to the tax imposed by this Act or any return required under this Act;
- (b) examine any property, process or matter that, in his or her opinion, may assist in determining or ascertaining,
 - (i) the information that is or should be in the books and records,
 - (ii) the amount of any tax imposed by this Act, or

(iii) whether or not a return is required under this Act; and

(c) require the operator or the operator's employees or agents to give all reasonable assistance with the audit or examination and to answer all proper questions relating to the audit or examination either orally or, if so required in writing, on oath or by statutory declaration and for that purpose may require that person to attend at the premises or place.

Obstruction (2) No person shall obstruct or interfere with any person authorized by the Minister under subsection (1) in the exercise of his or her powers under this section.

Demand for information **6.** For the purpose of obtaining any information that the Minister considers necessary for the purposes of this Act, the Minister may demand from any person such information as is indicated in a letter delivered personally or sent by registered or certified mail to the person, and the person shall furnish to the Minister all such information that the person has in his or her personal possession or under his or her control, in writing, within such reasonable period of time after the delivery or sending of the letter as is stipulated therein.

Assessment of tax collected **7.—(1)** Where an operator fails to submit a return or fails to remit amounts collected under this Act as required under this Act or the regulations, or if the return is not substantiated by the operator's records, the Minister may make an assessment of the tax collected by the operator at any time and such assessed amount shall be deemed to be the tax collected by the operator.

Idem (2) The Minister is not bound by a return submitted or information furnished by or on behalf of an operator and may, whether or not a return has been submitted, make an assessment of the tax collected by the operator at any time.

Continuing liability (3) Liability to remit tax collected under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Notice of assessment (4) Where the Minister makes an assessment under this section or section 8, the Minister shall serve by prepaid mail or by personal service a notice of assessment on the operator and the operator shall, within thirty days of the day of mailing or of personal service of the notice of assessment, remit to the Treasurer all amounts assessed and not previously paid or remitted by the operator, together with any interest thereon

payable under subsection 3 (3), whether or not an objection to or appeal from the assessment is outstanding.

(5) Where in the opinion of the Minister an operator is attempting to avoid payment of an amount assessed under this Act, the Minister may, notwithstanding subsection (4), direct that all amounts set out in the notice of assessment be paid forthwith.

Payment
forthwith

(6) Any assessment made under this section or section 8, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Assessment
valid and
binding

8.—(1) Every operator who fails to collect tax as required under this Act shall pay a penalty, when assessed therefor, equal to the amount of tax that the operator failed to collect.

Penalty for
non-
collection
of tax

(2) Every operator who fails to submit a return or fails to remit the tax collected as required by this Act and the regulations shall pay a penalty, when assessed therefor, equal to the greater of,

Penalty for
failure to
submit return
or to remit
tax

(a) \$25; and

(b) 10 per cent of the amount of tax collected and not remitted.

(3) Where the Minister is satisfied that an operator's failure to collect the tax that should have been collected under this Act is attributable to neglect, carelessness, wilful default or fraud, the Minister may assess a penalty against the operator, in lieu of any penalty that may be assessable under subsection (1), equal to the aggregate of the amount of tax the operator failed to collect and the greater of,

Where tax
not collected
because of
neglect,
fraud, etc.

(a) \$100; and

(b) 25 per cent of the amount of tax the operator failed to collect.

(4) No penalty may be assessed under subsection (1) or (2) more than three years after the date when the tax was required to be collected under this Act, the operator was required to submit a return under this Act and the regulations or the operator was required to remit the tax under this Act, as the case may be.

Penalty
assessment
time limit

- Idem** (5) A penalty under subsection (3) may be assessed more than three years after the date when the tax was required to be collected under this Act.
- Interest** (6) Any penalty assessed by the Minister under this section shall, if it is not paid within the time provided in subsection 7 (4), bear interest, at such rate as is prescribed, calculated from thirty days after the day of mailing or of personal service of the notice of assessment of the penalty until the day of payment.
- Surety bond** **9.—**(1) The Minister may require an operator to deposit with the Treasurer a bond by way of cash or other security satisfactory to the Minister in an amount to be determined by the Minister.
- Disposal of surety bond** (2) Where an operator who has deposited a bond with the Treasurer under subsection (1) has failed to collect or remit tax as required under this Act and the regulations, the Minister may apply the bond in whole or in part to the amount that should have been collected or remitted and shall forthwith give written notice thereof to the operator by registered mail or personal service.
- Recovery of tax** **10.—**(1) Upon default of payment by an operator of any amount payable under this Act, the Minister may,
- (a) bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office and may be continued by a successor of the Minister in office as if no change had occurred and shall be tried without a jury;
 - (b) issue a warrant directed to the sheriff of any county or district in which any property of the operator is located or situate for the amount owing by the operator, together with interest thereon from the date of the issue of the warrant and the fees and expenses of the sheriff, and the warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court.
- Idem** (2) The use of any remedy provided by subsection (1) does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of amounts due under this Act are in addition to any other remedies existing by law, and no

action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise.

11. The provisions of sections 22, 23, 24, 25, 26, 27 and 28 of the *Retail Sales Tax Act* apply with necessary modifications for the purposes of objections and appeals by an operator of assessments of tax or penalties under section 7 or 8 of this Act.

Objections
R.S.O. 1980,
c. 454

12.—(1) Every operator who fails to submit a return to the Minister or to remit the tax collected under this Act to the Treasurer as required by this Act and the regulations is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on conviction to a fine of not less than \$100 and not more than double the amount of tax collected and not remitted.

Offences

(2) Every person who has,

Idem

- (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 made under this Act;
- (b) to evade collection or remittance of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of records or books of account;
- (c) made, 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; or
- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on conviction to a fine of,

- (e) not less than the greater of \$500 and 25 per cent of the tax that was not remitted or was not collected; and
- (f) not more than twice the amount of such tax,

or to imprisonment for a term of not more than two years, or to both fine and imprisonment.

Idem

(3) Every operator who fails to collect the tax imposed by this Act is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on conviction to a fine equal to the amount of tax that should have been collected as determined under subsection (4) and, in addition, an amount not less than \$50 and not more than \$2,000.

Determination of tax

(4) The Minister shall determine the amount of tax referred to in subsection (3) from such information as is available to the Minister and shall issue a certificate as to the amount, but, except where the Minister considers there has been a deliberate evasion of this Act, the Minister shall not consider a period of more than three years in determining the amount of tax that should have been collected.

Certificate of tax

(5) In any prosecution under subsection (3), a certificate signed or purported to be signed by the Minister stating the amount of tax that should have been collected is *prima facie* proof of the amount of tax that should have been collected and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem

(6) Every person who contravenes or fails to comply with,

- (a) subsection 4 (1), (2), (3) or (4);
- (b) clause 5 (1) (c); or
- (c) subsection 5 (2),

of this Act is guilty of an offence and on conviction is liable to a fine of \$50 for each day during which the contravention or failure exists.

General offence

(7) Every person who contravenes, or fails to comply with, any of the provisions of this Act or the regulations is guilty of an offence and, if no other fine is provided for that offence under this Act, is liable upon conviction to a fine of not less than \$100 and not more than \$2,500.

Idem

(8) Every individual who directed, authorized, assented to, acquiesced in or participated in the commission of any act or omission which is an offence under this Act and for which a corporation, agricultural society, association or club would be liable for prosecution under this Act is guilty of an offence and on conviction is liable to the punishment provided for the offence, whether or not the corporation, agricultural society, association or club has been prosecuted or convicted.

(9) Proceedings shall not be commenced in respect of an offence under this Act six years after the date on which the offence was, or is alleged to have been, committed. Limitation

(10) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax under this Act or of any penalty assessed under section 8. Other remedies not affected

13.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall, Confidentiality

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to subsection (3), no person employed by the Government of Ontario shall be required, in connection with any legal proceedings, Non-disclosure

(a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections (1) and (2) do not apply in respect of, Exceptions

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax or a penalty under this Act.

(4) A person employed by the Government of Ontario may, in the course of his or her duties in connection with the administration or enforcement of this Act, Idem

(a) communicate or allow to be communicated to an official or authorized person employed by the Gov-

ernment of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and

- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

Copies

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any record or thing obtained by the Minister or on the Minister's behalf for the purposes of this Act to be given to,

- (a) the person from whom the record or thing was obtained; or
- (b) any person,
 - (i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or
 - (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause (a) or (b) or the agent of any such person authorized in writing in that behalf.

Disclosure to
other
jurisdictions

(6) Notwithstanding anything in this or any other Act, the Minister may permit information or a copy of any record or thing obtained by the Minister or on the Minister's behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administering or enforcing an Act of the Parliament of Canada imposing any tax or duty; or

- (b) a minister of the government of any province or territory of Canada or officer or employee employed under that minister, for the purposes of administering or enforcing an Act or ordinance of the Legislature of that province or territory imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of the province or territory, as the case may be, is permitted to give to the Minister information or copies of any record or thing obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that province or territory, as the case may be, in the administration or enforcement of that Act for the purposes of the administration or enforcement of this Act.

(7) Notwithstanding anything in this Act or any other Act, ^{Idem} the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act.

(8) Every person, ^{Offence}

- (a) who contravenes subsection (1); or
- (b) to whom information has been provided under the authority of subsection (4), (5), (6) or (7) who uses, communicates or allows to be communicated such information for any purposes other than that for which it was provided,

is guilty of an offence and is liable on conviction to a fine of not more than \$200.

14.—(1) The Lieutenant Governor in Council may make regulations, <sup>Regulations:
by
Lieutenant
Governor in
Council</sup>

- (a) prescribing the method of collection and remittance of the tax imposed under this Act and any condition or requirement affecting the collection or remittance;
- (b) authorizing or requiring the Deputy Minister of Revenue or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;

- (c) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (d) prescribing the rate of interest payable under this Act or the regulations, or a formula for computing that rate, and the method of calculating that interest;
- (e) prescribing the records, books of account and information to be kept and maintained by an operator;
- (f) prescribing anything that by this Act is to be prescribed or is to be determined by the regulations.

by Minister

(2) The Minister may make regulations,

- (a) prescribing, defining or determining anything that the Minister is permitted or required by this Act to prescribe, define or determine;
- (b) prescribing any form required by this Act or the regulations or that, in the Minister's opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.

may be retroactive

(3) A regulation is, if it so provides, effective with reference to a period before it was filed.

Repeals

15.—(1) The following are repealed:

1. The *Race Tracks Tax Act*, being chapter 428 of the Revised Statutes of Ontario, 1980.
2. The *Race Tracks Tax Amendment Act, 1981*, being chapter 5.

Application of R.S.O. 1980, c. 428

(2) Notwithstanding subsection (1), the *Race Tracks Tax Act* continues to apply in respect of taxes collected or collectable under that Act before the day this Act comes into force.

Commencement

16. This Act comes into force on the day it receives Royal Assent.

Short title

17. The short title of this Act is the *Race Tracks Tax Act, 1988*.