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c 346 Ontario Mineral Exploration Program Act

Ontario

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CHAPTER 346

Ontario Mineral Exploration Program Act

1.—(1) In this Act,

Interpre-
tation

- (a) “applicant” means a person who has applied for a grant or a tax credit under this Act;
- (b) “application” means an application for a grant or a tax credit under this Act;
- (c) “associate”, where used to indicate a relationship with any person, means,
 - (i) any corporation of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,
 - (ii) any partner of that person or corporation,
 - (iii) any trust or estate in which such person or corporation has, in the opinion of the Minister, a substantial beneficial interest or as to which such person or corporation serves as trustee or in a similar capacity,
 - (iv) any spouse, parent, son or daughter, brother or sister of that person, or
 - (v) any relative of such person or of his spouse, other than a relative referred to in subclause (iv), who has the same home as such person;
- (d) “designated program of mineral exploration” means a program of mineral exploration in Ontario designated by the Minister under section 2;
- (e) “eligible exploration expense” means a prescribed exploration expense incurred in a designated program of mineral exploration and paid in the year in respect of which the application is made;
- (f) “equity share” means any share of any class of shares of a corporation carrying voting rights under all circumstances and any share of any class of shares carrying

voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

- (g) "maximum grant limit" means the maximum aggregate amount of grants and tax credits in respect of a designated program of mineral exploration set by the Minister under subsection 2 (5);
- (h) "mineral exploration" means prospecting or exploring for a mineral resource;
- (i) "mineral resource" means a base or precious metal deposit, a coal deposit or such other minerals as may be prescribed;
- (j) "Minister" means the Minister of Natural Resources or such other member of the Executive Council to whom the administration of this Act is assigned;
- (k) "Ministry" means the Ministry of the Minister;
- (l) "person" means,
 - (i) an individual, partnership or limited partnership,
 - (ii) an unincorporated association, syndicate or organization,
 - (iii) a trust, trustee, executor, administrator or other legal representative, or
 - (iv) a corporation;
- (m) "prescribed" means prescribed by the regulations;
- (n) "regulations" means the regulations made under this Act.

Calculation of total number of equity shares

(2) In calculating the total number of equity shares that a corporation beneficially owned or controlled, for the purpose of this Act, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes carried.

Application of R.S.O. 1980, c. 475, s. 1 (2, 4, 5)

(3) In determining whether one corporation is affiliated with another corporation, subsections 1 (2), (4) and (5) of the *Small Business Development Corporations Act* apply. 1980, c. 20, s. 1.

Designation of program of mineral exploration

2.—(1) In each year, a person who proposes to carry out a program of mineral exploration in Ontario may apply to have the

program designated by the Minister under this Act and the Minister, subject to such terms and conditions as may be prescribed, may in his discretion designate such a program for the purposes of this Act.

(2) A designation under subsection (1) shall not be made by the Minister where the person who applies for designation is, Where designation not to be made

- (a) actively engaged in mineral production in Ontario; or
- (b) an affiliated corporation or an associate of any person who is actively engaged in mineral production in Ontario.

(3) No program of mineral exploration that commenced prior to the coming into force of this Act shall be designated under subsection (1). Idem

(4) A designation under subsection (1) shall be for a stated period of time and the designation shall expire at the end of the period of time stated, but the period of time for which a mineral exploration program is designated may, upon request, be extended by the Minister. Period of designation

(5) At the time the Minister designates a program of mineral exploration under subsection (1), the Minister shall establish a maximum grant limit applicable to the program for the year. 1980, c. 20, s. 2. Maximum grant or tax credit limit

3.—(1) Upon application by a person in the form prescribed by the Minister, the Minister may, subject to the provisions of this Act, pay a grant to any person who is not a corporation and who, Application for and payment of grant

- (a) is ordinarily resident in Canada; and
- (b) is not actively engaged in mineral production in Ontario and is not an affiliated corporation or an associate of any person actively engaged in mineral production in Ontario,

in an amount equal to 25 per cent of the eligible exploration expenses incurred by such person.

(2) Upon application made in the form prescribed by the Minister by a corporation that is not actively engaged in mineral production in Ontario and is not an affiliated corporation or an associate of any person actively engaged in mineral production in Ontario, the Minister may issue a certificate in the prescribed form that such corporation is entitled to a tax credit in an amount equal to 25 per cent of the eligible exploration expenses incurred by the Certificate of entitlement to tax credit

R.S.O. 1980,
c. 97

corporation and thereupon the corporation may deduct from the tax otherwise payable by it under Part II of the *Corporations Tax Act* the amount of the tax credit to which it is so entitled.

Pension
funds

(3) A pension fund with 10 per cent or more of its contributors resident in Ontario that meets the prescribed terms and conditions shall be deemed to be a person ordinarily resident in Ontario.

Grants to
corporations
1976, c. 62

(4) Notwithstanding subsection (1), a corporation incorporated as a credit union or caisse populaire under *The Credit Unions and Caisses Populaires Act, 1976* or a predecessor of that Act, and such other corporations as may be prescribed, may apply for and receive a grant under subsection (1) in lieu of a tax credit under subsection (2).

Carry for-
ward of
tax credit

(5) The unused portion of a tax credit obtained under subsection (2) may be carried forward by the corporation and deducted from the tax otherwise payable by the taxpayer under Part II of the *Corporations Tax Act* in subsequent taxation years.

Payment of
grant in lieu
of carry for-
ward of
tax credit

(6) Where a corporation is entitled to a tax credit under subsection (2) and the corporation is principally engaged in mineral exploration, the corporation may, in lieu of carrying the tax credit forward under subsection (5), apply to the Minister after the end of its taxation year in which it became entitled to the tax credit for the payment of a grant, and the Minister may pay a grant equal to the amount of the unused tax credit entitlement provided that the application is made within one year of the end of the corporation's taxation year in which it became entitled to the tax credit. 1980, c. 20, s. 3.

Supporting
material

4.—(1) An application for any grant or tax credit under subsection 3 (1) or (2) shall be accompanied by,

- (a) financial statements or records setting out the amounts of money actually spent on eligible exploration expenses; and
- (b) such additional information as the Minister may prescribe.

Copy of
tax credit
certificate
to Minister
of Revenue

(2) Where a tax credit certificate is issued by the Minister under subsection 3 (2), the Minister shall at the same time send a duplicate of such certificate to the Minister of Revenue.

Where tax
credit
claimed
R.S.O. 1980,
c. 97

(3) Where a corporation claims a tax credit under subsection 3 (2), the annual return required under section 67 of the *Corporations Tax Act* in which the credit is claimed, shall be accompanied by a copy of the certificate of the Minister issued under subsection 3 (2) setting out the amount of the tax credit to which the corporation is entitled. 1980, c. 20, s. 4.

5.—(1) Only one application for a grant or tax credit available under section 3 shall be made for each designated program of mineral exploration unless otherwise agreed to by the Minister at the time the program is designated.

One application only

(2) Where a designated program of mineral exploration is undertaken by or on behalf of a partnership, limited partnership or similar joint venture, the application shall be made on behalf of all such persons, and any grant or tax credit shall be available only to the persons who compose such partnership, limited partnership or joint venture calculated on the basis of the amount of money actually contributed and spent by or on behalf of each such person on eligible exploration expenses.

Partnership, limited partnership or joint venture

(3) The aggregate amount of grants and tax credits that may be given by the Minister under section 3 in respect of any designated program of mineral exploration shall not exceed the maximum grant limit in any year.

Maximum grant limit not to be exceeded

(4) Where an application under section 3 is made on behalf of more than one person and the amount of eligible exploration expenses entitles such persons to apply for grants or tax credits in an aggregate amount greater than the maximum grant limit, the Minister shall pro-rate the amounts of the grants among those persons eligible under subsections 3 (1) and (4) and the amounts of the tax credits among those persons eligible under subsection 3 (2) on the basis of the amount of money actually contributed and spent on eligible exploration expenses by such persons so that the aggregate of the grants paid and tax credits earned does not exceed the maximum grant limit.

Pro-rating

(5) No grant may be paid or tax credit made available under section 3 by the Minister unless an application therefor has been received by the Minister within six months of the expiry of the designation under subsection 2 (4). 1980, c. 20, s. 5.

Limitation on time for application

6. A grant or tax credit entitlement under this Act shall not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, attach, anticipate or give as security a grant or entitlement to a tax credit is void. 1980, c. 20, s. 6.

Grant or tax credit not assignable

7.—(1) The Minister upon receiving an application for a grant or tax credit under section 3 shall forthwith consider the application, and he may,

Consideration of application by Minister

- (a) approve payment of a grant or claim to a tax credit and determine the amount thereof that may be paid or claimed by the applicant; or

(b) determine that no grant may be paid or tax credit claimed by the applicant.

Notification
of Minister's
decision

(2) Where particulars of the basis on which the amount of any grant that may be paid or tax credit that may be claimed by the applicant was determined by the Minister are requested by the applicant, or where the Minister determines that no grant may be paid or tax credit claimed by the applicant, the Minister shall forthwith, in writing, notify the applicant of the basis upon which the amount was determined or of the basis upon which his determination was reached that no grant may be paid or tax credit entitlement claimed and shall notify the applicant of his right to object under this section.

Objection by
applicant

(3) Where an applicant is dissatisfied with the determination of the Minister under subsection (1) or with the decision of the Minister under subsection (2), he may object to the determination or decision and within sixty days from the date of the notice of such determination or decision by the Minister, serve on the Minister a notice of objection in the prescribed form setting out the reasons for the objection and all relevant facts.

Notice

(4) Notice of objection under this section shall be served by being sent by registered mail addressed to the Minister, but the Minister may accept a notice of objection under this section, notwithstanding that it was not served in the manner required.

Minister to
reconsider

(5) Upon receipt of the notice of objection, the Minister shall forthwith reconsider the determination or decision objected to and confirm, vary or reverse such determination or decision, and he shall thereupon notify the person making the objection of his action by registered mail.

Minister's
decision
final

(6) A decision of the Minister under subsection (5) is final and is not subject to appeal except where the decision involves the interpretation of a provision of this Act, or involves an issue solely of law. 1980, c. 20, s. 7.

Appeal on
question
of law

8. In any dispute over a determination or decision of the Minister under subsection 7 (5), the Minister may, where the dispute involves the interpretation of a provision of this Act, or involves an issue solely of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Supreme Court to have the issue in dispute determined, and if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined. 1980, c. 20, s. 8.

9.—(1) Except as provided in subsections (2) and (3), all information obtained under this Act by any officer, employee or agent of the Ministry is privileged and confidential, and no such officer, employee or agent shall knowingly communicate or allow to be communicated to any person not legally entitled thereto any such information, or allow any person not legally entitled to do so to inspect or have access to any statement or other writing containing such information. Information confidential

(2) Any information referred to in subsection (1) that is obtained by an officer, employee or agent of the Ministry in the administration of this Act may be communicated to any officer or employee of the Department of National Revenue of the Government of Canada, or of the Ministry of Revenue or of the Ministry of Treasury and Economics of the Government of Ontario. Exceptions

(3) Notwithstanding subsection (1), the Minister may publish particulars of any designated program of mineral exploration a year or more after such designation expires. 1980, c. 20, s. 9. Idem

10.—(1) Where a person receives or obtains a grant or a tax credit under this Act to which he is not entitled or the payment of an amount in excess of the grant or tax credit to which he is entitled, he shall forthwith return, Repayment of grant or tax credit where not entitled

(a) to the Minister in the case of a grant; or

(b) to the Minister of Revenue, in the case of a tax credit,

such grant or excess amount of grant or such tax credit that has been claimed or excess amount of tax credit claimed, as the case may be.

(2) Where a person receives or obtains the payment of a grant or claims a tax credit to which he is not entitled or the payment or claim of an amount in excess of the grant or tax credit to which he is entitled, the amount or excess amount, as the case may be, may be recovered in any court of competent jurisdiction as a debt due to the Crown in proceedings commenced at any time, and where applicable, the amount of any such indebtedness may be recovered in the manner provided for in the *Financial Administration Act* or the *Corporations Tax Act*. 1980, c. 20, s. 10. Idem
R.S.O. 1980,
cc. 161, 97

11.—(1) Every person who, Offence

(a) knowingly, makes a false or misleading statement in an application or statement required or permitted by this Act, and who does so for the purpose of obtaining a grant or tax credit under this Act to which he is not entitled or to which a person on whose behalf he is acting is not entitled;

- (b) knowingly, fails to disclose any information that is required to be disclosed and by reason thereof obtains a payment of a grant or entitlement to a tax credit under this Act to which he is not entitled or to which the person on whose behalf he is acting is not entitled;
- (c) knowingly, converts to his own use a payment of a grant or a tax credit entitlement under this Act to which he is not entitled; or
- (d) contravenes section 9 or 12,

is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or, if such person is a corporation, to a fine of not more than \$10,000.

Limitation

(2) No proceedings in respect of an offence under this Act shall be commenced except within five years of the time when the offence was or is alleged to have been committed.

Corporation

(3) Where a corporation is guilty of an offence under subsection (1), every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not more than \$1,000. 1980, c. 20, s. 11.

Investigation

12.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business or designated program of mineral exploration is carried on or any property is kept or where anything is done in connection with any such business or program of mineral exploration or where any books or records are kept and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or relative to the amount of a grant that may be paid or a tax credit claimed under this Act;
- (b) examine any lands or premises related to a designated program of mineral exploration, or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of any application for a grant or tax credit under this Act or in ascertaining the information that is or should be in the books or records or in any such application, or the amount of any grant that may be paid or tax credit that may be claimed under this Act;

- (c) require any person on the land or premises to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, he may require such person to attend at the premises or place with him; and
- (d) if during the course of any audit or examination it appears to him that there has been a violation of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

(2) The Minister may, for any purpose relating to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person any information or additional information, or the production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents within such reasonable time as is stipulated therein, provided that, in the opinion of the Minister or of the person authorized by him, it is necessary to make the demand in order to determine eligibility or possible eligibility for a grant or tax credit under this Act.

Production
of documents
and records
to Minister

(3) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way.

Copies of
documents
and records

(4) No person shall hinder or interfere with any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do.

Compliance

(5) Any officer or employee in the Ministry who is authorized by the Minister may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits. 1980, c. 20, s. 12.

Administra-
tion of
oaths

Regulations

13.—(1) The Minister may make regulations,

- (a) prescribing any form, notification, certificate or statement to be prescribed or that is required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any form, notification, certificate or statement shall be completed and what information it shall contain and requiring any information to be verified by statutory declaration;
- (b) providing for the payment of interest where no grant was payable or tax credit permitted or on overpayments of a grant or claims of tax credit and prescribing the rate of interest payable thereon.

Idem

(2) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the evidence to be furnished to the Minister to establish facts relevant to the entitlement of any person to receive a grant or tax credit and to establish the amount of such grant or tax credit;
- (b) authorizing a designated officer or class of officers employed by the Government of Ontario to exercise powers or perform duties of the Minister under this Act;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) prescribing a ceiling on the maximum grant limit that may be established by the Minister under subsection 2 (5);
- (e) defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;
- (f) prescribing the conditions of eligibility to any grant or tax credit available under this Act.

Retroactivity

(3) A regulation is, if it so provides, effective with reference to a period before it was filed. 1980, c. 20, s. 13.