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c 28 The Succession Duty Act Supplementary Provisions Act, 1980

Ontario

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CHAPTER 28

**An Act for the making of Additional Provisions
for the Levy and Payment of Succession Duty
by or in respect of Property or Persons to
whom The Succession Duty Act remains
Applicable**

Assented to June 17th, 1980

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

1. The purpose of this Act is to regulate the application of *The Succession Duty Act* in respect of a deceased person, to whom, notwithstanding the repeal of that Act, by reason of death occurring prior to the 11th day of April, 1979, the said Act continues to apply under section 1 of *The Succession Duty Repeal Act, 1979*, in order to prevent loss of revenue following the repeal of *The Succession Duty Act* and to provide a more expeditious procedure for the winding up of deferred liabilities to pay succession duty.

Purpose
of Act
R.S.O. 1970,
c. 449

1979, c. 20

2. Notwithstanding the repeal of *The Succession Duty Act*, the duty levied under that Act on any person or property and before giving effect to any allowance, reduction or discharge of duty authorized by section 7, 17a, 17b or 17c of *The Succession Duty Act* shall be levied, computed and paid in accordance with the provisions of this Act, which shall be applicable in addition to the provisions of *The Succession Duty Act* remaining in force.

This Act
additional
to *The
Succession
Duty Act*

3.—(1) Where, at any time after the 10th day of April, 1979, any person, whether directly or indirectly, becomes entitled to the possession or enjoyment of any benefit from any property, right or thing whatsoever, the value of which is required to be taken into account to determine the aggregate value of the estate of the deceased or that is, after the death of the deceased, derived from or substituted for any property, right or thing, the value of which is so required to be taken into account, and where such entitlement can reasonably be said to be,

Additional
duty
payable

- (a) the result of the exercise after the 10th day of April, 1979 by any person of any discretion of any kind howsoever arising or conferred; or

- (b) the result of the release, surrender, waiver, transfer or extinguishment by any person after the 10th day of April, 1979 of any right or interest to or in any benefit to such person resulting from the death of the deceased or resulting from any order that is made after the 10th day of April, 1979 with respect to any trust made by the deceased in his lifetime or by his will, and pursuant to *The Variation of Trusts Act* or any similar law in force in a jurisdiction other than Ontario,

R.S.O. 1970,
c. 447

R.S.O. 1970,
c. 449

duty in respect of the value thereof (determined in accordance with *The Succession Duty Act* and this Act) shall be levied in accordance with subsection 2 or 3 on the property in Ontario out of which such entitlement or any part thereof is provided or payable, and shall be levied on any person in Ontario who benefits from such entitlement, provided that payment of such duty by any person on whom it is levied shall, to the extent that such entitlement of that person is reasonably attributable to property in Ontario on which the same duty is levied, discharge such property from such duty.

No refund
of duty.

(2) Where the effect of the arising or coming into existence of the entitlement described in subsection 1 would, except for this Act, be to reduce, or give rise to a refund of, the duty paid or payable under *The Succession Duty Act* before the arising or coming into existence of such entitlement, the refund or reduction is void and shall not be made or given effect to.

Determina-
tion of
duty

(3) Where duty in respect of any interest that is diminished or adversely affected by the arising or coming into existence of the entitlement described in subsection 1 is not, at the time such entitlement arises or comes into existence, paid or to be paid in accordance with subsection 1 or 2 of section 16 of *The Succession Duty Act*, the duty levied by subsection 1 of this section and for which any person is liable shall be determined according to the following rules:

- (a) determine the dutiable value to such person of all property passing to or for his benefit on the death of the deceased and of all dispositions to him that do not come within clause g of subsection 1 of section 5 of *The Succession Duty Act*, as though this section were not applicable and the person was not entitled to any reduction or allowance under section 7 of *The Succession Duty Act*;
- (b) determine the value of the benefit to the person of any entitlement described in subsection 1 in respect of which duty was previously determined under this section or to which section 4 was applied, and as though the person was not entitled to any reduction or allowance under section 7 of *The Succession Duty Act*;

- (c) determine the value of the benefit to the person of any entitlement described in subsection 1 in respect of which duty has not been previously determined under this section and to which section 4 is not applied;
- (d) determine the duty payable if the aggregate of the values determined in accordance with clauses *a*, *b* and *c* were wholly dutiable to the person; and
- (e) subtract from the duty determined under clause *d* the duty that would be payable if only the values determined in accordance with clauses *a* and *b* were dutiable to the person,

and the amount remaining is the amount of the duty levied by subsection 1, and such amount shall not be reduced by any allowance provided for in section 7 of *The Succession Duty Act* and shall be paid forthwith to the Treasurer, and if not so paid shall bear interest until paid at the rates from time to time prescribed for the purpose of subsection 1 of section 17 of *The Succession Duty Act*.

R.S.O. 1970,
c. 449

4.—(1) Notwithstanding section 3, where the entitlement referred to in that section arises from the exercise of a discretion exercisable for the maintenance, advancement or benefit of any person or class of person designated in the will of the deceased or in a trust made by the deceased in his lifetime, and where the Minister, in his absolute discretion, is satisfied that the benefit to which any person thereby becomes entitled is, having regard to the financial circumstances of that person and his relationship to the deceased, necessary, reasonable and not for the purpose of reducing duty payable under *The Succession Duty Act*, section 3 shall not apply to such benefits.

Reasonable
maintenance
excepted

(2) Notwithstanding section 3, where the entitlement referred to in that section arises from the release, surrender, waiver, transfer or extinguishment of any right or interest, and where the Minister, in his absolute discretion, is satisfied that such release, surrender, waiver, transfer or extinguishment is not for the purpose of reducing duty payable under *The Succession Duty Act* and is for the purpose of providing for a dependant of the deceased, of effecting the compromise or settlement of a dispute in the administration of the estate of the deceased, of carrying out the true intent and purpose of the deceased expressed in his will, or of facilitating the administration of the estate of the deceased, section 3 shall not apply to such release, surrender, waiver, transfer or extinguishment.

Extinguish-
ment or
transfer of
interest

5.—(1) Notwithstanding subsections 3, 4, 5 and 7 of section 16 of *The Succession Duty Act*, the duty mentioned in subsection 3 or 4 of that section may, where an election is made in accordance

Where
duty
deferred

with subsection 2 of this section, be paid after the time provided by subsection 1 of section 16 of *The Succession Duty Act* and before any interest in expectancy referred to in subsection 3 or 4 of that section falls into possession or commences to be enjoyed, and shall be on the basis of the value of such interest in expectancy ascertained as provided in *The Succession Duty Act* and this Act and determined as at the 10th day of April, 1979, and no deduction shall be made for any duty paid on or with respect to any prior interest, income or annuity arising out of the property in respect of which such interest in expectancy exists, but where such election is made, the duty payable under this subsection is due and payable on the 1st day of January, 1981 and shall, if not then paid, bear interest at the rates from time to time prescribed for the purpose of subsection 1 of section 17 of *The Succession Duty Act*.

Election,
how made

(2) The election provided for in subsection 1 shall be made by the executors of the deceased on whose death the duty was levied that is elected to be paid in accordance with subsection 1, and the election shall be in writing delivered to the Minister on or before the 31st day of December, 1980, and every such election shall be with respect to all interests in expectancy referred to in subsection 1 that have not, prior to the delivery to the Minister of the election, fallen into possession or commenced to be enjoyed or been the subject of a consent given by the Minister under subsection 6 of section 16 of *The Succession Duty Act*.

R.S.O. 1970
c. 440

Expenses of
valuation

(3) Where an election under subsection 2 has been made, the value of any property that is required to be valued in accordance with subsection 1 may be reduced by the amount of any costs that are, in the opinion of the Minister, incurred for, and reasonably necessary to, the determination of the value of the property.

Contingencies not
to reduce
value

6. In determining any duty or valuing any property, right or thing or any interest in expectancy for the purposes of this Act or *The Succession Duty Act*, no effect shall be given to, or any reduction in value allowed for, the possible occurrence of any contingency that has not, at the date of death of the deceased, occurred, except to the extent that the happening of such contingency can be actuarially predicted according to such rule, method and standard of mortality and of value and at such rate of interest as is prescribed for the purpose of subsection 4 of section 3 of *The Succession Duty Act*, or to the extent that, where an election under subsection 2 of section 5 of this Act has been made, such contingency has occurred on or before the 10th day of April, 1979.

Interpre-
tation

7.—(1) Words and expressions in this Act that are defined in *The Succession Duty Act* have the same meaning in this Act that they have in *The Succession Duty Act*, unless the context of this Act otherwise requires.

(2) A reference in this Act to *The Succession Duty Act* or to any provision thereof includes a reference to any predecessor Act or provision of similar import that remains applicable in respect of a deceased person and the determination of duty levied in respect of his death.

Idem
R.S.O. 1970,
c. 449

(3) The provisions of *The Succession Duty Act* apply, with necessary modifications, to the administration and enforcement of the provisions of this Act, to the collection of any duty levied by this Act, and to an appeal to the Supreme Court of any question relating to the construction of this Act or the duty levied by this Act.

Procedures

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

Regulations

- (a) defining any expression in this Act that is not defined in *The Succession Duty Act*;
- (b) authorizing or requiring the Deputy Minister 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;
- (c) providing for the application of this Act to particular cases that are determined to come within the spirit and intent of this Act; or
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) A regulation is where it so provides effective with respect to any period of time prior to the coming into force of this Act and not earlier than the 11th day of April, 1979.

Idem

9. This Act comes into force on the day it receives Royal Assent and applies in respect of every deceased person whose death occurred before the 11th day of April, 1979 and to any event or transaction occurring before or after this Act comes into force, provided that no duty under this Act shall be payable in accordance with subsection 3 of section 3 where it is established by evidence satisfactory to the Minister that the entitlement described in subsection 1 of section 3 arose or came into existence prior to the 29th day of April, 1980.

Commence-
ment

10. The short title of this Act is *The Succession Duty Act Supplementary Provisions Act, 1980*.

Short title

