

1977

## c 14 The Land Transfer Tax Amendment Act, 1977

Ontario

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## CHAPTER 14

**An Act to amend  
The Land Transfer Tax Act, 1974**

*Assented to July 12th, 1977*

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

- 1.—(1) Subsection 1 of section 1 of *The Land Transfer Tax Act, 1974*, being chapter 8, as amended by the Statutes of Ontario, 1974, chapter 93, section 1, is further amended by adding thereto the following clauses:

(ha) “recreational land” means land that is not used exclusively as residential land and that is predominantly used for the recreation and enjoyment of its owner or lessee or those, other than persons using the land for agricultural purposes, who are permitted by such owner or lessee to be on the land;

(hb) “residential” means, when used in respect of land, the land subjacent to a building that is the main and principal residence of the occupants, whether as owners or tenants, and includes all immediately contiguous lands necessary and used for such residence;

. . . . .

(la) “unrestricted land” means land that,

- (i) under a by-law passed pursuant to section 35 of *The Planning Act*, or under an order made pursuant to section 32 of that Act is zoned for commercial or industrial use, or R.S.O. 1970.  
c. 349
- (ii) where subclause i does not apply, is assessed under *The Assessment Act* for residential assessment or is lawfully used and occupied or was last lawfully used or occupied for commercial, industrial or residential purposes, R.S.O. 1970.  
c. 32

R.S.O. 1970,  
c. 32

and that is not assessed under *The Assessment Act*, or is not actually used, as farm or agricultural land, woodlands, recreational land or as an orchard.

s. 1 (1) (m), (iv),  
re-enacted

- (2) Subclause iv of clause *m* of subsection 1 of the said section 1 is repealed and the following substituted therefor:

(iv) in the case of a final order of foreclosure under any mortgage or charge affecting land, the lesser of,

(A) the amount owed under the mortgage or charge at the time it was foreclosed, including principal, interest and all other costs and expenses, other than municipal taxes, secured by the mortgage or charge and owing at that time, or

(B) an amount established to the satisfaction of the Minister to be equal to the fair market value of the land that is subject to the mortgage or charge.

s. 2 (1),  
re-enacted

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

Tax  
imposed

- (1) Every person who tenders for registration in Ontario,

(a) a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person; or

(b) a conveyance that is a conveyance only of unrestricted land and upon which is endorsed or to which is attached a certification by the Minister, or by some person authorized by the Minister in writing to make the certification, that all of the land being conveyed is unrestricted land,

shall, before the conveyance is registered, pay a tax computed at the rate of three-tenths of 1 per cent of the value of the consideration for the conveyance up to and including \$35,000, and at the rate of six-tenths of 1 per cent upon the remainder of the value of the consideration.

s. 2 (2),  
amended

- (2) Subsection 2 of the said section 2 is amended by inserting after "land" in the second line "that is not unrestricted land".

- (3) The said section 2, as amended by the Statutes of Ontario, <sup>s.2, amended</sup> 1974, chapter 93, section 2, is further amended by adding thereto the following subsection:

(6) Where only a part of the land being conveyed is <sup>Apportionment of consideration</sup> unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, notwithstanding subsection 1 or 2, liable to a tax computed at the rate of six-tenths of 1 per cent of such amount so determined, and is liable to a tax computed at the rate of 20 per cent of the amount of the value of the consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed.

- 3.—(1) Subsection 2 of section 4 of the said Act is repealed and <sup>s. 4 (2), re-enacted</sup> the following substituted therefor:

(2) The affidavit required by subsection 1 shall be made <sup>Affidavit by whom to be made</sup> by the persons who are required to make the affidavit required by subsection 3, and notwithstanding subsection 3, the Minister may prescribe a form in which the affidavits required by subsection 1 or 3 are combined as one affidavit for the purposes of those subsections.

- (2) Subsections 3 and 4 of the said section 4 are repealed and <sup>s. 4 (3, 4), re-enacted</sup> the following substituted therefor:

(3) In addition to the affidavit required by subsection 1, <sup>Affidavit as to residence</sup> there shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in Form 1 or in such other form as is prescribed, and the affidavit shall be made by,

- (a) each transferee to whom or in trust for whom any land is conveyed by the conveyance to which the affidavit relates;
- (b) each trustee to whom any land is conveyed and who is shown as a trustee in the conveyance to which the affidavit relates;
- (c) each transferee named in the conveyance to which the affidavit relates;



- (d) an agent of any person referred to in clause *a*, *b* or *c*, if the agent is authorized in writing to make the affidavit;
- (e) the solicitor acting in the transaction as the solicitor for any person referred to in clause *a*, *b* or *c*;
- (f) the presiding officer authorized to act for a corporation that is a person referred to in clause *a*, *b* or *c*, or the Vice-President, Manager, Secretary, Director or Treasurer authorized to act for such corporation; or
- (g) either of two transferees who are married to each other and both of whom are transferees referred to in clause *a*, *b* or *c*, where the transferee making the affidavit is acting on behalf of the other of such transferees,

and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person, and shall state such other information as is required in order to complete the affidavit.

Affidavits,  
what to  
contain

(4) The affidavit required by subsection 1 or 3 shall state that the person making it has personal knowledge of the facts stated in it, and shall state, where applicable, the capacity in which such person is making the affidavit and the name of any transferee on whose behalf such person is making the affidavit.

s. 4(6),  
amended

(3) Subsection 6 of the said section 4, as amended by the Statutes of Ontario, 1974, chapter 93, section 3, is further amended by striking out "7" in the first line as inserted by the amendment of 1974 and inserting in lieu thereof "7 or 8".

s. 4,  
amended

(4) The said section 4 is further amended by adding thereto the following subsection:

Affidavit  
as to  
residence not  
required

(8) Notwithstanding subsection 3, where a conveyance tendered for registration has endorsed upon it or attached to it the certification in accordance with clause *b* of subsection 1 of section 2 that all of the land being conveyed is unrestricted land, no affidavit is required under subsection 3 on the tender of such conveyance for registration.

s. 8,  
amended

4. Section 8 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 93, section 5, is further amended by adding thereto the following subsection:

(4) Where tax has been paid with respect to the registration of a conveyance of unrestricted land to or in trust for a non-resident person, and it is established to the satisfaction of the Minister that the certification in accordance with clause *b* of subsection 1 of section 2 was erroneously refused after full and complete disclosure of all relevant circumstances and facts to the person requested to make the certification, the Minister may refund any tax that would not have been payable had the certification been properly given, provided that application for such refund is made within three years of the payment of the tax of which a refund is sought.

Refunds on conveyances of unrestricted land

5. Subsection 4 of section 12 of the said Act is repealed and the following substituted therefor:

s. 12 (4), re-enacted

(4) The Minister may assess or reassess any person for any tax payable by him under this Act within four years from the day such tax became payable, except that, where the Minister establishes that a person has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in supplying any information under this Act, in making any affidavit required by this Act, or in omitting to disclose any information, the Minister may assess or reassess at any time he considers reasonable the tax payable by such person.

Limitation on assessment

6. The said Act is further amended by adding thereto the following sections:

ss. 14a, 14b, enacted

14a.—(1) Upon default of payment of an amount assessed under section 12,

Recovery of tax

- (a) the Minister may 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 his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and
- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person assessed for tax under this Act is located or situate for the amount of the tax, interest and penalty or any of them owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the



same force and effect as a writ of execution issued out of the Supreme Court on a judgment in favour of the Crown.

Compliance  
to be  
proved by  
affidavit

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies  
for recovery  
of tax

(3) The use of any of the remedies provided by this section 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 any tax imposed by 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 at law in favour of the Crown.

Garnishment

14b.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability  
of debtor

(3) Every person who has discharged any liability to a person liable to make a payment under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

Service on  
garnishee

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment under this Act carries on business under a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly

served if it has been left with an adult person employed at the place of business of the addressee.

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. Idem

(6) Subject to the provisions of *The Wages Act*, where the Minister has under this section required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter or letter served personally. Garnishment  
of wages  
R.S.O. 1970,  
c. 486

(7) Where any person, without reasonable excuse, has failed to remit to the Treasurer the moneys as required under this section, the Minister may apply before a judge of the Supreme Court for an order directing such person to remit the moneys which he has failed to remit. Failure  
to remit

7.—(1) Subsection 1 of section 16 of the said Act, as re-enacted by the Statutes of Ontario, 1974, chapter 93, section 7, is amended by adding "or" at the end of clause *c* and by striking out clauses *e*, *f* and *g*. s. 16 (1),  
amended

(2) The said section 16, as amended by the Statutes of Ontario, 1974, chapter 93, section 7, is further amended by adding thereto the following subsections: s. 16,  
amended

(5a) Where a person entitled to the leasehold interest in land acquires the freehold interest therein, the value of the consideration for the conveyance to that person of the freehold interest may be reduced by the amount of the value of the consideration for the conveyance by which such person acquired his leasehold interest in the land if the value of that consideration was determined under sub-clause *v* of clause *m* of subsection 1 of section 1 and if tax was computed and paid with respect to the value of Reduction of  
consideration  
on lessee  
acquiring  
freehold



that consideration so determined, but the reduction shall not exceed the value of the consideration for the conveyance of the freehold interest.

Interpre-  
tation

(5*b*) For the purposes of clause *b* of subsection 1, farming shall not be considered to be an active commercial or industrial business.

Commence-  
ment

8.—(1) This Act, except sections 1, 2, 3, 4 and 7 comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 and 2, subsections 2, 3 and 4 of section 3, and sections 4 and 7 shall be deemed to have come into force on the 20th day of April, 1977.

Idem

(3) Subsection 1 of section 3 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

9. The short title of this Act is *The Land Transfer Tax Amendment Act, 1977*.