

1937

c 172 Mortgage Tax Act

Ontario

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CHAPTER 172.

The Mortgage Tax Act.

1.—(1) The council of any municipality, having a population of 200,000 or more, may by by-law provide that a tax not exceeding one-tenth of one per centum upon the sum of money secured by each instrument by way of mortgage or charge, registered in a registry or land titles office upon lands within the municipality shall be paid by the party registering the same and any such by-law may be repealed, altered, or amended from time to time.

Taxation of mortgages by municipality having population of 200,000 or more.

(2) Upon the passing of any by-law under subsection 1 by the council of a municipality, a copy thereof, certified by the clerk of the municipality under the seal of the corporation, shall be deposited with each registrar and master whose registry or land titles division covers land in such municipality, and from and after the deposit of the by-law as aforesaid, such tax as is provided shall be collected by the registrar or master as the case may be, before he registers the mortgage. R.S.O. 1927, c. 156, s. 1.

By-law to be deposited.

Tax collected by registrar.

2.—(1) Any registrar or master, not paid by salary, shall be entitled to retain to his own use two and one-half per centum of the moneys collected by him. R.S.O. 1927, c. 156, s. 2 (1).

Registrar entitled to percentage.

(2) The registrar and master shall, within the first week of each month, furnish the Inspector of Legal Offices with a statement of the amount collected during the previous month in respect of the said tax, and shall pay over the amount thereof, less the percentage provided for in subsection 1 to the treasurer of the municipality. R.S.O. 1927, c. 156, s. 2 (2); 1929, c. 44, s. 2.

Amount collected to be paid to Inspector.

3. Where the amount to be secured by any mortgage is not clearly stated therein, or where the registrar or master has any doubt as to the amount intended to be secured, he shall require the full and true amount of the moneys intended to be secured by such mortgage to be proved by affidavit to be filed with him. R.S.O. 1927, c. 156, s. 3.

Registrar may require affidavit as to amount of mortgage to be filed.

Tax to be payable once only.

4.—(1) Notwithstanding anything contained in this Act or in any by-law heretofore or hereafter passed under subsection 1 of section 1, and notwithstanding that the same instrument may be registered or entered more than once, or that more than one instrument may be registered or entered for securing the same sum of money, or that any such instrument or instruments may be registered or entered in more than one registry office or land titles office, or in a registry office and land titles office, the tax imposed by any such by-law shall be payable once only in respect of any one transaction for securing money by way of mortgage or charge, or by mortgage and charge, and shall be payable upon delivering to the registrar, or lodging in the land titles office the first instrument registered or lodged in such transaction.

Tax not to be collected when receipt for payment on prior registration produced.

Rev. Stat. cc. 174, 170.

(2) Where lands upon which a sum of money is secured are registered under *The Land Titles Act*, and other lands upon which the same sum of money is secured are subject to *The Registry Act*, and the instruments are registered or lodged and appear to be executed as part of the same transaction for securing such sum of money, and it appears by the production of the receipt of the master or registrar that the tax has been paid upon the registering or lodging of one of such instruments, the master or registrar shall not require any further payment of the tax before registering or entering the instrument delivered to him.

Division of tax where lands in different registry divisions.

Rev. Stat. cc. 174, 170.

(3) Where the lands upon which any sum of money is charged are partly in one registry division and partly in another, or parts of the lands are registered under *The Land Titles Act*, and parts are subject to *The Registry Act*, the registrar or master receiving the tax shall retain the percentage mentioned in subsection 1 of section 2, and shall pay over to the registrar or master in whose office any mortgage or charge is subsequently registered or entered for securing the same sum of money, such proportion of the percentage as may be agreed upon between them, and in case of disagreement, the amount to be paid shall be determined by the Inspector of Legal Offices. R.S.O. 1927, c. 156, s. 4.

No tax on collateral instrument.

5. Where an instrument purports to be executed concurrently with or as collateral security to a mortgage or charge already registered, the registrar or master shall register or enter such concurrent or collateral instrument without requiring the payment of the tax. R.S.O. 1927, c. 156, s. 5.

Tax not to be collected on assignment of lease as collateral security.

6. Where any sum of money is charged upon freehold lands and leasehold lands, and a mortgage or assignment of the lease is registered or lodged as security in addition to and separately from the mortgage or charge upon the freehold

lands, and the person delivering the mortgage or charge to the registrar or master produces a receipt for payment of the tax upon the registration of any other mortgage or charge or assignment, given as security for the same sum, the registrar or master shall receive and register or enter the mortgage, charge or assignment without requiring the payment of the tax. R.S.O. 1927, c. 156, s. 6.

7. Where a mortgage or charge recites that it is given as a renewal of a mortgage or charge already registered, no tax shall be payable upon the registration of such renewal mortgage or charge, except to the extent by which the amount secured by such renewal mortgage or charge exceeds the amount required to pay off the original mortgage or charge but the registrar or master shall not register or enter such renewal mortgage or charge until the full and true amount of the moneys required to pay off such original mortgage or charge has been proven by affidavit filed with him. R.S.O. 1927, c. 156, s. 7; 1929, c. 44, s. 4.

Tax not to be collected on renewal except as to additional amount.

8. Where a mortgage or charge recites that it is given to secure moneys, a portion of which moneys is required to pay off a prior mortgage or charge already registered, no tax shall be payable upon the registration of such mortgage or charge except to the extent by which the amount secured by such mortgage or charge exceeds the amount required to pay off the prior mortgage or charge, but the registrar or master shall not register or enter such new mortgage or charge until the full and true amount of the moneys required to pay off such prior mortgage or charge has been proven by affidavit filed with him. R.S.O. 1927, c. 156, s. 8; 1929, c. 44, s. 5.

Tax not to be collected on amount required to pay off prior mortgage.

9. Where the right of the registrar or master to require the payment of the tax under this section or any portion thereof, is disputed, by the person registering or lodging a mortgage or charge, the tax may be paid under protest, and the registrar or master shall give a receipt in writing signed by him, for the amount paid, and shall state that the same has been received subject to protest, and shall thereupon refer the matter to the decision of the Inspector of Legal Offices, who may order the refund of the tax or any portion thereof to the person paying the same. R.S.O. 1927, c. 156, s. 9.

Proceedings where tax disputed.