c 39 Land Transfer Tax Amendment Act, 1989 (No. 1)

Ontario

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CHAPTER 39

An Act to amend the Land Transfer Tax Act

Assented to July 13th, 1989

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

1. Subsection 1 (1) of the Land Transfer Tax Act, being chapter 231 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 20, section 1 and 1985, chapter 21, section 1, is further amended by adding thereto the following clauses:

   (gb) “Ontario home ownership savings plan” means an Ontario home ownership savings plan under the Ontario Home Ownership Savings Plan Act, 1988; 1988, c. 35

   (gc) “Ontario home ownership savings plan tax credit”, of an individual for a taxation year, means the deduction allowed to the individual under subsection 7 (2a) of the Income Tax Act for the taxation year of the individual as determined under that Act; R.S.O. 1980, c. 213

   (ia) “registration”, of a conveyance, means registration under the Land Titles Act or the Registry Act, and “registered” has a corresponding meaning. R.S.O. 1980, cc. 230, 445

2.—(1) Clause 2 (1) (c) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:

   (c) at the rate of,

   (i) one-half of 1 per cent of the value of the consideration for the conveyance up to and including $55,000,
(ii) 1 per cent of the value of the consideration which exceeds $55,000 up to and including $250,000, and

(iii) 1.5 per cent of the value of the consideration which exceeds $250,000; and

(2) Clause 2 (1) (d) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:

(d) where the value of the consideration for the conveyance exceeds $400,000 and the conveyance is a conveyance of land that contains at least one and not more than two single family residences, an additional tax of one-half of 1 per cent of the amount by which the value of the consideration exceeds $400,000.

(3) Subsection 2 (1a) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:

(1a) Where, in respect of a conveyance of land,

(a) subsection (2) does not apply;

(b) the value of the consideration for the conveyance exceeds $400,000; and

(c) a part of the land being conveyed is used for a purpose other than residential purposes,

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 land used in connection with a single family residence, and the person tendering the conveyance for registration is, despite subsection (1), liable to the additional tax of one-half of 1 per cent only upon the amount by which the value of the consideration determined by the Minister to be attributable to land used in connection with a single family residence exceeds $400,000.

(4) Subsection 2 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 21, section 2, is repealed and the following substituted therefor:
(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent the Minister 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, despite subsection (1) or (2), liable to a tax,

(a) with respect to the amount of the value of the consideration determined by the Minister to be reasonably attributable to the unrestricted land being conveyed, computed at the rate of,

(i) 1 per cent of the amount determined by the Minister which does not exceed $250,000,

(ii) 1.5 per cent of the amount determined by the Minister which exceeds $250,000, and

(iii) any tax required to be calculated under clause (1) (d) or subsection (1a), whichever is the lesser, on the amount determined by the Minister; and

(b) 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. Subsection 4 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 21, section 3, is repealed and the following substituted therefor:

(1) There shall be filed with the collector and attached by the collector to the conveyance to which it relates an affidavit in the prescribed form setting out,

(a) the true value of the consideration for the conveyance;

(b) the true amount in cash and the value of any property or security included in the value of the consideration;

(c) the amount or value of any lien or encumbrance subject to which the conveyance was made;
(d) whether the transferee to whom the land is being conveyed is a non-resident person or the trustee of a non-resident person;

(e) where the value of the conveyance exceeds $400,000, whether the land being conveyed contains at least one and not more than two single family residences; and

(f) any other information prescribed by the Minister that in the Minister's opinion is required for the purpose of administering and enforcing this Act.

4. The said Act is amended by adding thereto the following section:

7a.—(1) Where, in respect of a conveyance of land,

(a) subsection 2 (2) does not apply;

(b) the tax payable under subsection 2 (1) was paid with respect to the conveyance and the conveyance was registered after the 17th day of May, 1989;

(c) a transferee named in the conveyance was a plan-holder of an Ontario home ownership savings plan and the assets of that plan have been released under section 5 of the Ontario Home Ownership Savings Plan Act, 1988 for the purpose of purchasing the qualifying eligible home of the transferee under that Act;

(d) the qualifying eligible home of the transferee referred to in clause (c) now forms part of the land subject to the conveyance; and

(e) the transferee, or his or her spouse, within the meaning of the Ontario Home Ownership Savings Plan Act, 1988, if the transferee is married,

(i) is entitled to receive an Ontario home ownership savings plan tax credit for the taxation year in which the assets of the transferee's Ontario home ownership savings plan were released for the purpose described in clause (c), or would have been entitled to such a tax credit for that taxation year if the transferee had made a contribution to the plan in that taxation year, or would have been so entitled
but for subsection 3 (2) of the Ontario Home Ownership Savings Plan Act, 1988, or

(ii) was entitled to receive and did receive an Ontario home ownership savings plan tax credit for either of the two taxation years ending before the date the assets of the plan were released for the purpose described in clause (c),

the Minister may, upon application therefor within the prescribed time and in the prescribed manner, refund to the transferee the amount of tax determined under subsection (2) with respect to the conveyance, without interest thereon, where the Minister is satisfied that the qualifying eligible home had a total purchase price of not more than $200,000.

(2) The amount of tax which may be refunded to a transferee under subsection (1) is,

(a) where the total purchase price of the qualifying eligible home does not exceed $150,000, the amount of the tax paid under subsection 2 (1), or, if the transferee is not the only transferee named in the conveyance, the portion of such tax applicable to the transferee’s interest acquired under the conveyance including, where the transferee is married to a spouse within the meaning of the Ontario Home Ownership Savings Plan Act, 1988, the spouse’s interest acquired under the conveyance; and

(b) where the total purchase price of the qualifying eligible home exceeds $150,000 but does not exceed $200,000, the percentage of the tax paid under subsection 2 (1) appearing on the following table beside the range of total purchase prices which includes the total purchase price of the transferee’s qualifying eligible home, except that if the transferee is not the only transferee named in the conveyance, the amount of the refund shall not exceed the percentage determined under this clause of the portion of the tax applicable to the transferee’s interest acquired under the conveyance including, where the transferee is married to a spouse within the meaning of the Ontario Home Ownership Savings Plan Act, 1988, the spouse’s interest acquired under the conveyance:
(3) Subject to subsection (4), “total purchase price of a qualifying eligible home” for the purposes of this section means,

(a) where the conveyance is of land upon which there is an eligible home under the *Ontario Home Ownership Savings Plan Act, 1988* at the time of registration of the conveyance, the value of the consideration for the conveyance; or 

(b) where the conveyance is of land upon which there was not yet an eligible home under the *Ontario Home Ownership Savings Plan Act, 1988* at the time of registration of the conveyance, the aggregate of the value of the consideration for the conveyance and the total cost for the construction or acquisition of the eligible home which subsequently forms part of the land.

(4) Where a part of the land conveyed is not used for residential purposes at the time of the application for a refund under this section, the Minister may, to the extent that the Minister considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the land used in connection with the transferee’s qualifying eligible home and, for the purposes of determining the total purchase price of the qualifying eligible home and the amount of the refund payable under this section, the value of the consideration for the conveyance shall be deemed to be the amount so determined by the Minister and the amount of tax paid under subsection 2 (1) shall be deemed to be the amount of such tax which would have been payable thereon.

(5) Any person who makes or assists in making a statement in any application for a refund under this section, or in any document provided to the Minister in connection therewith, that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omis-

<table>
<thead>
<tr>
<th>Total Purchase Price</th>
<th>Percentage of Tax Paid</th>
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<tbody>
<tr>
<td>$150,001 - $155,500</td>
<td>90 per cent</td>
</tr>
<tr>
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<td>20 per cent</td>
</tr>
<tr>
<td>$194,001 - $200,000</td>
<td>10 per cent</td>
</tr>
</tbody>
</table>
sion of which makes the statement false or misleading is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

(6) Where a refund is made under this section to a transferee and it is subsequently determined that the transferee was not entitled to the refund, or was entitled only to a refund in a lesser amount, the amount of the refund to which the transferee was not entitled shall, for the purposes of this Act, be deemed to be tax imposed by section 2 which was required to have been paid by the transferee on the date the refund was made to the transferee by the Minister.

5. Subsection 10 (4) of the said Act is repealed and the following substituted therefor:

(4) The Minister may assess or reassess any person for any tax payable by the person under this Act within four years from the day the 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, or the person has failed to deliver any return required by this Act, the Minister may assess or reassess at any time the Minister considers reasonable the tax payable by such person.

6.—(1) Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may make regulations,

(a) prescribing forms for the purposes of this Act and providing for their use;

(b) providing for the approval by the Minister or a person designated by the Minister of prescribed forms containing variations;

(c) providing that a variation of a prescribed form is void unless approved by the Minister or a person designated by the Minister.

(2) Subsection 18 (2) of the said Act is amended by adding thereto the following clauses:

(ga) prescribing any matter required by this Act to be prescribed by the regulations;
(gb) defining any word or expression used in this Act that has not already been expressly defined in this Act;

(gc) providing for the method of calculating the total cost for the construction or acquisition of an eligible home for the purposes of section 7a.

7. — (1) Except as provided in subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) Sections 2 and 3 shall be deemed to have come into force on the 1st day of June, 1989.

(3) Section 4 shall be deemed to have come into force on the 18th day of May, 1989.

8. The short title of this Act is the *Land Transfer Tax Amendment Act, 1989.*