1980

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Ontario
CHAPTER 231
Land Transfer Tax Act

1.—(1) In this Act,

(a) "collector" means any land registrar to whom any conveyance to which this Act applies is tendered for registration;

(b) "convey" includes the granting, assigning, releasing, surrendering, leasing or disposing of land in Ontario, agreeing to sell land in Ontario, or the giving of an option upon or with respect to any land in Ontario, whether the effect of any of the foregoing is to bring into existence an interest of any kind in land or is only for the purpose of giving effect to or formal recognition to any interest of whatsoever kind that theretofore existed in land, but "convey" does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that had been used as security for a debt or loan;

(c) "conveyance" includes any instrument or writing by which land is conveyed and includes a final order of foreclosure under any mortgage or charge affecting land and a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed;

(d) "land" includes lands, tenements and hereditaments and any estate, right or interest therein, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location of land or to the existence thereon of any building or fixture, and fixtures;

(e) "Minister" means the Minister of Revenue;

(f) "non-resident corporation" means a corporation incorporated, formed or otherwise organized in Canada or elsewhere,

(i) that has allotted and issued shares to which are attached 50 per cent or more of the voting
rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by one or more non-resident persons, but this subclause does not apply where it is established to the satisfaction of the Minister that such one or more non-resident persons do not in fact directly or indirectly exercise control over the corporation and that subclause (v) does not apply to the corporation,

(ii) that has allotted and issued shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by any one non-resident person, but this subclause does not apply where it is established to the satisfaction of the Minister that such non-resident person does not in fact directly or indirectly exercise control over the corporation and that subclause (v) does not apply to the corporation,

(iii) one-half or more of the directors of which, or of the persons occupying the position of director by whatever name called, are individuals who are non-resident persons,

(iv) without share capital and one-half or more of the members of which are non-resident persons, or

(v) that is controlled directly or indirectly by one or more non-resident persons, including a non-resident corporation within the definition contained in the provisions of this clause other than this subclause;

(g) "non-resident person" means,

(i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor an individual who has been lawfully admitted to Canada for permanent residence in Canada,

(ii) a partnership, syndicate, association or other organization of whatsoever kind of which one-half or more of the members are non-resident persons within the meaning of subclause (i), (iii) or (iv) or in which interests repre-
senting in value 50 per cent or more of the total value of the property of such partnership, syndicate, association or other organization are beneficially owned by non-resident persons within the meaning of subclause (i), (iii) or (iv),

(iii) a trust in which non-resident persons within the meaning of subclause (i), (ii) or (iv) have 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom, and "trust" includes the trustees under such a trust in their capacity as the trustees thereof, or

(iv) a non-resident corporation;

(h) "prescribed" means prescribed by regulations made under this Act;

(i) "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;

(j) "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;

(k) "tax" means the tax imposed by this Act;

(l) "transferee" includes a person to whom land is conveyed and any person whose interest in land is increased, created or given effect to as the result of a conveyance;

(m) "transferor" includes any person making a conveyance of land to a transferee;

(n) "Treasurer" means the Treasurer of Ontario and Minister of Economics;

(o) "unrestricted land" means land that,

(i) under a by-law passed pursuant to section 39 of the Planning Act, or under an order made pursuant to section 35 of that Act is zoned for commercial or industrial use, or
(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, 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;

(\(p\)) "value of the consideration" includes,

(i) the gross sale price or the amount expressed in money of any consideration given or to be given for the conveyance by or on behalf of the transferee and the value expressed in money of any liability assumed or undertaken by or on behalf of the transferee as part of the arrangement relating to the conveyance and the value expressed in money of any benefit of whatsoever kind conferred directly or indirectly by the transferee on any person as part of the arrangement relating to the conveyance,

(ii) 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,

(iii) in the case where a lease of land, a transfer of the interest of a lessee under a lease of land, or a notice in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land is not exempt from tax by virtue of subsection (4), the fair market value, ascertained as at the time of the tender for registration, of the land to which the lease extends or
of a smaller portion of such land if only such smaller portion is conveyed,

(iv) in the case of a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed and that is not a notice in writing described in subclause (iii) the value of the consideration, determined under subclause (i) or (ii) for the land conveyed by the instrument or writing that is referred to in such notice or caution in writing that is not a notice in writing described in subclause (iii), or

(v) in the case of a conveyance of land from a trustee (whether or not the trustee is so described in the conveyance) to a person to whom or for whose benefit any equitable or beneficial interest in the land has been transferred by a conveyance or conveyances that have not been registered, the value of the consideration determined under subclauses (i) to (iv), whichever is applicable, in respect of the unregistered conveyances made to such person. 1974, c. 8, s. 1 (1); 1974, c. 93, s. 1 (1-3); 1977, c. 14, s. 1 (1); 1979, c. 26, s. 1.

(2) For the purposes of clause (1) (f), “control” means control by another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature. 1974, c. 8, s. 1 (2).

(3) For the purpose of clause (1) (g), an individual shall be considered to be ordinarily resident in Canada if, at the time the expression is being applied,

(a) he has sojourned in Canada during the next preceding twenty-four months for a period of, or periods the aggregate of which is, 366 days or more;

(b) he is a member of the Canadian Forces required to reside outside Canada;

(c) he is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided
in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;

(d) he is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is prescribed for the purposes of paragraph 250 (1) (d) of the Income Tax Act (Canada), and resided in Canada at any time in the three month period preceding the day on which such services commenced; or

(e) he resides outside Canada and is the spouse or child of, and is living with, an individual described in clause (b), (c) or (d). 1974, c. 8, s. 1 (3); 1974, c. 93, s. 1 (5).

(4) Notwithstanding any other provision of this Act, no tax is payable on the tender for registration of a conveyance that is a lease of land, the transfer of the interest of a lessee under a lease of land, or a notice in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land if the lease, at the time the lease or transfer or notice of either of them is tendered for registration, is for an unexpired term which, including any renewals or extensions of such term provided for in the lease, cannot exceed fifty years. 1974, c. 93, s. 1 (6).

2.—(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 two-fifths of 1 per cent of the value of the consideration for the conveyance up to and including $45,000, and at the rate of four-fifths of 1 per cent upon the remainder of the value of the consideration. 1977, c. 14, s. 2 (1); 1979, c. 26, s. 2 (1).

(2) Every person who tenders for registration in Ontario a conveyance whereby any land that is not unrestricted land is conveyed to or in trust for any transferee who is a non-resident person shall, before the conveyance is registered,
pay a tax computed at the rate of 20 per cent of the value of the consideration for the conveyance. 1974, c. 8, s. 2 (2); 1977, c. 14, s. 2 (2).

(3) Where the same conveyance may be registered in more than one office under the registry system, in more than one office under the land titles system, or under both the registry system and the land titles system, the tax is payable only once in respect of the first of such conveyances tendered for registration and where the Minister or a collector is satisfied that the value of the consideration for a conveyance that has been registered is the value of the consideration for a subsequently registered conveyance that does not create with respect to the land conveyed any beneficial interest therein in any person beyond that evidenced by the first mentioned conveyance, and if the conveyances are made as part of the same transaction, tax is payable only once and upon the value of the consideration for the first of such conveyances that was registered. 1974, c. 8, s. 2 (3); 1974, c. 93, s. 2 (1).

(4) No tax is payable where the only transferee in a conveyance that is tendered for registration is the Crown or a Crown agency within the meaning of the Crown Agency Act. 1974, c. 8, s. 2 (4).

(5) Where the Minister or some person authorized by him in writing to do so has indicated over his signature upon any conveyance that such tax as is payable has been paid or that no tax is payable, the conveyance may be registered without the payment of tax to the collector and without the production of the affidavits required by this Act, but the Minister or a person acting under his authority shall make the certification provided for by this subsection only when he is satisfied that no tax is payable or that all tax is paid or that security for the payment of the tax has been furnished to the Minister or to a collector in a form and of a kind that is acceptable to the Minister. 1974, c. 8, s. 2 (5); 1974, c. 93, s. 2 (2).

(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 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 four-fifths 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. 1977, c. 14, s. 2 (3); 1979, c. 26, s. 2 (2).

3. Every collector shall, in the first week of each month or at such other time as the Minister may from time to time require in writing, send to the Minister a statement of the amount of tax collected by him during the previous month or during such other period of time as the Minister shall in writing specify, and the collector shall pay over the amount of such tax to the Treasurer for the uses of Ontario. 1974, c. 8, s. 3.

4.—(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such other information as the Minister may prescribe to be disclosed in the affidavit. 1974, c. 8, s. 4 (1).

(2) The affidavit required by subsection (1) shall be made 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. 1977, c. 14, s. 3 (1).

(3) In addition to the affidavit required by subsection (1), there shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in such 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 prescribing 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.

(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. 1977, c. 14, s. 3 (2).

(5) If the collector is not satisfied that the affidavit required by subsection (1) sets out the true value of the consideration for the conveyance, he may refuse to register the conveyance to which the affidavit relates until the Minister has signified over his signature that he is satisfied that the value of the consideration stated in the affidavit is the true value of the consideration. 1974, c. 8, s. 4 (5).

(6) Except as provided in subsection (7) or (8), where a conveyance is tendered for registration without the affidavit required by subsection (3), tax is payable at the rate provided in subsection 2 (2), and the collector shall not register the conveyance until such tax is paid, but if it is subsequently established to the satisfaction of the Minister that, had the affidavit required by subsection (3) been furnished to the collector, tax would have been payable as provided in subsection 2 (1), the Minister may refund the amount paid under this subsection in excess of the tax pro-
vided for in subsection 2 (1). 1974, c. 8, s. 4 (6); 1974, c. 93, s. 3 (1); 1977, c. 14, s. 3 (3).

(7) Notwithstanding subsection (3), no affidavit is required under that subsection on the tender for registration of a conveyance to or in trust for a transferee who is expressly named in the conveyance and who is Her Majesty in right of Ontario, Her Majesty in right of Canada, a Crown agency within the meaning of the Crown Agency Act, the corporation of a municipality, including a district, metropolitan or regional municipality, in Ontario, a local board, as defined in the Municipal Affairs Act, of any such municipality in Ontario or Ontario Hydro or any corporation prescribed by the Minister by regulation or any individual acting in an official capacity prescribed by the Minister by regulation, but the Minister may make regulations under this subsection only if he is satisfied that the corporation or the official capacity of the individual is such that the corporation or the individual acting in his official capacity is not, and is not likely to become, a non-resident person. 1974, c. 93, s. 3 (2).

(8) Notwithstanding subsection (3), where a conveyance tendered for registration has endorsed upon it or attached to it the certification in accordance with clause 2 (1) (b) 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. 1977, c. 14, s. 3 (4).

5.—(1) Where the right of the collector to require payment of the tax is disputed by the person tendering a conveyance for registration, the tax may be paid under protest and the collector shall give a receipt in writing signed by him for the amount paid and stating that it was paid under protest, and he shall thereupon refer the matter for the decision of the Minister or of such official as the Minister appoints, who may order the refund of the tax or any part thereof to the person who paid it.

(2) In any dispute over the liability to tax of any person, the Minister may, after the tax has been paid, and if the dispute involves the interpretation of a provision of this Act, or involves an issue 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. 1974, c. 8, s. 5.

6.—(1) Every person who knowingly contravenes any provision of this Act or who knowingly makes an affidavit required by this Act that falsely discloses the value of the consideration for any conveyance of land or falsely states that a person who is a non-resident person is not a non-resident person, is guilty of an offence and on conviction is liable to a fine of not less than the amount of tax that was not paid to the collector as provided for in this Act plus an amount of not less than $50 and not more than $1,000.

(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.

(3) A proceeding to prosecute an offence under this Act shall be commenced within six years of the time when the offence occurred. 1974, c. 8, s. 7, revised.

7.—(1) Where a person has paid an amount under this Act as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

(2) Where a conveyance has been tendered for registration that conveys land both to non-resident persons and to persons who are not non-resident persons, the Minister may refund to the persons who are not non-resident persons an amount equal to the difference between,

(a) the amount that would result from the application of the rates of tax in subsection 2 (1) to the value of the consideration attributable in the opinion of the
Minister to the land conveyed to persons who are not non-resident persons; and

(b) the amount of tax paid on the value of the consideration attributable in the opinion of the Minister to land conveyed to persons who are not non-resident persons,

but no refund under this subsection shall be made if the land is held in joint tenancy by the non-resident person and the persons who are not non-resident persons or if the Minister is of the opinion that the land conveyed to persons who are not non-resident persons cannot readily be distinguished from the land conveyed to non-resident persons. 1974, c. 8, s. 8.

(3) Where a conveyance is registered that is a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed, and the instrument or writing described in the notice or caution evidences an agreement to transfer or extinguish an interest in land, the Treasurer shall, where the Minister is satisfied that the transfer or extinguishment contemplated in the agreement has not taken place, refund any tax paid on the tender for registration of the conveyance. 1974, c. 93, s. 5.

(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 2 (1) (b) 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. 1977, c. 14, s. 4.

8.—(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 is carried on or any property is kept or where anything is done in connection with any business or where any books or records are or should be 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 to the amount of tax payable under this Act;

(b) examine property described in any conveyance or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any affidavit required by this Act or in ascertaining the information that is or should be in the books or records or in such affidavit, or the amount of any tax payable under this Act;

(c) require any officer, director, agent or representative of a transferee a conveyance to whom has been registered as a result of which there may be a possible liability to pay tax under this Act, and any person on the 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 made under this Act, 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 the liability or possible liability to tax under this Act.

(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 of Revenue, 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 proven in the ordinary way.

(4) No person shall hinder or molest 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.

(5) Every person who has failed to comply with or has contravened this section is guilty of an offence and, in addition to any penalty otherwise provided, is liable on conviction to a fine of $25 for each day during which the default continues. 1974, c. 8, s. 9.

9. A person authorized to administer an oath under the Land Titles Act or the Registry Act may administer an oath for any of the purposes of this Act. 1974, c. 8, s. 11.

10.—(1) Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

(2) Where the Minister has made an assessment under subsection (1), he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

(3) Where the Minister has made an assessment under subsection (1), the notice of assessment may provide that the amount assessed is payable forthwith. 1974, c. 8, s. 12 (1-3).

(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. 1977, c. 14, s. 5.

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax.

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection (4) or (5) to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith.

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act.

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken. 1974, c. 8, s. 12 (5-10).

11.—(1) Where a person objects to an assessment made under section 10 he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.
(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. 1974, c. 8, s. 13.

12.—(1) After the Minister has given the notification required by subsection 11 (3), a person who has served notice of objection under section 11 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under subsection 11 (3). 1974, c. 8, s. 14 (1), revised.

(2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the land the tax on the tender for registration of a conveyance of which is under appeal. 1974, c. 8, s. 14 (2); 1974, c. 93, s. 6.

(3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.

(4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

(6) Upon the filing in the Supreme Court of the material referred to in subsection (5), the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice
and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

(7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court.

(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

(10) The time within which a notice of objection under subsection 11 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. 1974, c. 8, s. 14 (3-10).

13.—(1) Upon default of payment of an amount assessed under section 10,

(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.

(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.

(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. 1977, c. 14, s. 6, part.

(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.

(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.

(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.

(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.

(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.

(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. 1977, c. 14, s. 6, *part.*

**15.**—(1) Where the tax imposed by this Act is not paid at the time provided for, interest on the unpaid tax shall be paid to the Treasurer at the rate of 9 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation but no interest is payable for any period of time prior to the 10th day of April, 1974.

(2) Any payment received by the Treasurer or a collector on account of any tax under this Act shall first be applied to any interest payable on the tax with respect to which the payment is made, but this subsection does not apply to payments on account of any fine or penalty payable under this Act. 1974, c. 8, s. 15.

**16.**—(1) Where tax has been paid or may be payable on the registration of a conveyance of land to a non-resident
person, and that non-resident person satisfies the Minister that the land was or is to be acquired,

(a) for the purpose of the development and resale of land for residential, commercial or industrial purposes;

(b) for the purpose of establishing, expanding or relocating any active commercial or industrial business that is or will be carried on by the non-resident person who shall undertake to obtain, within such time as is agreed upon with the Minister, any zoning changes necessary to permit the land to be used as proposed and to complete, within such time as is agreed upon with the Minister, the establishment, expansion or relocation for which the land was or is to be acquired;

(c) by a non-resident person who is a Canadian citizen and who undertakes to the Minister to cease to be a non-resident person within five years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land; or

(d) by a non-resident person who is an individual other than a Canadian citizen and who undertakes to the Minister to cease to be a non-resident person within two years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land,

the Minister may, with the approval of the Lieutenant Governor in Council, defer the payment of the tax, or remit the tax paid, on such conditions as to the use and development of the land or otherwise as are considered advisable and sufficient to ensure the development of the land as proposed or compliance with any undertakings given by the non-resident person acquiring the land, and any tax deferred or remitted under this subsection constitutes a first lien and charge in favour of Her Majesty in right of Ontario on the land so acquired or to be acquired, and the lien and charge shall be effective upon registration by the Minister of a notice thereof, and the Minister may discharge the lien and charge in whole or in part as the conditions that he has imposed or the undertakings that have been given to him are fulfilled or complied with, and may, where he considers it necessary and advisable
to enable the performance of any condition or undertaking, postpone, release or waive the lien and charge with respect to all or any part of any land affected by the lien and charge. 1974, c. 93, s. 7 (1); 1977, c. 14, s. 7 (1).

(2) A deferral or remission under subsection (1) may not exceed the amount by which the rate of tax imposed by subsection 2 (2) exceeds the rate of tax imposed by subsection 2 (1), but may otherwise be for all or any part of the tax. 1974, c. 8, s. 16 (2); 1974, c. 93, s. 7 (2).

(3) Where tax is deferred under subsection (1) upon conditions that are fulfilled, the amount of the tax so deferred is thereupon cancelled and no longer owing as tax under this Act, and where the conditions upon which any tax has been remitted under subsection (1) are not fulfilled, the tax so remitted thereupon becomes payable. 1974, c. 8, s. 16 (3).

(4) Upon the tender for registration of a conveyance that is described in any of clauses (a) to (e) and that is made to a non-resident person, the tax imposed by subsection 2 (2) shall, notwithstanding any other provision of this Act, be reduced to an amount equal to the tax that would result if only the rates of tax mentioned in subsection 2 (1) were applicable,

(a) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance and stating,

(i) that he has been lawfully admitted to Canada and is lawfully in Canada as an immigrant admitted under the Immigration Act (Canada) R.S.C. 1970, c. 1-2 for permanent residence in Canada, or that he is lawfully in Canada for the purpose of engaging in a trade, profession, calling, occupation or employment that he is authorized to engage in in Canada, and the nature of that trade, profession, calling, occupation or employment,

(ii) that the land being conveyed to him is being acquired by him for the purpose of enabling him to establish thereon his principal residence in Canada, and will not be used as the residence of persons other than the transferee or members of his family or members of his usual domestic establishment,
(iii) the number and expiration date of the employment visa, if any, issued to him pursuant to the Immigration Act (Canada) or regulations made thereunder and the length of time during which he intends to engage in the trade, profession, calling, occupation or employment for which he was admitted into Canada, and

(iv) that he is not in Canada as a tourist or visitor or for the purpose of passing through Canada to another country, or as a student admitted to Canada under the provisions of paragraph 7 (1) (f) of the Immigration Act (Canada);

(b) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance and stating,

(i) that the transferee is a Canadian citizen, and

(ii) that the land being conveyed to him is being acquired by him for the purpose of enabling him to establish thereon a place of residence or recreation to be his principal residence or principal recreational property upon his return to Canada to take up permanent residence in Canada;

(c) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, stating,

(i) that the transferee, on and after the 9th day of April, 1974, has continuously occupied premises in Canada where the transferee carried on an active commercial or industrial business that is not principally,

(A) the rental of land or premises for possession or occupancy for a period of one month or more,

(B) the acquisition of land,

(C) the sale of land owned by the seller,
(D) the holding of land, or
(E) the development of land,

(ii) the nature of such business so carried on by the transferee, and the principal location in Canada from which such business is carried on, and

(iii) that the land being conveyed to the transferee is being acquired for the purpose of enabling the transferee to acquire the freehold of only the leased premises on which such business is being carried on and not of other premises, or is being acquired for the purpose of expanding or relocating the operations of such business where such expansion or relocation is not prevented by any zoning restrictions affecting the land conveyed;

(d) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, and stating that the land being conveyed to him is being acquired by him as part of his normal business practice and either,

(i) for the principal purpose of selling the land to an employee of the transferee or to such employee and his spouse as the residence of that employee and members of his family or members of his usual domestic establishment, or

(ii) for the principal purpose of making the land available for the exclusive use of his employees and members of their families or members of their usual domestic establishments as a place of residence; or

(e) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, stating,

(i) that the land being conveyed to him is being acquired by him as the result of a final order of foreclosure under a mortgage
or charge affecting the land or is being acquired in any other manner for the sole purpose of satisfying the obligations of the transferor to the transferee under a mortgage or charge affecting the land,

(ii) that the land being conveyed to him is being acquired by him only for the purpose of safeguarding or giving effect to rights or interests of the transferee as mortgagee or chargee and in respect of an outstanding loan that was owed by the transferor to the transferee and that is in default,

(iii) that the transferee is dealing in all respects with the transferor as though the parties were strangers, and

(iv) that the conveyance was not arranged with the intention of defeating the incidence of tax imposed by this Act.

(5) Where it is established to the satisfaction of the Minister that land being acquired by a person is acquired for the purpose of replacing land that was taken from him under statutory authority, that was sold by him to a person by whom notice of an intention to take the land under statutory authority was given, or that was sold by him to a person having the power to take the land under statutory authority and in the reasonable expectation that, had the land not been so sold, it would have been taken from him by that person under statutory authority, the value of the consideration for the land being so acquired shall be reduced by an amount equal to the proceeds of sale reasonably attributable to the land that was so taken or sold. 1974, c. 93, s. 7 (3), part.

(6) 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 1 (1) (p) (iii) and if tax was computed and paid with respect to the value of that consideration so determined, but the reduction shall not exceed the value of the consideration for the conveyance of the freehold interest. 1977, c. 14, s. 7 (2), part; 1979, c. 26, s. 3.
(7) For the purposes of clause (1) (b), farming shall not be considered to be an active commercial or industrial business. 1977, c. 14, s. 7 (2), part.

(8) Every person who, knowing it to be false, makes an affidavit described in subsection (4), is guilty of an offence and on conviction is liable to a fine of not less than the amount of the tax that, had the true facts been stated, would have been payable, plus an amount of not less than $50 and not more than $1,000. 1974, c. 93, s. 7 (3), part.

17. Where it is established to the satisfaction of the Minister that, prior to the 10th day of April, 1974, there existed,

(a) a written agreement conveying, or providing for the conveyance of, land either at a definite price or consideration the amount or value of which is set out in the agreement or at a price or consideration the amount or value of which is determinable under the agreement by reference only to a valuation as of a date not later than the 9th day of April, 1974; or

(b) a conveyance that was fully executed and was irrevocably and unconditionally delivered to the transferee or to some person on behalf of the transferee,

the person tendering for registration after the 9th day of April, 1974 a conveyance that is, or is provided for in, an agreement described in clause (a), or that is a conveyance described in clause (b), is, notwithstanding that such conveyance is to or in trust for a non-resident person, liable to pay tax under this Act only at the rates provided for in subsection 2 (1). 1974, c. 16, s. 1.

18.—(1) The Minister may make regulations prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any prescribed form shall be completed and what information it shall contain.

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

(a) exempting from tax any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply,
or any conveyance to persons prescribed for the purpose of this clause;

(b) providing for the collection of tax, the appointment of persons other than collectors to collect the tax, and establishing procedures for the collection of the tax;

(c) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;

(d) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;

(e) providing for the method of calculating and ascertaining the value of the consideration in any case or class of cases;

(f) authorizing any person or persons, on such conditions and subject to such rules as may be specified, to exempt from the tax or any part thereof imposed by subsection 2 (2), or to refund such tax or any part thereof to, any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to any non-resident person;

(g) providing for the payment of interest on any refund or rebate of tax authorized by this Act or the regulations, and prescribing the rate of such interest and the method by which it is to be calculated;

(h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(3) A regulation is, if it so provides, effective with reference to a period before it was filed. 1974, c. 8, s. 18.