1960

c 178 Hospitals Tax Act

Ontario
CHAPTER 178

The Hospitals Tax Act

1. In this Act,

(a) "admission" includes entry to a place of amusement or place of entertainment where any charge is made or fee is collected before or after entry;

(b) "Comptroller" means the Comptroller of Revenue;

(c) "entertainment by one or more paid performers", if facilities for dancing are not provided, means entertainment of any kind, except music produced by means of a musical instrument other than the human voice, and except entertainment produced by mechanical or electronic means;

(d) "facilities for dancing" means a cleared dance floor when music for dancing is provided by any means;

(e) "owner" means a person who operates a place of amusement or a place of entertainment, or both;

(f) "place of amusement" means a premises or place, whether enclosed or not, where a cinematograph or moving picture machine or similar apparatus is operated, or where a theatrical performance, carnival, circus, side-show, menagerie, concert, rodeo, exhibition, horse race, athletic contest or other performance is staged or held, and to which admission is granted upon payment of a price of admission through the sale of tickets or otherwise;

(g) "place of entertainment" means a premises or place, whether enclosed or not,

(i) where facilities for dancing are provided with the service of liquor, beer or wine, or

(ii) where entertainment by one or more paid performers is provided with the service of food or the service of liquor, beer or wine,

but no premises or place shall be deemed to be a place of entertainment on any day until facilities for dancing are provided or entertainment by one or more
paid performers is provided and, thereafter, such premises or place is a place of entertainment until closed;

(h) "price of admission" includes every charge made to or fee collected from a purchaser by an owner before or after admission to a place of amusement or place of entertainment and includes, when it is for admission to a place of entertainment, every cover charge and every charge for the service of food or the service of liquor, beer or wine;

(i) "purchaser" means a person who purchases admission for himself to a place of amusement or place of entertainment, and includes a person for whom admission to a place of amusement or place of entertainment is purchased by any other person;

(j) "regulations" means the regulations made under this Act;

(k) "service of liquor, beer or wine" means the service of liquor, beer or wine to a purchaser in a place from which, in order to use facilities for dancing or to view entertainment by one or more paid performers, he is not required to pass through a doorway or through more than one doorway;

(l) "service of food" means the service of food or beverages, other than liquor, beer or wine, to the purchaser at a table in a place from which, in order to view entertainment by one or more paid performers, he is not required to pass through a doorway or through more than one doorway;

(m) "Treasurer" means the Treasurer of Ontario. R.S.O. 1950, c. 170, s. 1; 1951, c. 36, s. 1; 1955, c. 31, s. 1.

Licences

2.—(1) No owner shall sell admission to a place of amusement or place of entertainment unless a licence therefor has been, upon his application, issued to him under this Act, and unless the licence is in force at the time of sale.

Expiry

(2) The license remains in force until the 31st day of March next following the date of issue. R.S.O. 1950, c. 170, s. 2 (1, 2).

Application

(3) The application for the licence shall be filed with the Comptroller. R.S.O. 1950, c. 170, s. 2 (3); 1955, c. 31, s. 2 (1).

Granting of licences

(4) Subject to clause a of subsection 6, the licence shall be granted by the Comptroller upon payment of $1 by the
owner to the Treasurer for the use of Her Majesty in right of Ontario. 1955, c. 31, s. 2 (2).

(5) The licence shall be placed in public view in the office of the owner at which admission is sold to the purchaser. R.S.O. 1950, c. 170, s. 2 (5).

(6) The Comptroller may,

(a) refuse to issue a licence to any owner; or

(b) suspend or cancel the licence of any owner if such owner or any of his employees contravenes any of the provisions of this Act,

but, before a refusal, suspension or cancellation is made, the owner shall be afforded an opportunity to appear before the Comptroller to show cause why the issuance of a licence should not be refused or why the licence should not be suspended or cancelled, as the case may be. 1955, c. 31, s. 2 (3).

(7) The application for a licence shall contain the name and address of the owner, and where the owner is a partnership, the name and address of each partner, and where the owner is a corporation, club, association or syndicate, the name and address of the president, if he resides in Ontario, or if not, the name and address of its resident manager or representative, and the address of its chief place of business in Ontario. R.S.O. 1950, c. 170, s. 2 (7).

3.—(1) A purchaser of admission to a place of amusement shall pay to the Treasurer for the use of Her Majesty in right of Ontario a tax on the price of admission as follows:

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<th>Price of Admission</th>
<th>Tax</th>
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<td>More than 25 cents and not more than 34 cents—2 cents</td>
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and, where the price of admission is more than 94 cents, a tax at the rate of 10 per cent calculated upon the price of admission, and in the calculation every fraction of less than one-half cent shall not be counted and every fraction of one-half cent or more shall be counted as 1 cent.

(2) The tax imposed by subsection 1 on a price of admission less than 66 cents does not apply to the purchaser of admission to a place of amusement, other than a Class D theatre as defined in The Theatres Act that is situated outside the Metropolitan Area within the meaning of The Municipality of Metropolitan Toronto Act, any city and any municipality.
(3) A purchaser of admission to a place of entertainment shall pay to the Treasurer for the use of Her Majesty in right of Ontario,

(a) a tax at the rate of 10 per cent calculated upon the price of admission where such price is less than $10; and

(b) a tax of $1 where such price is $10 or more,

and in the calculation under clause a, every fraction of less than one-half cent shall not be counted and every fraction of one-half cent or more shall be counted as 1 cent. 1955, c. 31, s. 3.

4.—(1) An owner shall, as the agent of the Treasurer, collect the tax imposed by this Act.

(2) For the purpose of collecting the tax, the Treasurer may enter into such arrangement with each owner as he deems expedient and may provide for the payment of such remuneration to each owner as he deems proper. R.S.O. 1950, c. 170, s. 4.

(3) An owner shall be deemed to hold all amounts collected under this Act in trust for Her Majesty.

(4) All amounts collected by an owner under this Act shall be kept separate and apart from his own moneys.

(5) The Treasurer may require any owner to furnish a surety bond on such terms and conditions and in such amount as the Treasurer deems appropriate. 1955, c. 31, s. 4.

5.—(1) An owner shall inform every purchaser of admission of the price or prices of admission to his place of amusement or place of entertainment and of the amount of tax to be paid by the purchaser by placing in public view at the office of the owner where admission may be purchased a schedule showing such price or prices and the amount of such tax.

(2) For the purposes of subsection 3 of section 3, an owner shall collect the tax on each part of the price of admission and shall give each purchaser a receipt for each such part so that each purchaser may know when he has paid the maximum tax. R.S.O. 1950, c. 170, s. 5.

6. An owner shall, upon the request of the purchaser, deliver to him a writing showing his name, his address, the number of his licence issued under this Act, the price of admis-
sion charged to the purchaser, and separately stated, the amount of the tax payable or paid by the purchaser. R.S.O. 1950, c. 170, s. 6.

7. No owner shall advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax or any part thereof imposed under this Act will be assumed or absorbed by the owner or that it will not be considered as an element in the price to the purchaser or, if added, that it or any part thereof will be refunded. R.S.O. 1950, c. 170, s. 7.

8.—(1) Where special circumstances exist, whether of a religious, charitable or educational nature or otherwise, the Lieutenant Governor in Council may, upon application of the owner made to the Treasurer at least ten days before the tax would otherwise be payable, exempt the purchaser from payment and the owner from collection of the tax imposed under this Act. R.S.O. 1950, c. 170, s. 8 (1).

(2) Where it is shown to the satisfaction of the Treasurer that the tax calculated on the price of admission to a place of amusement or place of entertainment at or in which an entertainment has been held for the purpose of raising funds for religious, charitable or educational purposes, was collected and paid to the Treasurer in accordance with this Act, and where the owner files with the Comptroller a statement, verified by his affidavit, giving in detail all receipts and expenses in connection with the entertainment and the receipt of the organization to which the proceeds were donated acknowledging receipt of the proceeds is attached thereto, and where the Treasurer is satisfied that the organization is one the operations of which are carried on exclusively for religious, charitable or educational purposes or for any combination of such purposes, the Treasurer may pay to the organization an amount equal to that proportion of the tax so collected and paid which the proceeds acknowledged as received by the organization bear to the gross amount received by the owner as the price of admission to such place of amusement or place of entertainment. R.S.O. 1950, c. 170, s. 8 (2); 1955, c. 31, s. 5 (1).

(3) Where application of the owner is made to the Treasurer at least ten days before the tax would otherwise be payable and the Treasurer is satisfied that the performers in a theatrical or musical performance in a place of amusement are residents of Canada performing under the management of a person resident in Canada and that the performance will not be presented with the showing of a motion picture or with a carnival, circus, side-show, menagerie, rodeo, exhibition, horse race, athletic contest or other performance, the Treasurer may, in
his absolute discretion, exempt the purchaser from the pay-
ment and the owner from the collection of the tax imposed
under this Act. 1955, c. 31, s. 5 (2).

9.—(1) An owner shall, as agent of the Treasurer,

(a) on or before the tenth day of each month, without
notice or demand; or

(b) on or before the day designated in the demand of
the Comptroller served on the owner by hand or by
registered mail,

deliver to the Comptroller such return as is required for the
purpose of carrying out this Act. 1955, c. 31, s. 6.

(2) The return shall be verified by the certificate of the
owner, and, if the owner is not an individual, of his president
or his resident manager or representative in Ontario, certifying
that the financial statements for the preceding month, attached
to the return, showing the receipts of the place of amusement
or place of entertainment, the amount of the tax collectable
under this Act and such other information as is required, are
in agreement with the books of the owner and exhibit truly
and correctly all the business of the owner at his place of
amusement or place of entertainment during the preceding
month. R.S.O. 1950, c. 170, s. 9 (2).

10.—(1) Every owner who contravenes subsection 1 of sec-
section 2 is guilty of an offence and on summary conviction
is liable to a fine for each sale of not less than $10 and not more
than $1,000. R.S.O. 1950, c. 170, s. 10 (1), amended.

(2) Every purchaser who fails to pay the tax imposed
under this Act is guilty of an offence and on summary conviction
is liable to a fine of not less than $10 and not more than
$200. R.S.O. 1950, c. 170, s. 10 (2).

(3) Every owner who refuses or neglects to collect, account
for or remit the amount of the tax in accordance with this
Act or the regulations is guilty of an offence and on summary
conviction is liable, in addition to the remittance of the tax,
to a fine for each day during which such offence continues, of
not less than $10 and not more than $1,000. R.S.O. 1950,
c. 170, s. 10 (3), amended.

(4) Every owner who contravenes subsection 1 of section 9
is guilty of an offence and on summary conviction is liable to
a fine of 5 per cent of the tax collectable by him, but in no case
shall such fine be more than $500. R.S.O. 1950, c. 170, s. 10
(4).
Every owner who fails to complete the information required in the return to be delivered to the Comptroller under subsection 1 of section 9 is guilty of an offence and on summary conviction is liable to a fine of 1 per cent of the tax collectable by him, but in no case shall such fine be less than $1 or more than $20. R.S.O. 1950, c. 170, s. 10 (5); 1955, c. 31, s. 7 (1).

(6) Every employee of an owner who permits or authorizes, or is a party or privy to the admission of a purchaser to a place of amusement or place of entertainment without collecting from the purchaser the tax imposed under this Act is guilty of an offence and on summary conviction is liable to a fine of not less than $20 and not more than $500. R.S.O. 1950, c. 170, s. 10 (6).

(7) Every owner who contravenes subsection 4 of section 4 is guilty of an offence and on summary conviction is liable, in addition to the remittance of the tax collectable, to a fine equal to double the amount of the moneys collected and not kept separate and apart from his own moneys and in default of payment, to imprisonment for a term of three months. 1955, c. 31, s. 7 (2).

(8) In addition to the penalties provided by this Act, the Treasurer may apply to a judge of the Supreme Court for an injunction against any owner who sells admission to his place of amusement or place of entertainment without having a subsisting licence under this Act ordering him to cease selling such admission and to close his place of amusement or place of entertainment until a licence is granted and all costs are paid. R.S.O. 1950, c. 170, s. 10 (7).

11. The treasurer may enlarge the time for making any return before or after the time for making it. R.S.O. 1950, c. 170, s. 11.

12.—(1) An owner shall remit with the return required by subsection 1 of section 9 the amount of the tax collectable by him as shown therein. R.S.O. 1950, c. 170, s. 12 (1); 1955, c. 31, s. 8.

(2) When an owner remits less than the amount of the tax collectable as shown by the return, he shall pay interest at the rate of 7 per cent per annum upon the deficiency calculated from the date of default until the date of remission to the Treasurer. R.S.O. 1950, c. 170, s. 12 (2).

13.—(1) If the Comptroller, in order for him to make an accounting of the tax collectable by the owner under this Act or for any other purpose, desires any information or addi-
Sec. 13 (1) Penalty

Books of account to be kept

Compliance of Treasurer or Comptroller etc., to be proved by affidavit

Inquiry as to amount of tax collectable

Treasurer or Comptroller not bound by return

(2) The Comptroller may, by registered letter, require the production under oath or otherwise, by any owner or the president, manager, secretary, or any director, agent or representative of such owner, or by any person, partnership, syndicate, trust or company holding or paying or liable to pay any portion of the income of such owner, or by any partner, agent or official of any such person, partnership, syndicate, trust or company, of any letters, accounts, invoices, statements or other documents. R.S.O. 1950, c. 170, s. 13 (2); 1955, c. 31, s. 9 (2).

(3) If an owner fails or refuses to keep adequate books or accounts for the purpose of ascertaining the amount of the tax collectable by him under this Act, the Comptroller may require the owner to keep such records and accounts as he prescribes. R.S.O. 1950, c. 170, s. 13 (3); 1955, c. 31, s. 9 (2).

(4) For a default in complying with any requirement of subsections 1 to 3, the owner or the persons, or both, in default are jointly and severally liable to a penalty of $25 for each day during which the default continues. R.S.O. 1950, c. 170, s. 13 (4).

(5) For the purpose of any proceedings taken under this Act, the facts necessary to establish compliance on the part of the Treasurer or of the Comptroller with this section, as well as the failure of any owner or person to comply with the requirements of this section, are sufficiently proven in any court by affidavit of the Treasurer or of any officer of the Treasury Department. R.S.O. 1950, c. 170, s. 13 (5); 1955, c. 31, s. 9 (2).

(6) Any officer authorized by the Treasurer may make such inquiry as he deems necessary to ascertain the amount of any tax collectable by an owner under this Act, and for the purposes of such inquiry, such officer has all the powers and authority that may be conferred upon a commissioner under The Public Inquiries Act. R.S.O. 1950, c. 170, s. 13 (6).

(7) No return or information supplied by or on behalf of any owner is binding upon the Treasurer or the Comptroller,
and notwithstanding any such return or information, or in the absence of any return or information, the Comptroller may determine the amount of the tax collectable by any owner. R.S.O. 1950, c. 170, s. 13 (7); 1955, c. 31, s. 9 (2).

(8) After examination of the return of the owner, the Comptroller shall send a notice of accounting to the owner verifying or altering the amount of tax shown to be collectable by the owner in his return, and any additional tax found to be collectable over the amount shown in the return shall be remitted within one month from the date of mailing of the notice of accounting, and subject to section 12, such additional tax shall bear interest at the rate of 4 per cent per annum calculated from the last date prescribed for making the return to the date of remission to the Treasurer. R.S.O. 1950, c. 170, s. 13 (8); 1955, c. 31, s. 9 (2).

(9) If an owner fails to remit the additional tax and interest within one month after the date of the mailing of the notice of accounting, the owner shall pay, in addition to the interest provided by subsection 8, interest at the rate of 3 per cent per annum upon the additional tax from the expiry of the period of one month after the date of the mailing of the notice of accounting to the date of remission to the Treasurer. R.S.O. 1950, c. 170, s. 13 (9).

14.—(1) The Treasurer may refund before or after the issue of the notice of accounting any amount that the owner has remitted in excess of the taxes collectable or of the interest or penalties payable by him, if application in writing is made therefor by the owner within six months of the date of remission of the tax or the date on which the notice of accounting was issued.

(2) Any refund under this section may be paid with interest at the rate of 3 per cent per annum calculated upon the amount by which the tax remitted exceeds the amount of tax collectable as determined in the notice of accounting, but in no case shall interest be paid where the refund of tax is less than $50. R.S.O. 1950, c. 170, s. 14.

15. Notwithstanding any prior accounting or where no accounting has been made, the owner continues to be liable for any tax that is collectable and that has not been remitted by him under this Act. R.S.O. 1950, c. 170, s. 15.

16. Upon default of remission by an owner of any tax collectable by him or any penalty payable by him under this Act,

(a) the Treasurer may bring an action for 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 Treasurer 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; or

(b) the Treasurer may issue a warrant and direct it to the sheriff of a county or district in which any property of the owner is located or situate, for the amount of the tax, interest and penalty, or any of them owing by the owner, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court; or

(c) the Treasurer or any officer authorized by him may enter upon the premises of the owner or any other place in Ontario where the books or records of the owner or any part of them are kept and make such investigation and examination as he deems necessary, and may seize any of the books and records and may, by notice in writing, require any person who is indebted to the owner to pay the debt to the Treasurer.

R.S.O. 1950, c. 170, s. 16.

17.—(1) A notice under clause c of section 16 may be served personally or by registered mail addressed to such person at the address indicated in the books or records of the owner, and the receipt of payment of the amount of the indebtedness by the Treasurer constitutes a good and sufficient discharge of the liability of such person to the owner to the extent of the amount indicated in the receipt.

(2) A person discharging any liability to an owner owing taxes collectable by him or penalties payable by him, or both, under this Act after the service of the notice referred to in subsection 1 is personally liable to the Treasurer to the extent of the amount of the liability discharged between the person and the owner or to the extent of the amount of taxes collectable by the owner, or interest and penalties payable by him, or both, owing under this Act, whichever is the lesser amount, and the Treasurer has the same remedies for the recovery of such amount from such person as he has for the recovery from the owner of a tax collectable or penalty payable by him under this Act. R.S.O. 1950, c. 170, s. 17.

18. Every tax collectable and every penalty payable by an owner under this Act is a first lien and charge upon his property in Ontario. R.S.O. 1950, c. 170, s. 18.
19. Declarations or affidavits in connection with returns under this Act may be taken before any person having authority to administer an oath, or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge a fee therefor. R.S.O. 1950, c. 170, s. 19.

20.—(1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto, any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act.

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than $200. R.S.O. 1950, c. 170, s. 20.

21. The use of any remedy does not bar or affect any other remedy, and the remedies provided by this Act for the recovery and enforcement of payment or collection, or both, of any tax or penalty, or both, imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise. R.S.O. 1950, c. 170, s. 21.

22. An information with respect to a contravention of this Act or the regulations may be laid or made within three years from the time when the matter of the information arose. R.S.O. 1950, c. 170, s. 22.

23. The fines imposed for offences under this Act are payable to the Treasurer. R.S.O. 1950, c. 170, s. 23, amended.

24. A person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided, is guilty of an offence and on summary conviction is liable to a fine of not less than $50 and no more than $500. R.S.O. 1950, c. 170, s. 24.

25. The Lieutenant Governor in Council may make regulations,

(a) authorizing or requiring the Deputy Treasurer or any other officer of the Treasury Department to exercise any power or perform any duty conferred or imposed upon the Treasurer by this Act;

(b) providing for the collection of the tax imposed under this Act by the issuance of tickets wherever it is deemed advisable;
(c) providing for the exemption of the purchaser from the payment and the owner from the collection of the tax that would otherwise be payable and collectable under this Act where the Treasurer, in his absolute discretion, determines that the entertainment given, amusement provided or game played is for religious, charitable or educational purposes;

(d) designating municipalities for the purposes of subsection 2 of section 3;

(e) respecting any matter necessary or advisable to carry out effectively the purpose of this Act. R.S.O. 1950, c. 170, s. 25; 1960, c. 48, s. 2.