1975

c 15 The Gift Tax Amendment Act, 1975
CHAPTER 15

An Act to amend The Gift Tax Act, 1972

Assented to May 2nd, 1975

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

1. (1) Clause (h) of subsection 1 of section 10 of The Gift Tax Act, 1972, being chapter 12, as enacted by the Statutes of Ontario, 1973, chapter 165, section 2, is repealed and the following substituted therefor:

(h) absolute and indefeasible gifts, except gifts made by the creation of a settlement or by the transfer of property to a trust, of farming assets in Ontario given after the 12th day of April, 1973 by a donor who is resident in Ontario, or who is the spouse of an individual who is resident in Ontario, to a person or persons resident in Ontario and connected with the donor by blood relationship, marriage or adoption to be used by such person or persons, or by such person or persons together with the donor or the spouse of the donor, in farming in Ontario, but no gifts are exempt from tax by virtue of this clause,

(i) to the extent that the value of all such gifts of farming assets in Ontario, after making allowance for any other exemption or deduction permitted by this Act, that are given after the 12th day of April, 1973, during the life of the donor, and prior to the 1st day of January, 1975 exceeds $50,000, or

(ii) to the extent that the value of all such gifts of farming assets in Ontario, after making allowance for any other exemption or deduction permitted by this Act, that are given on or after the 1st day of January, 1975 and during the lifetime of the donor exceeds the result obtained by subtracting from $75,000 the value of any exemption to which
the donor was entitled under this clause with respect to gifts given prior to the 1st day of January, 1975;

(i) absolute and indefeasible gifts, except gifts made by the creation of a settlement or by the transfer of property to a trust, of shares of a small active business corporation given on or after the 1st day of January, 1975 by a donor to a person or persons connected with the donor by blood relationship, marriage or adoption, but no gifts are exempt from tax by virtue of this clause to the extent that the value of all such gifts of shares of a small active business corporation, after making allowance for any other exemption or deduction permitted by this Act, that are made during the lifetime of the donor exceeds $75,000.

(2) Subsection 1 of the said section 10, as amended by the Statutes of Ontario, 1973, chapter 165, section 2, is further amended by adding thereto the following clause:

(j) absolute and indefeasible gifts made by a donor to or for the benefit of his spouse by way of any payment as a contribution to, or as consideration under a contract that is, a registered retirement savings plan under which his spouse is the annuitant.

(3) Subsection 2 of the said section 10, as enacted by the Statutes of Ontario, 1973, chapter 165, section 2, is repealed and the following substituted therefor:

(2) For the purpose of this section,

(a) "farming" includes tillage of the soil, the breeding, raising or grazing of live stock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of live stock, and the keeping of bees;

(b) "farming assets" means,

(i) trade accounts receivable, supplies and inventory of commodities or things produced, raised or grown through farming,

(ii) land, buildings, equipment, machinery and live stock that are used chiefly in farming,

(iii) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,
(iv) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and

(v) shares in a farming corporation,

(vi) any indebtedness that is owing to the donor from a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or from a farming corporation solely as a result of a sale by the donor to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation of farming assets as defined in subclause i, ii, iii, iv or v and such indebtedness is "farming assets" only if, in addition to the foregoing requirements of this subclause, the farming assets the sale of which gave rise to such indebtedness are at the date of the gift used in farming.

(A) by the person, persons or farming corporation indebted to the donor, or

(B) by a person resident in Ontario who is connected with the person or persons mentioned in sub-subclause A by blood relationship, marriage or adoption, and

(vii) the interest of a donor in a partnership 95 per cent of the assets of which are farming assets as defined in subclause i, ii, iii, iv, v or vi and that carried on farming in Ontario, provided that the gift of such interest is to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation;

(c) "farming corporation" means a corporation,

(i) every share of which that confers on the holder thereof the right to vote is, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario,
(ii) 95 per cent of the assets of which are farming assets, and

(iii) which carries on the business of farming in Ontario through the employment of a person or persons connected with the donor by blood relationship, marriage or adoption actually engaged in the operation of the farm;

(d) "registered retirement savings plan" has the meaning given to that expression by the Income Tax Act (Canada);

(e) "small active business corporation" means a corporation,

(i) incorporated under the laws of Canada or a province of Canada,

(ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills, notes or other similar property) from which at least 75 per cent of its income is derived,

(iii) more than 50 per cent of the shares of which that confer on the holder thereof the right to vote are, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption, and

(iv) that, in the fiscal year ending in the year in which the gift was made, qualified for a deduction under section 125 of the Income Tax Act (Canada) notwithstanding that no deduction is allowed under that section for the fiscal year by reason only that the amount determined under paragraph a or b of subsection 1 of that section is nil for the fiscal year.

2. Subsection 1 of section 11 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 165, section 3, is further amended by striking out "two" in the eighth line and inserting in lieu thereof "five" and by striking out "$10,000" in the fourteenth line and inserting in lieu thereof "$25,000".
3. Clauses \( a \) and \( b \) of subsection 1 of section 18 of the said Act are repealed and the following substituted therefor:

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(a) \text{ a gift exempt from tax under clauses } a \text{ to } g, \text{ or under clause } j, \text{ of subsection } 1 \text{ of section } 10; \text{ or }
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(b) \text{ a gift made to an individual having a value of not more than } $5,000 \text{ if the aggregate value of gifts made to individuals by the donor in the year does not exceed } $25,000.
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4. Subsection 6 of section 34 of the said Act is amended by s.34(6), striking out “$10,000” in the fourth line and in the eighth line and inserting in lieu thereof each instance “$25,000” and by striking out “$2,000” in the thirteenth line and inserting in lieu thereof “$5,000”.

5. Subsection 2 of section 42 of the said Act is amended by s.42(2), inserting after “annum” in the second line “or such other rate as is prescribed”.

6. Section 46 of the said Act is repealed.

7.—(1) This Act, except subsection 2 of section 1 and section 2, comes into force on the day it receives Royal Assent.

(2) Subsection 2 of section 1 shall be deemed to have come into force on the 1st day of January, 1974.

(3) Section 2 shall be deemed to have come into force on the 1st day of January, 1975.

8. This Act may be cited as The Gift Tax Amendment Act, 1975.