1950

c 175 Income Tax Act

Ontario

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CHAPTER 175

The Income Tax Act

PART I—INCOME TAX

DIVISION A—LIABILITY FOR TAX

1.—(1) An income tax shall be paid as hereinafter required upon the tax payable under Part I of The Income Tax Act 1948, c. 52 (Canada) for each taxation year by every individual resident in Ontario at any time in the year.

(2) Where an individual who is not taxable under subsection 1 for a taxation year,

(a) was employed in Ontario at any time in the year; or

(b) carried on business in Ontario at any time in the year,
an income tax shall be paid as hereinafter required upon the tax payable under Part I of The Income Tax Act (Canada) for each taxation year. 1950, c. 29, s. 1.

2.—(1) The tax payable under this Part for a taxation year shall be five per cent of the tax payable under section 31 of The Income Tax Act (Canada) for the same taxation year.

(2) For the purpose of subsection 1, the tax payable under idem. section 31 of The Income Tax Act (Canada) means the tax otherwise payable under Part I of The Income Tax Act (Canada). 1950, c. 29, s. 2.

DIVISION B—APPLICATION OF THE INCOME TAX ACT (CANADA)

3. For the purposes of this Act, all the provisions of The Application of 1948, Income Tax Act (Canada) comprising,

(a) Part I, except Divisions F, I and J;

(b) Part V; and

(c) Part VI,
affecting the tax payable under Part I of that Act by an individual taxable under this Act, as they from time to time apply, shall apply mutatis mutandis under this Act, provided
that in this Act the Treasurer and Controller shall exercise the powers and duties conferred and imposed upon the Minister and the Deputy Minister, respectively, under The Income Tax Act (Canada). 1950, c. 29, s. 3.

DIVISION C—RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

Returns. 4. (1) A return of the tax payable for each taxation year for which a tax is payable under this Act shall, without notice or demand therefor, be filed with the Controller in prescribed form and containing prescribed information,

(a) in the case of a taxpayer who has died without making the return, by his legal representative, within six months from the day of death;

(b) in the case of an estate or trust, within 90 days from the end of the year;

(c) in the case of any other taxpayer, on or before the 30th day of April, in the next year, by that individual or, if he is unable for any reason to file the return, by his guardian, committee or other legal representative; or

(d) in a case where no person described by clause a, b or c has filed the return, by such person as is required by notice in writing from the Controller to file the return, within such reasonable time as the notice specifies.

(2) Every taxpayer, whether or not he is liable to pay tax under this Part for a taxation year and whether or not he has filed a return under subsection 1, shall, upon receipt at any time of a demand therefor in writing from the Treasurer or any person thereunto authorized by the Treasurer, file forthwith with the Controller a return of his tax for the year in the prescribed form and containing prescribed information.

(3) Every trustee in bankruptcy, assignee, liquidator, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a taxpayer who has not filed a return for a taxation year as required by this section shall file a return in the prescribed form of the tax payable by that taxpayer for that year.

(4) Where a taxpayer who is a partner in or is a proprietor of a business died after the close of a fiscal period but before the end of the calendar year in which the fiscal period closed,
a separate return of the tax payable for the period following the close of the fiscal period to the time of death shall be filed and the tax payable under this Part shall be paid as if such tax were the tax payable by another taxpayer. 1950, c. 29, s. 4.

5. Every taxpayer or person required by section 4 to file a return shall in the return estimate the amount of tax payable. 1950, c. 29, s. 5.

6.—(1) The Treasurer shall, with all due despatch, examine each return and assess the tax for the taxation year and the interest and penalties, if any, payable.

(2) After examination of the return, the Treasurer shall send a notice of assessment to the taxpayer or person by whom the return was filed.

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

(4) The Treasurer may at any time assess tax, interest or penalties and may,

(a) at any time, if the taxpayer or person filing the return has made any misrepresentation or committed any fraud in filing the return or supplying information under this Act; and

(b) within six years from the day of the original assessment in any other case,

re-assess or make additional assessments.

(5) The Treasurer is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

(6) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to re-assessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. 1950, c. 29, s. 6.

7.—(1) Every person paying salary or wages or other remuneration to an officer or employee, a superannuation or pension benefit, a retiring allowance, an annuity payment,
director's fee or fees, commissions or other amounts for services, at any time in a taxation year shall deduct or withhold therefrom such amount as may be prescribed and shall, within one week of the day when he became liable to make the payment or at such other time as may be prescribed, remit that amount to the Treasurer on account of the tax payable by the payee for the year under this Part.

Payment of remainder.

(2) Where amounts have been deducted or withheld under this section from the remuneration received by a taxpayer in a taxation year, if the total of such amounts equals or is greater than three-quarters of the tax payable under this Part, he shall, on or before the 30th day of April in the next year, pay to the Treasurer the remainder of his tax for the year as estimated under section 5. 1950, c. 29, s. 7.

Farmers and fishermen.

8. Every taxpayer, the chief source of income of whom is farming or fishing, shall pay to the Treasurer,

(a) on or before the 31st day of December in each taxation year, two-thirds of the tax as estimated by him for the year or of the tax payable by him for the immediately preceding year; and

(b) on or before the 30th day of April in the next year, the remainder of the tax as estimated under section 5. 1950, c. 29, s. 8.

9. Every taxpayer, other than one to whom subsection 2 of section 7 or section 8 applies, shall pay to the Treasurer,

(a) on or before the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December, respectively, in each taxation year, an amount equal to one-quarter of the tax as estimated by him for the year or of the tax payable by him for the immediately preceding year; and

(b) on or before the 30th day of April in the next year, the remainder of the tax as estimated under section 5. 1950, c. 29, s. 9.

Payment of remainder.

10.—(1) Every taxpayer shall, within 30 days from the day of the mailing of the notice of assessment, pay to the Treasurer any part of the assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or appeal from the assessment is outstanding.

(2) Where, in the opinion of the Treasurer, a taxpayer is attempting to avoid payment of taxes, the Treasurer may direct that all taxes, penalties and interest be paid forthwith upon assessment. 1950, c. 29, s. 10.
11.—(1) Every person required by section 4 to file a return of the tax payable by any other taxpayer for a taxation year shall, within 30 days of mailing of the notice of assessment, pay all taxes, penalties and interest payable by or in respect of that taxpayer to the extent that he has or had, at any time since the taxation year, in his possession or control property belonging to that taxpayer or his estate and shall thereupon be deemed to have made that payment on behalf of such taxpayer.

(2) Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, before distributing any property under his control, shall obtain a certificate from the Treasurer certifying that there are not outstanding any taxes, interest or penalties that have been assessed under this Act and are chargeable against or payable out of the property.

(3) Distribution of property without a certificate required by subsection 2 renders the person required to obtain the certificate personally liable for the unpaid taxes, interest and penalties. 1950, c. 29, s. 11.

12.—(1) Where the amount paid on account of tax payable by a taxpayer under this Part for a taxation year before the expiration of the time allowed for filing the return of the tax payable by such taxpayer is less than the amount of tax payable for the year under this Part, such taxpayer shall pay interest on the difference between those two amounts from the expiration of the time for filing the return to the day of payment at six per cent per annum.

(2) In addition to the interest payable under subsection 1, where a taxpayer, being required by this Part to pay a part or instalment of tax, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at six per cent per annum from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he becomes liable to pay interest thereon under subsection 1, whichever is earlier.

(3) For the purposes of subsection 2, where a taxpayer is required to pay a part or instalment of tax for a taxation year, as payable by him for a preceding year or estimated by him for the taxation year, he shall be deemed to have been liable to pay a part or instalment computed by reference to the tax payable,
(a) for the preceding year; or

(b) for the taxation year,

whichever is the lesser.

(4) Notwithstanding any other provision in this section, no interest is payable in respect of the amount by which the tax payable by a taxpayer is increased by a payment made by the Canadian Wheat Board on a participation certificate previously issued to him until 30 days after the payment is made.

(5) No interest under this section upon the amount by which the unpaid taxes exceed the amount estimated under section 5 is payable in respect of the period beginning 12 months after the day fixed by this Act for filing the return or 12 months after the return was actually filed, whichever was later, and ending 30 days from the day of mailing of the notice of the original assessment for the taxation year. 1950, c. 29, s. 12.
14.—(1) The Treasurer may, upon mailing the notice of Refunds, assessment, refund, without application therefor, any overpayment made on account of the tax and he shall make such a refund after mailing the notice of assessment if application in writing is made therefor by the taxpayer within 12 months from the day the overpayment was made or the day on which the notice of assessment was sent, whichever is the later.

(2) Instead of making a refund that might otherwise be made under this section, the Treasurer may, where the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify the taxpayer of that action.

(3) Where an amount in respect of an overpayment is refunded or applied on other liability under this section, interest shall be paid or applied for the period commencing,

(a) on the day when the overpayment arose;
(b) on the day on or before which the return in respect of which the tax was paid was required to be filed; or
(c) on the day that the return was actually filed,

whichever was later, and ending with the day of refunding or application aforesaid at the rate of,

(d) two per cent per annum on the amount of the overpayment or $5,000, whichever is lesser; and
(e) one-half of one per cent per annum on any part of the overpayment in excess of $5,000,

unless the amount of the interest so calculated is less than $1, in which event no interest is payable under this subsection.

(4) For the purpose of this section, the term "overpayment" means the aggregate of all amounts paid on account of tax minus all amounts payable under this Act or an amount so paid where no amount is so payable. 1950, c. 29, s. 14.

15.—(1) A taxpayer who objects to an assessment under this Act may, within 60 days from the day of mailing the notice of assessment, serve on the Treasurer 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 to the Treasurer.
(3) Upon receipt of the notice of objection, the Treasurer shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or re-assess and he shall thereupon notify the taxpayer of his action by registered mail. 1950, c. 29, s. 15.

16. Where a taxpayer has served notice of objection to an assessment under section 15, he may appeal to the tax appeal board constituted under section 19 to have the assessment vacated or varied after either,

(a) the Treasurer has confirmed the assessment or re-assessed; or

(b) 180 days have elapsed after service of the notice of objection and the Treasurer has not notified the individual that he has vacated or confirmed the assessment or re-assessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 15 that the Treasurer has confirmed the assessment or re-assessed. 1950, c. 29, s. 16.

17.—(1) The Treasurer or the taxpayer may, within 120 days from the day on which the registrar of the tax appeal board mails the decision on an appeal under section 16 to the Treasurer and the taxpayer, appeal to the Supreme Court.

(2) All matters in connection with an appeal under this section shall be regulated under the rules of the Supreme Court. 1950, c. 29, s. 17.

18. An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act. 1950, c. 29, s. 18.

DIVISION D—TAX APPEAL BOARD

19. There is hereby constituted a tax appeal board to be appointed by the Lieutenant-Governor in Council, consisting of the following members, namely, a chairman and not less than two or more than four other members of whom one may be appointed as assistant chairman. 1950, c. 29, s. 19.

20.—(1) No person shall be appointed chairman or assistant chairman unless he is,
(a) a judge of a superior, county or district court in Ontario; or

(b) a barrister of at least 10 years standing at the Bar of Ontario,

but, if a person who is a judge is appointed chairman or assistant chairman, he shall cease to hold office 90 days after his appointment unless,

(c) within that time he has resigned from his office as judge; or

(d) his appointment as chairman or assistant chairman was for a period not exceeding two years and he has been granted leave of absence without pay for that period from his office as a judge.

(2) No person who has attained the age of 65 years shall be appointed a member.

(3) Where the chairman, assistant chairman or any other member is ill or otherwise unable to act, or where his office is vacant, the Lieutenant-Governor in Council may appoint some person qualified to hold the office to act in his stead during his illness or incapacity or until the office is filled, as the case may be.

(4) The chairman, the assistant chairman and the members shall be paid such salaries as are determined by the Lieutenant-Governor in Council.

(5) Every member shall be paid allowances for travelling as are determined by the Lieutenant-Governor in Council.

(6) A person having the qualifications provided by sub-section 1 for the chairman or assistant chairman may be appointed by the Lieutenant-Governor in Council a hearing officer for an appeal or group of appeals and paid such remuneration and expenses as may be determined by the Lieutenant-Governor in Council. 1950, c. 29, s. 20.

21. The board may, subject to the approval of the Lieutenant-Governor in Council, make rules not inconsistent with this Act governing the carrying on of the business of the board and practice and procedure in connection with appeals. 1950, c. 29, s. 21.

22.—(1) The chairman or assistant chairman and not less than one-half of the other members of the board are a quorum.
(2) The chairman or the board may direct that an appeal be heard and determined on behalf of the board, by the chairman or assistant chairman and one or more other members who shall have for the hearing and determination of the appeal all powers of the board.

(3) The members nominated to hear and determine an appeal may at any stage refer the appeal to the board and the board shall then in its discretion hear and determine the appeal or determine the appeal on the report of such members if the report was made after hearing the parties.

(4) Where an appeal is to be determined by the board, the chairman or the board may direct that evidence relating to the appeal, in whole or in part, be received by a hearing officer, the chairman or the assistant chairman, and the board shall, after,

(a) receiving the report of the hearing officer, the chairman or the assistant chairman; and

(b) holding a rehearing in whole or in part if in its discretion it deems it advisable so to do,

determine the appeal.

(5) A hearing officer, the chairman or the assistant chairman has all the powers of the board for the purpose of taking evidence pursuant to this section. 1950, c. 29, s. 22.

23.—(1) An appeal to the board shall be instituted by serving upon the Treasurer a notice of appeal in triplicate in such form as may be determined by the rules and the Treasurer shall forthwith forward a copy of the notice to the board.

(2) The notice of appeal shall be served upon the Treasurer by being sent by registered mail to the Controller.

(3) Immediately after receiving the notice of appeal, the Treasurer shall forward to the board copies of all documents relevant to the assessment. 1950, c. 29, s. 23.

24.—(1) An appellant shall pay to the Treasurer a fee of $15 upon the serving of the notice of appeal and if the appeal is allowed, in whole or in part, the fee shall be returned to the appellant forthwith after disposition of the appeal but not otherwise.

(2) Subject to subsection 1, no costs may be awarded on the disposition of an appeal and no fees may be charged the appellant by the board.
(3) Subject to subsection 1, fees paid under this section shall be retained in the Consolidated Revenue Fund. 1950, c. 29, s. 24.

25.—(1) The Treasurer and the appellant may appear in person or may be represented at the hearing by counsel or an agent or, with the consent of the Treasurer and the appellant, the board or the chairman may order that written submissions be filed in addition to or in place of an oral hearing.

(2) An appeal may, in the discretion of the board, the chairman, the assistant chairman or hearing officer, as the case may be, be heard in camera or in public unless the appellant requests that it be heard in camera in which case it shall be so heard.

(3) The board is a court of record and may, to be court of record,

(a) summon before it any witness and require him to give evidence orally or in writing on oath or otherwise and to produce such documents and things as it deems requisite to the full investigation of the facts in issue; and

(b) enforce the attendance of witnesses and compel them to give evidence.

(4) The chairman may, subject to the rules and this Procedure. Division, determine the procedure to be followed on an appeal. 1950, c. 29, s. 25.

26.—(1) The board may dispose of an appeal by,

disposal of appeal.

(a) dismissing it;

(b) vacating the assessment;

(c) varying the assessment; or

(d) referring the assessment back to the Treasurer for reconsideration and re-assessment.

(2) Where an appeal is from an assessment or re-assessment made pursuant to a direction under section 126 of The Income Tax Act (Canada) as made applicable to this Act by section 3, hereof, the board has no jurisdiction to vacate or vary the assessment in so far as it is made in accordance with that direction; and, if it appears that the only matter at issue in the appeal is whether one of the purposes of the transactions was the avoidance or reduction of taxes, the board shall forthwith dismiss the appeal.
(3) The registrar shall, upon the disposition of an appeal, forward by registered mail a copy of the decision and the reasons therefor to the Treasurer and the appellant. 1950, c. 29, s. 26.

27.—(1) The Lieutenant-Governor in Council may appoint a registrar and a deputy registrar and fix their salaries.

(2) Such other officers, clerks and employees as may be required to carry on the business of the board shall be appointed under The Public Service Act.

(3) The registrar, or in his absence the deputy registrar, shall control and supervise the other persons employed under this section. 1950, c. 29, s. 27.

28.—(1) The registrar, with the approval of the chairman, shall establish such office or offices as are required for the use of the members and staff of the board and provide therefor the necessary accommodation, furnishings, stationery, equipment and telephones and shall arrange for the necessary accommodation for the hearing of appeals.

(2) The registrar shall, under the control and direction of the chairman, make available for publication all decisions of the board. 1950, c. 29, s. 28.

29. The registrar shall, with the approval of the chairman, incur all expenses necessary for the carrying on of the business of the board and the hearing of appeals. 1950, c. 29, s. 29.

30. All expenses and salaries under this Division shall be paid out of the Consolidated Revenue Fund. 1950, c. 29, s. 30.

31. In this Division,

(a) "assistant chairman" means the assistant chairman of the board;

(b) "board" means the tax appeal board;

(c) "chairman" means the chairman of the board;

(d) "member" means a member of the board;

(e) "rule" means a rule made under section 21. 1950, c. 29, s. 31.
DIVISION E—APPEALS TO THE SUPREME COURT OF ONTARIO

32.—(1) An appeal to the court shall be instituted by serving upon the taxpayer or the Treasurer, as the case may be, a notice of appeal in triplicate in such form as may be determined by the rules and filing a copy thereof with the registrar of the tax appeal board.

(2) A notice of appeal shall be served upon the Treasurer by being sent by registered mail to the Controller and may be served upon the taxpayer either personally or by being sent to him at his last known address by registered mail.

(3) The appellant shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and reasons which the appellant intends to submit in support of his appeal.

(4) An appeal by a taxpayer and all proceedings thereunder are, upon the expiration of 30 days from the day the appeal is instituted, null and void unless security for the costs of the appeal has been, within the said period, given to the satisfaction of the Treasurer in a sum of not less than $400 and, upon an appeal becoming null and void by virtue of this section, no further appeal can be instituted in respect of the same decision.

(5) When security has been given under subsection 4, notice thereof in such form as may be determined by the rules shall be filed with the registrar of the tax appeal board. 1950, c. 29, s. 32.

33.—(1) The respondent shall, within 60 days from the day the notice of appeal is received, or within such further time as the court or a judge thereof may either before or after the expiration of that time allow, serve on the appellant and file in the court 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 the respondent intends to rely on.

(2) The court or a judge may, in its or his discretion, strike out a notice of appeal or any part thereof for failure to comply with subsection 3 of section 32 and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(3) The court or a judge may, in its or his discretion,

(a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply; and
(b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.

(4) Where a notice of appeal is struck out for failure to comply with subsection 3 of section 32 and a new notice of appeal is not filed as and when permitted by the court or a judge, the court or a judge thereof may, in its or his discretion, dispose of the appeal by dismissing it.

(5) Where a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the court or a judge within the time ordered, the court may dispose of the appeal ex parte or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true. 1950, c. 29, s. 33.

34.—(1) The registrar of the tax appeal board shall,

(a) in the case of an appeal by the Treasurer, upon receipt of the notice of appeal; and

(b) in the case of an appeal by a taxpayer, upon receipt of the notice of appeal and of notice of the giving of security,

cause to be transmitted to the registrar of the court all papers filed with the board on the appeal thereto together with a transcript of the record of the proceedings before the board.

(2) Upon the filing of the material referred to in subsection 1 and of the reply required by section 33, the matter shall be deemed to be an action in the court and, unless the court otherwise orders, ready for hearing.

(3) Any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and upon such terms as the court may direct.

(4) The court may dispose of the appeal by,

(a) dismissing it;

(b) vacating the assessment;

(c) varying the assessment; or

(d) referring the assessment back to the Treasurer for reconsideration and re-assessment. 1950, c. 29, s. 34.

35. The court may, in delivering judgment disposing of an appeal, order payment or repayment of tax, interest,
penalties or costs by the taxpayer or the Treasurer. 1950, c. 29, s. 35.

36. Proceedings under this Division shall be held in camera upon request made to the court by the taxpayer. 1950, c. 29, s. 36.

37. Rules otherwise applicable to practice and procedure in the court shall be applicable to practice and procedure in appeals under this Division. 1950, c. 29, s. 37.

38. In this Division, "court" means the Supreme Court of Ontario. 1950, c. 29, s. 38.

PART II— ADMINISTRATION AND ENFORCEMENT

39.—(1) The Treasurer shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act and the Controller may exercise all the powers and perform the duties of the Minister under this Act.

(2) The Lieutenant-Governor in Council may appoint such staff, officers and servants as are necessary to administer and enforce this Act and may fix their remuneration.

(3) The Treasurer may at any time extend the time for making a return under this Act.

(4) The Treasurer may, if he considers it advisable in a particular case, accept security for payment of taxes by way of mortgage or other charge of any kind whatsoever on property of the taxpayer or any other person or by way of guarantee from other persons. 1950, c. 29, s. 39.

40. The Lieutenant-Governor in Council may make regulations,

(a) prescribing anything that, by this Act, is to be prescribed, determined or regulated by regulations;

(b) prescribing the evidence required to establish facts relevant to assessments under this Act;

(c) to facilitate the assessment of tax where deductions or exemptions of a taxpayer have changed in a taxation year;

(d) requiring any class of persons to make information returns respecting any class of information required in connection with assessments under this Act;
(e) authorizing a designated officer or class of officers to exercise powers or perform duties of the Treasurer or the Controller under this Act;

(f) assigning the names of office of officers and other persons appointed under this Act;

(g) requiring every person or every member of any group or class of persons ceasing to be a resident of Ontario to make application to the Treasurer for a certificate that there are not outstanding any assessed taxes, interest or penalties payable under this Act and that he is not in default in filing any return required by or under this Act;

(h) defining the classes of persons who may be regarded as dependent for the purposes of this Act;

(i) generally to carry out the purposes and the provisions of this Act. 1950, c. 29, s. 40.

**Debts to His Majesty.**

41. All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to His Majesty for the uses of Ontario and shall be recoverable in any court of competent jurisdiction or in any other manner provided by this Act. 1950, c. 29, s. 41.

**Certificates.**

42.—(1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may, upon the expiration of 30 days after the default, be certified by the Treasurer.

(2) On production to the Supreme Court, a certificate made under this section shall be registered in the court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in such court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act.

**Costs.**

(3) All reasonable costs and charges attendant upon the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section. 1950, c. 29, s. 42.

**Garnishment.**

43.—(1) When the Treasurer 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, require him to pay the moneys otherwise payable to that 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 \_idem\_ under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(3) Where the Treasurer has, under this section, required \_idem\_, 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 Treasurer in the registered letter.

(4) Every person who has discharged any liability to a \_idem\_ person liable to make a payment under this Act without complying with a requirement under this section is liable to pay to His Majesty in right of Ontario an amount equal to the liability discharged or the amount which he was required under this section to pay to the Treasurer, whichever is the lesser. 1950, c. 29, s. 43.

44.—(1) Where a person has failed to make a payment as \_seizure of chattels\_ required by this Act, the Treasurer, on giving 10 days notice by registered mail addressed to his last known place of residence, may, whether or not there is an objection to or appeal in respect of the assessment not disposed of, issue a certificate of the failure and direct that the goods and chattels of the person in default be seized.

(2) Property seized under this section shall be kept for \_idem\_ 10 days at the cost and charges of the owner and, if he does not pay the amount due together with the costs and charges within the 10 days, the property seized shall be sold by public auction.

(3) Except in the case of perishable goods, notice of the \_idem\_ sale setting forth the time and place thereof, together with a general description of the property to be sold shall, a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation.

(4) Any surplus resulting from the sale after deduction of \_idem\_ the amount owing and all costs and charges shall be paid or returned to the owner of the property seized.
(5) Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued out of the Supreme Court are exempt from seizure under this section. 1950, c. 29, s. 44.

45.—(1) Where the Treasurer suspects that the taxpayer is about to leave Ontario, he may before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer, demand payment of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived and the same shall be paid forthwith notwithstanding any other provision of this Act.

(2) Where a person has failed to pay tax, interest or penalties demanded under this section as required, the Treasurer may direct that the goods and chattels of the taxpayer be seized and subsections 2 to 5 of section 44 are, thereupon, applicable mutatis mutandis. 1950, c. 29, s. 45.

46.—(1) No action lies against any person for withholding or deducting any sum of money in compliance or intended compliance with this Act.

(2) Every person whose employer is required to deduct or withhold any amount from his remuneration under section 7 shall, from time to time as prescribed, file a return with his employer in prescribed form.

(3) Every person failing to file a form as required by subsection 2 is liable to have the deduction or withholding from his salary or wages under section 7 made as though he were an unmarried person without dependants.

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for His Majesty in right of Ontario.

(5) All amounts deducted or withheld by a person under this Act shall be kept separate and apart from his own moneys.

(6) Every person who deducts or withholds an amount under this Act is liable to pay to His Majesty in right of Ontario on the day fixed by or pursuant to this Act an amount equal to the amount so deducted or withheld and this liability constitutes a first charge on his property and ranks for payment in priority to all other claims.

(7) Where a person on whose behalf an amount has been paid to the Treasurer after having been deducted or withheld
under this Act was not liable to pay any tax under this Act or
where the amount so paid to the Treasurer on his behalf is in
excess of the tax that he was liable to pay, the Treasurer shall,
upon application in writing made within two years from the
end of the calendar year in which the amount was paid, pay to
him the amount so paid or such part thereof as he was not liable
to pay, unless he is otherwise liable or about to become liable
to make a payment under this Act, in which case, the Treasurer
may apply the amount otherwise payable under this subsection
to that payment and notify him of that fact.

(8) Any person who has failed to deduct or withhold any amount as required by this Act or a regulation is liable to pay
to His Majesty in right of Ontario,

(a) if the amount should have been deducted or withheld
under subsection 1 of section 7 from an amount that
has been paid to a person resident in Ontario, 10
per cent of the amount that should have been
deducted or withheld; and

(b) in any other case, the whole amount that should have
been deducted or withheld,
together with interest thereon at the rate of 10 per cent per
annum.

(9) Every person who has failed to remit an amount deducted or withheld as required by this Act or a regulation
is liable to a penalty of 10 per cent of that amount or $10,
whichever is the greater, in addition to the amount itself,
together with interest on the amount at the rate of 10 per
cent per annum.

(10) The Treasurer may assess any person for any amount that has been deducted or withheld under this Act or a
regulation or that is payable under this section and, upon
his sending a notice of assessment by registered mail to that
person, Division C of Part I is applicable mutatis mutandis.

(11) Provisions of this Act requiring a person to deduct or withhold an amount in respect of taxes from amounts payable
to a taxpayer are applicable to His Majesty in right of Canada
or a province.

(12) Where this Act requires an amount to be deducted or withheld, an agreement by the person on whom that
obligation is imposed not to deduct or withhold, is void.

(13) The receipt of the Treasurer for an amount withheld or deducted by any person as required by or under this Act
is a good and sufficient discharge of the liability of any debtor to his creditor with respect thereto to the extent of the amount referred to in the receipt. 1950, c. 29, s. 46.

47.—(1) Every taxpayer carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account, including an annual inventory kept in the prescribed manner, at his place of business or residence in Ontario or at such other place as may be designated by the Treasurer, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

(2) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Treasurer may require him to keep such records and books of account as he may specify and that person shall thereafter keep records and books of account as so required.

(3) Every person required by this section to keep records and books of account shall, until written permission for their disposal is obtained from the Treasurer, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. 1950, c. 29, s. 47.

48.—(1) Any person thereunto authorized by the Treasurer 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 anything is done in connection with any business or any books or records are, or should be, kept pursuant to this Act, and,

(a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act;

(b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act;
(c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper 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, require the owner or manager to attend at the premises or place with him; and

(d) if, during the course of an audit or examination, it appears to him that there has been a violation of this Act or a regulation, 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 Treasurer may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally require from any person,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as may be stipulated therein.

(3) The Treasurer may, for any purpose related to the search, administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon ex parte application, authorize in writing any officer of the Treasury Department, together with such members of the Ontario Provincial Police Force or other police officers as he calls on to assist him and such other persons as may be named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things which may afford evidence as to the violation of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

(4) The Treasurer may, for any purpose related to the inquiry, administration or enforcement of this Act, authorize any person, whether or not he is an officer of the Treasury Department, to make such inquiry as he may deem necessary with reference to anything relating to the administration or enforcement of this Act.
(5) Where any 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 Treasury Department may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Treasurer or a person thereunto authorized by the Treasurer 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 if it had been proven in the ordinary way.

Compliance.

(6) No person shall hinder or molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do, or 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 or pursuant to this section to do.

Powers.

(7) For the purpose of an inquiry authorized under subsection 4, the person authorized to make the inquiry has all the powers that may be conferred upon a commissioner appointed under *The Public Inquiries Act*. 1950, c. 29, s. 48.

**49.**—(1) Before a bearer coupon or warrant representing either interest or dividends payable by any debtor or cheque representing dividends or interest payable by a non-resident debtor, is negotiated by or on behalf of a resident of Ontario, there shall be completed by or on behalf of the resident an ownership certificate in the prescribed form.

(2) An ownership certificate completed pursuant to subsection 1 shall be delivered in such manner, at such time and at such place as may be prescribed and a person who has failed to do so is liable on summary conviction to a fine of not less than $10 and not more than $100.

(3) A person who has failed to complete an ownership certificate as required by or under this Act and a debtor or other person who has cashed a coupon or warrant for which an ownership certificate has not been completed, is liable on summary conviction to a fine of not less than $10 and not more than $100. 1950, c. 29, s. 49.

**50.** Every person who has failed to make a return as and when required by regulation under section 40 or by subsection 2 of section 46 is liable to a penalty of $10 a day for each day of default but not more than $2,500 in all. 1950, c. 29, s. 50.
51. A return, certificate or other document made by a corporation pursuant to this Act or a regulation shall be signed on its behalf by the president, secretary or treasurer of the corporation or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation. 1950, c. 29, s. 51.

52.—(1) Every person who has failed to file a return as offences, and when required by or under this Act or a regulation is guilty of an offence and, in addition to any penalty otherwise provided, liable on summary conviction to a fine of not less than $25 for each day of default.

(2) Every person who has failed to comply with or con- travened subsection 1 of section 7, subsection 5 of section 46, section 47 or section 48 is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to,

(a) a fine of not less than $200 and not more than $10,000; or

(b) both the fine described in clause a and imprisonment for a term not exceeding six months.

(3) Where a person has been convicted under this section saving, of failing to comply with a provision of this Act or a regulation, he is not liable to pay a penalty imposed under section 13, section 46 or section 50 for the same failure unless he was assessed for that penalty or that penalty was demanded from him before the information or complaint giving rise to the conviction was laid or made. 1950, c. 29, s. 52.

53.—(1) Every person who has, Idem:

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation;

(b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer;

(c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer;
(d) wilfully, in any manner, evaded or attempted to evade, compliance with this Act or payment of taxes imposed by this Act; or

(e) conspired with any person to commit an offence described by clauses a to d,

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to,

(f) a fine of not less than $25 and not more than $10,000 plus, in an appropriate case, an amount not exceeding double the amount of the tax that should have been shown to be payable or that was sought to be evaded; or

(g) both the fine described in clause f and imprisonment for a term of not more than two years.

(2) Every person who is charged with an offence described by subsection 1 may, at the election of the Attorney-General of Ontario, be prosecuted upon indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to imprisonment for a term of not more than five years and not less than two months. 1950, c. 29, s. 53.

54. Every person who, while employed in the service of His Majesty, has communicated or allowed to be communicated to a person not legally entitled thereto any information obtained under this Act or has allowed any such person to inspect or have access to any written statements furnished under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding $200. 1950, c. 29, s. 54.

55. Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. 1950, c. 29, s. 55.

56. Notwithstanding any other statute or law in force at the commencement of this Act, the court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act and the court has no power to suspend sentence. 1950, c. 29, s. 56.
57.—(1) An information or complaint under this Act may be laid or made by any officer of the Treasury Department or by any person thereunto authorized by the Treasurer and, where an information or complaint purports to have been laid or made under this Act, it shall be deemed to have been laid or made by a person thereunto authorized by the Treasurer and shall not be called in question for lack of authority of the informant or complainant except by the Treasurer or by some person acting for him or for His Majesty.

(2) An information or complaint in respect of an offence under this Act may be for one or more than one offence and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(3) A complaint or information in respect of an offence under this Act may be heard, tried or determined by any magistrate if the accused is resident, carrying on business, found or apprehended or is in custody within his jurisdiction although the matter of the information or complaint did not arise within his jurisdiction.

(4) An information or complaint under Part XV of the Criminal Code (Canada) in respect of an offence under this Act may be laid or made on or before a day five years from the time when the matter of the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Treasurer to justify a prosecution for the offence, came to his knowledge, and the Treasurer's certificate as to the day on which such evidence came to his knowledge is conclusive evidence thereof.

(5) Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Treasury Department sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed, indicating such address, and that he identifies as exhibits attached to the affidavit the post-office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall be received as prima facie evidence of the sending and of the request, notice or demand.

(6) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit in proof of failure to comply.
of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by such person, shall be received as \textit{prima facie} evidence that in such case that person did not make the return, statement, answer or certificate, as the case may be.

(7) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular day, shall be received as \textit{prima facie} evidence that it was filed or made on that day and not prior thereto.

(8) An affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Treasurer or some person exercising the powers of the Treasurer or by or on behalf of a taxpayer, shall be received as \textit{prima facie} evidence of the nature and contents of the document and shall be admissible in evidence and have the same probative force as the original document would have if it had been proven in the ordinary way.

(9) An affidavit of an officer of the Treasury Department, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, shall be received as \textit{prima facie} evidence of the statements contained therein.

(10) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Treasury Department, it is not necessary to prove his signature or that he is such an officer
nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

(11) Judicial notice shall be taken of all orders or regulations made under this Act without such orders or regulations being specially pleaded or proven. 1950, c. 29, s. 57.

PART III

58.—(1) In this Act,

(a) “amount” means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing;

(b) “assessment” includes a re-assessment;

(c) “Controller” means Controller of Revenue for Ontario;

(d) “corporation” includes an incorporated company;

(e) “employed” means performing the duties of an office or employment;

(f) “employment” means the position of an individual in the service of some other person, including His Majesty or a foreign state or sovereign, and “servant” or “employee” means a person holding such a position;

(g) “estate” means the trustee or the executor, administrator, heir or other legal representative having ownership or control of a trust or estate property;

(h) “fiscal period” means the period for which the accounts of the business of the taxpayer has been ordinarily made up and accepted for purposes of assessment under this Act and, in the absence of an established practice, the fiscal period is that adopted by the taxpayer; provided that a fiscal period may not exceed a period of 12 months and that a change in a usual and accepted fiscal period may not be made for the purpose of this Act without the concurrence of the Treasurer;

(i) “individual” means a person other than a corporation;

(j) “inventory” means a description of property, the value of which is relevant in computing a taxpayer’s income from a business for a taxation year;

(k) “Minister” means Minister of National Revenue for Canada;
(l) "non-resident" means not resident in Ontario;

(m) "office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a Minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly, senator or member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and "officer" means a person holding such an office;

(n) "prescribed" in the case of a form or the information to be given on a form, means prescribed by order of the Treasurer, and, in any other case, means prescribed by regulation;

(o) "property" means property of any kind whatsoever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes a right of any kind whatsoever, a share or a chose in action;

(p) "regulation" means a regulation made by the Lieutenant-Governor in Council under this Act;

(q) "taxpayer" includes any individual mentioned in Part I of this Act whether or not he is liable to pay tax;

(r) "Treasurer" means Treasurer of Ontario;

(s) "trust" means the trustee or the executor, administrator, heir or other legal representative having ownership or control of the trust or estate property;

(t) "tax payable by a taxpayer under Part I" means the tax payable by him as fixed by assessment or reassessment subject to variation on objection or appeal, if any, in accordance with the provisions of that Part.

(2) For the purpose of this Act, a "taxation year" is, in the case of an individual, a calendar year, and when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with or ending in that year.

(3) For the purposes of this Act, a person shall be deemed to have been resident in Ontario in a taxation year if,
(a) he sojourned in Ontario in the year for a period of, or periods the aggregate of which is one 183 or more;

(b) he was, at any time in the year, a member of the naval, military or air forces of Canada, if, before his enlistment, he was ordinarily resident in Ontario; or

(c) he was, at any time in the year,
   (i) an ambassador, minister, high commissioner, officer or servant of Canada, or
   (ii) an agent-general, officer or servant of Ontario,

and he was resident in Ontario immediately prior to appointment by Canada or Ontario, as the case may be, or received representation allowances in respect of the year.

(4) In this Act, a reference to a person resident in Ontario includes a person who was at the relevant time ordinarily resident in Ontario.

(5) "Tax payable under Part I of The Income Tax Act (Canada)" and "tax payable under section 31 of The Income Tax Act (Canada)" and "tax otherwise payable under Part I of The Income Tax Act (Canada)" means "tax otherwise payable under this Part" as the definition of such term in subsection 2 of section 32 of The Income Tax Act (Canada) from time to time applies. 1950, c. 29, s. 58.

PART IV

59.—(1) The provisions of The Income Tax Act (Ontario), being chapter 25 of The Revised Statutes of Ontario, 1937, shall apply to the taxation year 1949 and earlier taxation years and the provisions of this Act shall apply thereafter.

(2) Subject to subsection 1, the said The Income Tax Act (Ontario) is repealed. 1950, c. 29, s. 59.

60. This Act shall come into force on a day to be named by the Lieutenant-Governor by his Proclamation and shall be effective with respect to the income of individuals of the then current taxation year and succeeding years. 1950, c. 29, s. 60.