c 1 The Income Tax Amendment Act, 1971 (No. 2)

Ontario
20 ELIZABETH II

CHAPTER 1

An Act to amend
The Income Tax Act

Assented to December 17th, 1971
Session Prorogued December 17th, 1971

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

1. — (1) Paragraph 15 of subsection 1 of section 1 of
The Income Tax Act, being chapter 217 of the Revised
Statutes of Ontario, 1970, is amended by striking out
"subsection 1 of section 63" in the second and third
lines and inserting in lieu thereof "section 104".

(2) Paragraph 17 of subsection 1 of the said section 1 is
repealed.

(3) Subparagraph ii of paragraph 27 of subsection 1 of the
said section 1 is amended by striking out "subsection 13 of
section 63" in the third line and inserting in lieu thereof
"subsection 23 of section 104".

2. Section 2 of the said Act is repealed and the following
substituted therefor:

2. An income tax shall be paid as hereinafter required for each taxation year by every individual,

(a) who was resident in Ontario on the last day of the taxation year; or

(b) who, not being resident in Ontario on the last day of the taxation year, had income earned in the taxation year in Ontario as defined in clause (b) of subsection 4 of section 3.
s. 3 (3) (f), re-enacted 3.—(1) Clause f of subsection 3 of section 3 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 22, section 1, is repealed and the following substituted therefor:

(f) 28 per cent in respect of the 1967, 1968, 1969 and 1970 taxation years;

(g) 27.5 per cent in respect of the 1971 taxation year;

(h) 30.5 per cent in respect of the 1972 taxation year.

s. 3 (4) (a), re-enacted (2) Clause a of subsection 4 of the said section 3 is repealed and the following substituted therefor:

(a) “tax payable under the Federal Act” means the amount of tax payable under Part I of the Federal Act for the taxation year in respect of which that expression is being applied computed as if the taxpayer were not entitled to any deduction under section 126 or 127 of that Act.

s. 3 (4) (b), amended (3) Clause b of subsection 4 of the said section 3 is amended by striking out “subsection 3 of section 33” in the fourth line and inserting in lieu thereof “subsection 4 of section 120”.

s. 3 (4) (d), re-enacted (4) Clause d of subsection 4 of the said section 3 is repealed and the following substituted therefor:

(d) “income for the year” means,

(i) in the case of an individual resident in Canada during part only of the taxation year in respect of whom section 114 of the Federal Act applies, the aggregate of,

(A) his income for the period or periods in the year referred to in clause a of section 114 of the Federal Act as determined in accordance with and for the purposes of the Federal Act, and

(B) his income for the portion of that year that is not included in the period or periods referred to in sub-subclause A, computed under clauses a, b and c of subsection 1 of section 115 of the Federal Act as though such portion of the year were the whole taxation year,

(ii) in the case of an individual not resident in Canada at any time in the taxation year, his
income for the year as computed under clauses a, b and c of subsection 1 of section 115 of the Federal Act, and

(iii) in the case of any other individual, his income for the year as determined in accordance with and for the purposes of the Federal Act.

(5) Clause e of subsection 4 of the said section 3 is repealed.

(6) Subsection 5 of the said section 3 is amended by striking out “subsection 2 of section 32” in the second line and inserting in lieu thereof “subsection 6 of section 117”.

(7) Subsection 6 of the said section 3 is repealed and the following substituted therefor:

(6) Where an individual resided in Ontario on the last day of a taxation year and had income for the year that included income earned in a country other than Canada in respect of which any non-business-income tax was paid by him to the government of a country other than Canada, he may deduct from the tax payable by him under this Act for that taxation year an amount equal to the lesser of,

(a) the amount, if any, by which any non-business-income tax paid by him for the year to the government of such other country exceeds the amount claimed under the Federal Act as a deduction for that taxation year by virtue of subsection 1 of section 126 of that Act; or

(b) that proportion of the tax otherwise payable under this Act for that taxation year that,

(i) the aggregate of the taxpayer’s income from sources in that country,

(A) for that year, if section 114 of the Federal Act is not applicable, or

(B) if section 114 of the Federal Act is applicable, for the period or periods in the year referred to in paragraph a thereof,

on the assumption that no businesses were carried on by him,

is of,

(ii) the taxpayer’s income,

(A) for the year, if section 114 of the Federal Act is not applicable, or
(B) if section 114 of the Federal Act is applicable, for the period or periods in the year referred to in paragraph a thereof,

minus any amounts deductible under clause b of subsection 1 of section 111 or section 112 or 113 of the Federal Act for the year or such period or periods, as the case may be.

s. 3, amended

(8) The said section 3 is amended by adding thereto the following subsection:

(7) For the purposes of subsection 6, the non-business-income tax paid by an individual to the government of a country other than Canada in respect of his income for a year is the non-business-income tax paid by him to the government of that country in respect of that year as computed under clause c of subsection 7 of section 126 of the Federal Act for the purposes of that Act.

s. 4, repealed

s. 6 (1), amended

s. 5 (1), (a), (ii), amended

s. 5 (3), amended

s. 6 (6), amended

4. Section 4 of the said Act is repealed.

5.—(1) Subsection 1 of section 5 of the said Act is amended by striking out “subsection 1 of section 42” in the fourth line and inserting in lieu thereof “subsection 1 of section 119”.

(2) Clause a of subsection 1 of the said section 5 is amended by striking out “section 42” in the fourth line and in the ninth line and inserting in lieu thereof in each instance “section 119”.

(3) Clause c of subsection 1 of the said section 5 is amended by striking out “section 42” in the sixth line and inserting in lieu thereof “section 119”.

(4) Subclause ii of clause a of subsection 2 of the said section 5 is amended by striking out “section 33” in the fourth line and inserting in lieu thereof “section 120”.

(5) Subsection 3 of the said section 5 is amended by striking out “section 42” in the seventh line and inserting in lieu thereof “section 119”.

(6) Subsection 6 of the said section 5 is amended by striking out “section 42” in the second line and in the third line and inserting in lieu thereof in each instance “section 119”.
6. Section 6 of the said Act is amended by striking out “section 62” in the third line and inserting in lieu thereof “section 149”.

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

6a. There may be deducted from the tax otherwise payable for the 1972 taxation year by an individual, an amount equal to 3 per cent of the tax payable under clause h of subsection 3 of section 3.

8. Subsection 4 of section 7 of the said Act is repealed and the following substituted therefor:

(4) Where a partner or an individual who 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 taxpayer’s income as a member of the partnership or as a proprietor of the business, after the close of the fiscal period to the time of death may be filed and, if such a separate return is filed, the tax under this Part shall be paid on the taxpayer’s income as such member or proprietor after the close of the fiscal period to the time of death as if that income were the income of another person.

9.—(1) Subsection 4 of section 9 of the said Act is repealed and the following substituted therefor:

(4) The Provincial Minister may at any time assess tax, interest or penalties under this Act or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for a taxation year and may,

(a) at any time, if the taxpayer or person filing the return,

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Treasurer a waiver in prescribed form within four years from the day of mailing of a notice of an
original assessment or of a notification that no tax is payable for a taxation year; and

(b) within four years from the day referred to in subclause ii of clause a in any other case,

reassess or make additional assessments or assess tax, interest or penalties as the circumstances require.

(4a) Notwithstanding subsection 4, there shall not be included in computing the income of a taxpayer for the purpose of any reassessment, additional assessment or assessment of tax, interest or penalties that is made after the expiration of four years from the day referred to in subclause ii of clause a of subsection 4, any amount,

(a) that was not included in computing his income for the purposes of an assessment of tax made prior to the expiration of four years from that day; and

(b) in respect of which the taxpayer establishes that the failure to so include it did not result from any misrepresentation that is attributable to neglect, carelessness or wilful default or from any fraud in filing a return of his income or in supplying any information under this Act.

(2) Subsection 6 of the said section 9 is repealed and the following substituted therefor:

(6) Where a taxpayer has filed the return required by section 7 for a taxation year and, within one year from the day on or before which he was required by section 7 to file the return for that year, has filed an amended return for the year claiming a deduction from income under section 111 of the Federal Act in respect of non-capital losses, net capital losses or restricted farm losses sustained in the taxation year immediately following that year, the Provincial Minister shall reassess the taxpayer's tax for the year.

10. Clause h of subsection 1 of section 10 of the said Act is amended by striking out "section 79C" in the second line and inserting in lieu thereof "section 147".

11. Subsection 2 of section 11 of the said Act is amended by striking out "section 48" in the fourth line and inserting in lieu thereof "section 155".
12. Subsection 2 of section 12 of the said Act is amended by striking out “section 49” in the fourth line and inserting in lieu thereof “section 156”.

13. Section 14 of the said Act is repealed and the following substituted therefor:

14. Sections 159 and 160, subsection 2 of section 104, paragraph e of subsection 23 of section 104 and subsection 2 of section 70 of the Federal Act apply mutatis mutandis in respect of the payment of tax under this Act for a taxation year by a taxpayer subject to tax under this Act to whom such provisions apply in respect of tax payable under the Federal Act for the same taxation year.

14.—(1) Subsections 1 and 2 of section 15 of the said Act are repealed and the following substituted therefor:

(1) Where the amount paid on account of tax payable by a taxpayer under this Act for a taxation year before the expiration of the time allowed for filing the return for that year is less than the amount of tax payable for the year under this Act, the person liable to pay the tax shall pay interest at the rate per annum prescribed for the purposes of subsection 1 of section 161 of the Federal Act on the difference between those two amounts from the expiration of the time for filing the return to the day of payment.

(2) In addition to the interest payable under subsection 1, where a taxpayer, being required by this Act 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 the rate per annum prescribed for the purposes of subsection 1 of section 161 of the Federal Act 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 is liable to pay interest thereon under subsection 1, whichever is earlier.

(2) Subsection 4 of the said section 15 is amended by striking out “section 54” in the sixth line and inserting in lieu thereof “section 161”.

(3) Subsection 7 of the said section 15 is amended by striking out “section 27” in the first line and in the eleventh line and inserting in lieu thereof in each instance “section 111”.
15. Subsection 4 of section 16 of the said Act is amended by striking out "section 55" in the fourth line and inserting in lieu thereof "section 162".

16. Section 17 of the said Act is amended by adding thereto the following subsections:

(2) Every person who wilfully attempts to evade payment of the tax payable by him by wilfully failing to file a return of income as and when required by subsection 1 of section 7 is liable to a penalty of 50 per cent of the amount of tax sought to be evaded.

(3) Where in any appeal under this Act a penalty assessed by the Provincial Minister under this section is in issue, the onus of establishing the facts justifying the assessment of the penalty rests upon the Provincial Minister.

17.—(1) Subsection 3 of section 18 of the said Act is amended by striking out "Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at the rate of 3 per cent per annum shall be paid or applied thereon for the period commencing with the latest of," in the first, second, third and fourth lines and inserting in lieu thereof: "Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at the rate per annum prescribed for the purposes of subsection 3 of section 164 of the Federal Act shall be paid or applied thereon for the period commencing with the latest of".

(2) Subsection 4 of the said section 18 is repealed and the following substituted therefor:

(4) Where, by a decision of the Provincial Minister under section 19 or by a decision of the Supreme Court of Ontario or the Supreme Court of Canada, it is finally determined that the tax payable by a taxpayer for a taxation year under this Act is less than the amount assessed by the assessment under section 9 to which the objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment for the taxation year, the interest payable under subsection 3 on that overpayment shall be computed at the rate per annum prescribed for the purposes of subsection 1 of section 161 of the Federal Act instead of that prescribed for the purposes of subsection 3 of section 164 of the Federal Act.
(3) Subsection 5 of the said section 18 is amended by striking out “subsection 3a of section 57” in the second line and inserting in lieu thereof “subsection 4 of section 164”.

(4) Subsection 7 of the said section 18 is amended by striking out “section 27” in the first line and in the eleventh line and inserting in lieu thereof in each instance “section 111”.

(5) The said section 18 is amended by adding thereto the following subsection:

(8) Where in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative has, within the 12-month period immediately following the death of the taxpayer, disposed of certain property of the estate described in clause a or b of subsection 6 of section 164 of the Federal Act, subsection 6 of section 164 of the Federal Act is applicable mutatis mutandis.

18.—(1) Subsection 3 of section 19 of the said Act is repealed and the following substituted therefor:

(3) Upon receipt of a notice of objection, the Provincial Minister shall,

(a) where the taxpayer indicates in the notice of objection that he wishes to appeal immediately to the court and that he waives reconsideration of the assessment and the Provincial Minister consents, file a copy of the notice of objection with the Registrar of the Supreme Court or the local registrar of the court for the county or district in which the taxpayer resides; or

(b) with all due despatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess,

and he shall thereupon notify the taxpayer of his action by registered mail.

(3a) Where the Provincial Minister files a copy of a notice of objection pursuant to clause a of subsection 3, the Provincial Minister shall be deemed, for the purpose of this section, to have confirmed the assessment to which the notice relates and the taxpayer who served the notice shall be deemed to have thereupon instituted an appeal in accordance with this section.
(2) The said section 19 is amended by adding thereto the following subsection:

(6) Where a taxpayer has served a notice of objection to an assessment in accordance with this section and thereafter the Provincial Minister reassesses the taxpayer's tax for the taxation year in respect of which the notice of objection was served or issues an additional assessment in respect thereof, and notifies the taxpayer of his action by registered mail, the taxpayer may, without serving a notice of objection to the reassessment or the additional assessment,

(a) appeal therefrom to the court in accordance with section 20; or

(b) if an appeal to the court has been instituted with respect to the assessment, amend such appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms, if any, as the court directs.

19. Clause b of subsection 4 of section 26 of the said Act is amended by striking out "section 116" in the third line and inserting in lieu thereof "section 220".

20. Subsection 2 of section 27 of the said Act is amended by striking out "section 117" in the fourth line and inserting in lieu thereof "section 221".

21.—(1) Subsection 6 of section 34 of the said Act is amended by striking out "of 10 per cent per annum" in the tenth and eleventh lines and inserting in lieu thereof "per annum prescribed for the purposes of subsection 8 of section 227 of the Federal Act".

(2) Subsection 7 of the said section 34 is repealed and the following substituted therefor:

(7) Every person who has failed to remit or pay 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 per annum prescribed for purposes of subsection 8 of section 227 of the Federal Act, but, where a collection agreement is entered into, the Minister may refrain from levying or reduce the penalty if the person who is
liable therefor is liable to pay a penalty under subsection 9 of section 227 of the Federal Act by reason of the failure to pay an amount described in clause a of that subsection.

(3) Subsection 8 of the said section 34 is amended by striking out "Division D" in the fifth line and inserting in lieu thereof "Divisions I and J".

22. Clause d of subsection 1 of section 36 of the said Act is repealed and the following substituted therefor:

(d) if, during the course of an audit or examination, it appears to him that there has been a contra­vention of this Act or the regulations, seize and take away any of the documents, books, records, papers or things that may be required as evidence as to the violation of any provision of this Act or a regulation.

23.—(1) Subsection 1 of section 37 of the said Act is amended by striking out "Section 126A" in the first line and inserting in lieu thereof "Section 232".

(2) Subsection 2 of the said section 37 is amended by striking out "section 126A" in the fourth line and inserting in lieu thereof "section 232".

24. Section 38 of the said Act is amended by striking out "section 117" in the third line and inserting in lieu thereof "section 221".

25. Subsection 1 of section 39 of the said Act is amended by striking out "section 117" in the second line and inserting in lieu thereof "section 221".

26. Clause f of section 42 of the said Act is repealed and the following substituted therefor:

(f) a fine of not less than 25 per cent and not more than double the amount of the tax that was sought to be evaded; or

27. Section 43 of the said Act is amended by striking out "section 131 or 132" in the second line and inserting in lieu thereof "section 238 or 239".
28.—(1) This Act, except sections 1 and 2, subsections 2 to 8 of section 3, sections 4, 5 and 6 and sections 8 to 27, comes into force on the day it receives Royal Assent.

(2) Sections 1 and 2, subsections 2 to 8 of section 3, sections 4, 5 and 6 and sections 8 to 27 come into force on a day to be named by the Lieutenant Governor by his proclamation and apply with respect to the 1972 and subsequent taxation years.

29. This Act may be cited as *The Income Tax Amendment Act, 1971 (No. 2).*