

2009 Bill 37

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 37

ALBERTA CORPORATE TAX AMENDMENT ACT, 2009

THE MINISTER OF FINANCE AND ENTERPRISE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 37

2009

ALBERTA CORPORATE TAX AMENDMENT ACT, 2009

(Assented to _____, 2009)

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

Amends RSA 2000 cA-15

1 The *Alberta Corporate Tax Act* is amended by this Act.

2(1) Section 1 is amended

(a) by repealing subsection (1) and substituting the following:

Interpretation

1(1) In this Act and in the application of the provisions of the federal Act and the regulations made under that Act that are by this Act made applicable, each of the provisions of Part XVII of the federal Act apply for the purposes of this Act, except as provided in this Act or the regulations.

(b) in subsection (2) by adding the following after clause (e):

(e.01) “fiscal period” means the period for which the person’s or partnership’s accounts in respect of the business or property are made up for purposes of assessment under the federal Act;

(c) by repealing subsection (2.1) and substituting the following:

Explanatory Notes

1 Amends chapter A-15 of the Revised Statutes of Alberta 2000.

2 Section 1 presently reads in part:

1(1) In this Act and in the application of the provisions of the federal Act and the regulations made under that Act that are by this Act made applicable, each of the provisions of Part XVII of the federal Act apply for the purposes of this Act, except for those terms defined in subsection (2)(b.1), (f), (g), (h.1), (i), (j) and (k) of this Act and the definition of “regulation” contained in subsection 248(1) of the federal Act.

(2) In this Act and in the application of the provisions of the federal Act and the regulations made under that Act that are by this Act made applicable for the purposes of this Act,

(2.1) For the purposes of this Act, a reference in this Act to the Minister of National Revenue is to be read as including the Commissioner of Revenue under the *Canada Revenue Agency Act* (Canada).

(2) Subsection (1)(c) is deemed to have come into force on November 3, 2005.

3(1) The following is added after section 4:

Functional currency reporting

4.01 Where subsection 261(4) of the federal Act applies to a corporation for a particular taxation year as a result of the corporation having filed a valid election under subsection 261(3) of the federal Act, in the application of section 261 of the federal Act for the purposes of this Act,

- (a) the corporation is deemed to have made the same election for the purposes of this Act,
- (b) all amounts payable under this Act in respect of that year must be paid in Canadian currency, and
- (c) the corporation's taxes payable for the year must be converted to Canadian dollars in accordance with the regulations.

(2) Subsection (1) applies to taxation years that begin after December 13, 2007.

4(1) Section 22.01(8) is amended by striking out “and” at the end of clause (a) and by adding the following after clause (a):

- (a.1) for taxation years ending in 2009, the definition of B in subsection (4) shall be read as “B is equal to \$500 000 for the taxation year”, and

(2) This section is deemed to have come into force on January 1, 2009.

3 Functional currency reporting.

4 Section 22.01(8) presently reads:

(8) This section comes into force on January 1, 2009 except that

(a) for taxation years ending in 2009, subsection (7) shall be read as “The rolling average allocation rate at the end of the taxation year is equal to the quotient obtained when the total of the Alberta allocation factors for all taxation years ending on or before the end of the year and within the calendar year is divided by the total number of those taxation years”, and

5(1) Section 26 is amended by adding the following after subsection (1.94):

(1.95) If, before a particular petroleum or natural gas well in Alberta is spudded, 2 persons enter into an agreement in respect of the well under the terms of which

- (a) one person, in this subsection referred to as the “farmor”, disposes of a working interest in the well to another person, in this subsection referred to as the “farmee”, in consideration for the farmee’s incurring Canadian development expense, Canadian exploration expense or, if the agreement so provides, acquiring gas or oil well equipment as defined in subsection 1104(2) of the federal regulations in respect of the well, and
- (b) the agreement provides that the disposition of the working interest will occur at rig release date,

the disposition of the working interest is deemed not to be a disposition for the purposes of subsection (1)(h).

(2) This section applies to dispositions after April 7, 1986.

(b) *for taxation years ending in 2010, subsection (7) shall be read as “The rolling average allocation rate at the end of the taxation year is equal to the quotient obtained when the total of the Alberta allocation factors for all taxation years ending on or before the end of the particular year and within the immediately preceding calendar year is divided by the total number of those taxation years”.*

5 Section 26(1.94) presently reads:

(1.94) If, before a particular petroleum or natural gas well in Alberta is spudded, 2 persons enter into an agreement in respect of the well under the terms of which

- (a) one person, in this subsection referred to as the “farmor”, disposes of a working interest in the well to another person, in this subsection referred to as the “farmee”, in consideration for the farmee’s incurring Canadian development expense, Canadian exploration expense or, if the agreement so provides, acquiring gas or oil well equipment as defined in subsection 1104(2) of the federal regulations in respect of the well,*
- (b) the farmor, at the time the farmor disposes of the working interest in the well,*
 - (i) reserves a gross overriding royalty in respect of production from the well, or*
 - (ii) retains a working interest, a carried interest or a net profits interest in the well,*

and

- (c) the farmor has an option to convert the royalty or interest referred to in clause (b) into a working interest in the well which, if exercised, must be exercised within a stipulated number of days, not exceeding 60, of receiving written notification from the farmee to the effect that the farmee’s cumulative net proceeds from production from the well are at least equal to its cumulative costs of drilling, equipping, completing and operating the well,*

the disposition by the farmor described in clause (a) and any disposition by the farmee of a working interest in the well pursuant

6(1) Section 26.6(2) is amended

- (a) **by adding** “, including a year in which the corporation does not incur scientific research and experimental development expenditures in Alberta,” **after** “for a taxation year”;
- (b) **by repealing the definition of F and substituting the following:**

F is the amount of a repayment, in the taxation year, of

- (a) government assistance, other than an Alberta SR&ED tax credit, or
- (b) a contract payment

referred to in paragraphs (e.1) and (e.2) in the definition of investment tax credit in subsection 127(9) of the federal Act that can reasonably be considered to relate to amounts included in the definition of A in the taxation year or any preceding taxation year.

(2) This section is deemed to have come into force on January 1, 2009.

7(1) Section 26.7(6) is amended by striking out “corporation does not file” **and substituting** “Provincial Minister does not receive”.

to the farmor's exercise of the option described in clause (c) are deemed not to be dispositions for the purposes of subsection (1)(h).

6 Section 26.6(2) presently reads:

(2) The eligible expenditures of a qualified corporation for a taxation year means the amount determined by the formula

$$A - B + C + D - E + F$$

where

- A is those amounts included in federal expenditures of the corporation that are incurred in Alberta after 2008,*
- B is the amount, if any, included in the amounts determined under the definition of A that is in respect of a prescribed proxy amount included in federal expenditures of the corporation,*
- C is the Alberta proxy amount, if any, for the taxation year,*
- D is the amount, if any, in respect of an Alberta SR&ED tax credit that reduced federal expenditures of the corporation in the taxation year,*
- E is the amount of the federal investment tax credit received by the corporation in the immediately preceding taxation year that can reasonably be considered to relate to amounts included in the definition of A in any taxation year, and*
- F is the amount of a repayment of government assistance, other than an Alberta SR&ED tax credit, or contract payment referred to in paragraphs (e.1) and (e.2) in the definition of investment tax credit in subsection 127(9) of the federal Act in the taxation year or any prior taxation year that can reasonably be considered to relate to amounts included in the definition of A.*

7 Section 26.7(6) presently reads:

(6) No amount shall be included in determining the Alberta SR&ED tax credit of a qualified corporation for a taxation year if the corporation does not file a prescribed form containing prescribed

(2) This section is deemed to have come into force on January 1, 2009.

8(1) The following is added after section 26.7:

Recapture of Alberta SR&ED credit

26.71(1) A corporation that received a federal investment tax credit in the immediately preceding taxation year in respect of federal expenditures of the corporation incurred in Alberta and in respect of which an amount could reasonably be considered to have been included in determining the corporation's Alberta SR&ED tax credit for a prior year must determine an amount under section 26.6(2) for the taxation year.

(2) Where the amount determined under section 26.6(2) for a taxation year by a corporation referred to in subsection (1) is negative (in this section referred to as the "adjustment"), an amount equal to 10% of the adjustment is deemed to be an amount owing by the corporation to the Crown in right of Alberta, which is payable to the Provincial Minister on or before the corporation's balance-due day for the current taxation year.

(2) This section is deemed to have come into force on January 1, 2009.

9(1) Section 26.9(2)(f) is amended by adding "as it applies to the transferee" after "section 26.91(4)".

(2) This section is deemed to have come into force on January 1, 2009.

information in respect of the amount on or before the day that is 12 months after the day on or before which the corporation is required to file its return for the taxation year pursuant to section 36.

8 Recapture of Alberta SR&ED credit.

9 Section 26.9(2)(f) presently reads:

(2) Where

(f) the product of the ratio as defined in B in section 26.91(4) and the amount determined by the formula

$$10\% \times C - D$$

where

C is

(i) where the particular property or the other property is disposed of to a person who deals at arm's length with

10(1) Section 26.91(4) is amended by striking out “A x B” and substituting “10% x A x B”.

(2) This section is deemed to have come into force on January 1, 2009.

11(1) Section 43 is amended

(a) in subsection (1) by striking out “or” at the end of clause (a.1), by adding “or” at the end of clause (b) and by adding the following after clause (b):

(c) the assessment is the first assessment in respect of the corporation’s Alberta SR&ED tax credit for the year or is an additional assessment or reassessment made on or before the day that is 3 years, in the case of a corporation eligible for the small business deduction, or 4 years, in any other case, after the day of mailing of the first

the corporation, the proceeds of disposition of that property, or

(ii) in any other case, the fair market value of the particular property or the other property at the time of the conversion or disposition;

D is the amount, if any, added to the corporation's tax payable under subsection (1) in respect of the particular property.

10 Section 26.91(4) presently reads:

(4) For the purposes of section 26.9, the amount that can reasonably be considered to have been included in a corporation's Alberta SR&ED tax credit in respect of a particular property is equal to the amount determined by the formula

A x B

where

A is the amount included in eligible expenditures of the corporation in respect of the cost of the property in the taxation year in which the property was acquired;

B is the ratio of the corporation's maximum expenditure limit for the taxation year in which the property was acquired to the greater of the maximum expenditure limit or eligible expenditures of the corporation for that year.

11 Section 43 presently reads in part:

(1) The Provincial Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Act by a corporation, notify in writing any corporation by whom a return of income for a taxation year has been filed that no tax is payable for the year, or determine the corporation's entitlement to and the amount, if any, of a refundable tax credit for a taxation year, except that an assessment, reassessment or additional assessment may be made after the corporation's normal reassessment period in respect of the year only if

assessment in respect of the Alberta SR&ED tax credit for the year.

(b) in subsection (1.02)

(i) by striking out “(1)(a) or (b)” and substituting “(1)(a), (b) or (c)”;

(ii) by striking out “and” at the end of clause (a.1), by adding “and” at the end of clause (b) and by adding the following after clause (b):

(c) where subsection (1)(c) applies to the assessment, reassessment or additional assessment, the amount of the Alberta SR&ED tax credit to which the corporation was entitled.

(c) by repealing subsection (1.21) and substituting the following:

(1.21) If the Provincial Minister becomes aware that there has been an assessment action in respect of a corporation,

(a) the Provincial Minister may exercise the powers in subsection (1.2)(c), (d) and (e) with respect to that corporation before the corporation files information under section 36.2 in respect of that action, and

(b) section 36.2 ceases to apply with respect to that assessment action at the time the Provincial Minister exercises any of the powers referred to in clause (a).

(2) Subsection (1)(a) and (b) are deemed to have come into force on January 1, 2009.

(1.02) Notwithstanding subsections (1) and (2), an assessment, reassessment or additional assessment to which subsection (1)(a) or (b) applies in respect of a corporation for a taxation year may be made after the corporation's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(a) where subsection (1)(a)(i), (ii) or (iii) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the corporation or a person who filed the corporation's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the corporation or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in a waiver filed with the Provincial Minister in respect of the year,

(a.1) where subsection (1)(a)(iv) applies to the assessment, reassessment or additional assessment, the issues that gave rise to the assessment action, the errors made in the information contained in the return filed or the information or return filed pursuant to section 36.2, and

(b) where subsection (1)(b) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subsection (1)(b)(i) applies,

(ii) the assessment or reassessment referred to in subsection (1)(b)(ii),

(iii) the transaction referred to in subsection (1)(b)(iii),

(iv) the payment or reimbursement referred to in subsection (1)(b)(iv),

(v) the reduction referred to in subsection (1)(b)(v), or

(vi) the denial of a tax benefit from an avoidance transaction as described in section 72.1.

(1.21) If the Provincial Minister becomes aware that there has been an assessment action in respect of a corporation, the Provincial

12 Section 48 is amended

(a) by repealing subsection (4)(a) and substituting the following:

- (a) if the corporation indicates in the notice of objection that it wishes to appeal immediately to the court and that it waives reconsideration of the assessment and the Provincial Minister consents, consent to an immediate appeal, or

(b) by repealing subsection (5) and substituting the following:

(5) If the Provincial Minister consents to an immediate appeal under subsection (4)(a), the Provincial Minister is deemed for the purpose of section 50 to have confirmed the assessment to which the notice relates, and the corporation may, within 90 days from the day notice that the Provincial Minister has consented to an immediate appeal was mailed to the corporation, appeal to the court pursuant to section 50.

13 Section 60 is amended by adding the following after subsection (1.1):

(1.2) If a person or institution that has been issued a notice under subsection (1) or (1.1) is liable to make a payment jointly to the tax debtor and one or more persons, for the purposes of this section it is deemed that

- (a) the money payable is divided into as many equal portions as there are persons who are owed the money jointly, and
- (b) the tax debtor is the unconditional and sole owner of one portion of the money.

Minister may exercise the powers in subsection (1.2)(c), (d) and (e) with respect to that corporation before the corporation files information under section 36.2(1) in respect of that assessment action.

12 Section 48 presently reads in part:

(4) Subject to subsection (4.1), on receipt of a notice of objection, the Provincial Minister shall

- (a) if the corporation indicates in the notice of objection that it wishes to appeal immediately to the court and that it waives reconsideration of the assessment and the Provincial Minister consents, file a copy of the notice of objection with the clerk of the court of a judicial district in which the corporation has a permanent establishment, or*
- (b) with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess*

and the Provincial Minister shall notify the corporation of the Provincial Minister's action in writing.

(5) If the Provincial Minister files a copy of a notice of objection pursuant to subsection (4)(a), the Provincial Minister is deemed for the purpose of section 50 to have confirmed the assessment to which the notice relates and the corporation that served the notice is deemed to have instituted an appeal in accordance with that section.

13 Section 60 presently reads:

60(1) If the Provincial Minister has knowledge or suspects that a person is or will be, within one year, liable to make any payment to another person liable to make a payment under this Act (in this section referred to as the "tax debtor"), the Provincial Minister may, by written notice, require the person to pay the money otherwise payable to the tax debtor in whole or in part to the Provincial Minister on account of the tax debtor's liability under this Act.

(1.1) Without limiting the generality of subsection (1), if the Provincial Minister has knowledge or suspects that within 90 days

(1.3) The Provincial Minister, the tax debtor and any person who is owed the money jointly with the tax debtor may, within 30 days of the notice issued under subsection (1) or (1.1), as the case may be, apply to the court

- (a) for an order that the tax debtor is entitled to a smaller or greater portion of the money, and
- (b) for appropriate relief.

(1.4) Notice of an application under subsection (1.3) must be served,

- (a) if the applicant is the tax debtor or a person who is owed the money jointly with the tax debtor, on all the other persons who are owed the money jointly and the Provincial Minister, or
- (b) if the applicant is the Provincial Minister, on all the persons who are owed the money jointly.

- (a) *a bank, credit union, trust company or other similar person (in this section referred to as the “institution”) will lend or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or*
- (b) *a person, other than an institution, will lend or advance money to, or make a payment on behalf of, a tax debtor who the Provincial Minister knows or suspects*
 - (i) *is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or*
 - (ii) *if that person is a corporation, is not dealing at arm’s length with that person,*

the Provincial Minister may by written notice require the institution or person, as the case may be, to pay in whole or in part to the Provincial Minister on account of the tax debtor’s liability under this Act the money that would otherwise be so lent, advanced or paid, and any money so paid to the Provincial Minister is deemed to have been lent, advanced or paid, as the case may be, to the tax debtor.

(2) The receipt of the Provincial Minister for money paid under this section is a good and sufficient discharge of the original liability to the extent of that payment.

(3) A person who, after receiving notice pursuant to subsection (1), has discharged any liability to a tax debtor without complying with a requirement under this section is liable to pay to Her Majesty in right of Alberta an amount equal to the liability discharged or the amount that the person was required under this section to pay to the Provincial Minister, whichever is the lesser.

(3.1) Every institution or other person that fails to comply with a requirement under subsection (1.1) with respect to money to be lent, advanced or paid is liable to pay to the Provincial Minister an amount equal to the lesser of

- (a) *the total of money so lent, advanced or paid, and*
- (b) *the amount that the institution or person was required under that subsection to pay to the Provincial Minister.*

14 Section 76(1) is repealed and the following is substituted:

Offences

76(1) A person who

- (a) fails to file a return or to provide or produce information or a document as and when required by this Act,
- (b) fails to comply with an order under section 65.1, or
- (c) fails to comply with section 61 or 68

is guilty of an offence.

15(1) Section 86(1.1) is amended by striking out “an insurance company that” and substituting “a person or corporation that”.

(2) Subsection (1) is effective for taxation years that begin after this Act receives Royal Assent.

(4) If the person who is or is about to become indebted or liable carries on business under a name or style other than the person's own name, the notice under subsection (1) or (1.1) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(5) If the persons who are or are about to become indebted or liable carry on business in partnership, the notice under subsection (1) or (1.1) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

14 Section 76(1) presently reads:

76(1) A person who fails to file a return as and when required by this Act, who fails to comply with section 61, 64 or 68 or who fails to comply with an order under section 65.1 is guilty of an offence.

15 Section 86(1.1) presently reads:

(1.1) For the purposes of this Part, an insurance company is deemed to include an insurance company that claims a policy reserve in respect of an insurance business pursuant to paragraph 20(7)(c) of the federal Act as it applies for the purposes of this Act.

