

2009 Bill 38

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 38

TOURISM LEVY AMENDMENT ACT, 2009

THE MINISTER OF FINANCE AND ENTERPRISE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 38

2009

TOURISM LEVY 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 cT-5.5

1 The *Tourism Levy Act* is amended by this Act.

**2 Section 2 is amended by adding the following after
subsection (1.1):**

(1.2) Notwithstanding the definition of “purchase price”, for
the purpose of calculating the tourism levy, if a person pays a
deposit to an operator to reserve accommodation and all or part
of the deposit is forfeited by the person on cancellation of the
reservation or kept by the operator as a cancellation fee,

- (a) the person is deemed to have purchased accommodation
at the time of the forfeiture or cancellation for a purchase
price determined by the formula

$$A - (A \times B/C)$$

where

A is the amount forfeited or kept;

B is the tourism levy rate referred to in subsection
(1)(b);

Explanatory Notes

1 Amends chapter T-5.5 of the Revised Statutes of Alberta 2000.

2 Section 2 presently reads:

2(1) Subject to this section, a purchaser shall pay a tourism levy to the Minister at the rate of

- (a) 5% of the purchase price for any accommodation purchased before April 1, 2005, and*
- (b) 4% of the purchase price for any accommodation purchased after March 31, 2005.*

(1.1) Where a room is occupied by a person (in this subsection and subsection (3.1) referred to as the "contractor") performing services for an operator who provides the room free of charge to the contractor, the contractor shall pay a tourism levy at the applicable rate specified in subsection (1) based on the purchase price

- (a) of a similar room rented or available for rent to another person by the operator on the day or days the contractor occupies the room, or*
- (b) that is, in the Minister's opinion, attributable to the room.*

C is 100% plus the tourism levy rate referred to in subsection (1)(b),

and

- (b) the person is deemed to have paid a tourism levy on the purchase price determined under clause (a) in the amount determined by the formula

$A \times B/C$

where

A is the amount forfeited or kept;

B is the tourism levy rate referred to in subsection (1)(b);

C is 100% plus the tourism levy rate referred to in subsection (1)(b).

(1.3) Notwithstanding the definition of “purchase price”, for the purpose of calculating the tourism levy, if a person uses reward or loyalty points as partial or full consideration to purchase accommodation, then, in respect of that consideration,

- (a) the person is deemed to have purchased accommodation for a purchase price determined by the formula

$A - (A \times B/C)$

where

A is the amount of money received by the operator in respect of the accommodation purchased using the reward or loyalty points;

B is the tourism levy rate referred to in subsection (1)(b);

C is 100% plus the tourism levy rate referred to in subsection (1)(b),

and

(2) An operator shall, as an agent of the Minister for the collection of a tourism levy, collect the tourism levy payable under this Act from the purchaser when the purchase is made or, in the case of ongoing maintenance fees referred to in section 1(1)(i)(iii), when the maintenance fees are paid.

(2.1) If the Crown in right of Alberta is a purchaser, it shall pay an amount equal to the tourism levy it would pay if it were a natural person.

(3) For the purposes of this Act, if an operator does not collect a tourism levy payable pursuant to subsection (2), the operator is nevertheless deemed to have collected the tourism levy regardless of whether or not the operator is registered under section 2.1.

(3.1) Subsection (1.1) does not apply in respect of lodging provided to a contractor in a work camp.

- (b) the person is deemed to have paid a tourism levy on the purchase price determined under clause (a) in the amount determined by the formula

$$A \times B/C$$

where

- A is the amount of money received by the operator in respect of the accommodation purchased using the reward or loyalty points;
- B is the tourism levy rate referred to in subsection (1)(b);
- C is 100% plus the tourism levy rate referred to in subsection (1)(b).

(1.4) For clarification, if a person purchases accommodation using both reward or loyalty points and money or other consideration,

- (a) the tourism levy on purchase of accommodation using the reward or loyalty points must be determined in accordance with subsection (1.3), and
- (b) the tourism levy on purchase of accommodation using the money or other consideration must be determined in accordance with subsection (1).

3 Section 8(1) is amended by striking out “25%” and substituting “50%”.

3 Section 8(1) presently reads:

8(1) Where

- (a) a person owes an amount to the Crown in right of Alberta under this Act, and*
- (b) the Minister is of the opinion that the reason that the amount is owing to the Crown in right of Alberta by that person is attributable to*
 - (i) neglect, carelessness or wilful default by or on behalf of that person, or*

4 Section 10 is amended by adding the following after subsection (2):

(2.1) If a person or institution that receives a notice under subsection (1) or (2) is liable to make a payment jointly to the debtor and one or more other 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 debtor is the unconditional and sole owner of one portion of the money.

(2.2) The Minister, the debtor and any person who is owed the money jointly with the debtor may, within 30 days of the written notice being given under subsection (1) or (2), as the case may be, apply to the Court

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

(2.3) Notice of an application under subsection (2.2) must be served,

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

(ii) *fraud or evasion committed by or on behalf of that person,*
the Minister may determine the amount owing by that person and
assess against the person a penalty in the amount of 25% of the
amount owing.

4 Section 10 presently reads:

10(1) If the Minister has knowledge or suspects that a person is or will be, within one year, liable to make any payment to a person who owes an amount under this Act (in this section referred to as the “debtor”), the Minister may, by written notice, require the person to pay the money otherwise payable to the debtor in whole or in part to the Minister on account of the amount owing by the debtor under this Act.

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

(a) a bank, credit union, trust corporation, loan corporation 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 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 debtor who the 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 Minister may, by written notice, require the institution or person, as the case may be, to pay in whole or in part to the Minister on account of the amount owing by the debtor under this Act the money that would otherwise be so lent, advanced or paid, and any money so paid to the Minister is deemed to have been lent, advanced or paid, as the case may be, to the debtor.

5 Section 13.1 is repealed and the following is substituted:

(3) The receipt of the Minister for money paid under this section is a good and sufficient discharge of the amount owing by the debtor to the extent of that payment.

(4) A person who, after receiving a notice under subsection (1), discharges any liability to the debtor without complying with a requirement under this section is liable to pay to the Crown in right of Alberta the lesser of

(a) an amount equal to the liability discharged, and

(b) the amount that the person was required under this section to pay to the Minister.

(5) An institution or other person that, after receiving a notice under subsection (2), fails to comply with a requirement under this section with respect to money to be lent, advanced or paid is liable to pay to the Crown in right of Alberta an amount equal to the lesser of

(a) the total amount of money so lent, advanced or paid, and

(b) the amount that the institution or person was required under this section to pay to the Minister.

(6) If a person who is or is about to become liable to make a payment to, lend money to or make a payment on behalf of a debtor carries on business under a name or style other than the person's own name, the notice under subsection (1) or (2) 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.

(7) If the persons who are or are about to become liable to make a payment to, lend money to or make a payment on behalf of a debtor carry on business in partnership, the notice under subsection (1) or (2) 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.

5 Section 13.1 presently reads:

Waiver or cancellation of penalties or interest

13.1 Notwithstanding the *Financial Administration Act*, the Minister may, on application by a person within 4 calendar years from the end of the calendar year in which a penalty or interest is assessed against the person,

- (a) waive or cancel all or any portion of any penalty or interest payable under this Act by the person, or
- (b) refund all or any portion of any penalty or interest paid under this Act by the person.

6 Section 16 is amended by adding the following after subsection (4):

(5) Notwithstanding subsection (4), if the person serving a notice of objection indicates in the notice of objection that the person wishes to appeal immediately to the Court and waives reconsideration of the action or decision by the Minister, the Minister may on receipt of the notice of objection consent to an immediate appeal by serving a notice of consent on the person by registered letter or personal service.

(6) If the Minister consents to an immediate appeal under subsection (5), the person may within 90 days after service of the notice of consent appeal to the Court pursuant to section 17(2).

7 Section 26.1 is amended

- (a) in subsection (2) by adding “under subsection (1)” before “holds”;**

13.1 Notwithstanding the Financial Administration Act, the Minister may at any time waive or cancel the imposition of or liability for any penalty or interest imposed or payable under this Act.

6 Section 16 presently reads:

16(1) A person who objects to a notice of assessment under section 3.1, 5, 6.1, 8, 8.1, 14(3) or 14.1(3) or a notice of refusal, suspension or cancellation under section 2.1 may, within 90 days after the day of mailing of the notice, serve on the Minister a notice of objection in the prescribed form setting out the reasons for the objection and the relevant facts.

(2) A notice of objection under this section shall be served by being sent by registered letter addressed to the Minister.

(3) The Minister may accept a notice of objection under this section notwithstanding that it was not served in the manner required by subsection (2).

(4) On receipt of a notice of objection, the Minister shall with all due dispatch reconsider the action or decision taken by the Minister and shall

(a) vacate, confirm or vary that action or decision and notify the objector of the Minister's decision in writing, or

(b) serve a new notice of assessment.

7 Section 26.1 presently reads:

26.1(1) Information collected under this Act may be disclosed to a person employed or engaged by the Government of Canada or the government of a province or territory in the administration or enforcement of a taxation statute of Canada or of that province or

(b) in subsection (4) by adding “under subsection (1)” after “disclosure”.

8 The following is added after section 26.1:

Collection, use and publication of information by Minister

26.2(1) The Minister may collect and use information, including personal information of a class or type prescribed in the regulations, that is necessary for the purposes of formulating or analyzing tax, fiscal or enforcement policy.

(2) The Minister may publish or disclose to any person for any purpose information collected under this Act that

- (a) is readily available,
- (b) is in a summarized or statistical form, and
- (c) cannot, directly or indirectly, be associated with or identify a particular person.

territory if the information is used solely for the purposes of administering or enforcing the taxation statute and the Government of Canada or government of that province or territory supplies the Government of Alberta with similar information under an agreement or arrangement.

(2) A person who receives information holds that information subject to the same prohibitions and restrictions respecting communication of the information that applied to the person from whom the information was obtained.

(3) Notwithstanding subsection (2), a person may communicate information to any person engaged or employed in the investigation or prosecution of offences under the Criminal Code (Canada) solely for the purpose of investigating and prosecuting an offence.

(4) Nothing in this section authorizes the disclosure of personal information, as defined in the Freedom of Information and Protection of Privacy Act, about a purchaser.

8 Collection, use and publication of information by Minister.

