

1989

CHAPTER 41
An Act to amend The Income Tax Act

(Assented to August 25, 1989)

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

Short title This Act may be cited as The Income Tax Amendment Act, 1989.

R.S.S. 1978, c.I-2 amended

2 The Income Tax Act is amended in the manner set forth in this Act.

Section 4 amended³ Subsection 4(1) is amended:

(a) by striking out "subsequent" and substituting "1988" in clause (h); and

(b) by adding the following clause after clause (h):

"(i) for the 1989 and subsequent taxation years, by an amount equal to the lesser of:

(i) the tax computed pursuant to sections 3, 3.1 and 5 for the taxation year; and

(ii) the amount by which the aggregate of \$200 plus:

(A) \$300, in the case of an individual whose spouse is resident in Canada during the year, and with respect to whose spouse an amount is deductible by the individual pursuant to paragraph 118(1)(a) of the Federal Act from his or her tax payable pursuant to Part I of the Federal Act for the taxation year;

(B) \$300, in the case of an individual who, during the taxation year:

(I) was an unmarried person or a married person who neither supported nor lived with his or her spouse and was not supported by his or her spouse; and

(II) supported a wholly dependent person which respect to whom an amount is deductible by the individual pursuant to paragraph 118(1)(b) of the Federal Act from his or her tax payable pursuant to Part I of the Federal Act for the taxation year;

(C) the product obtained when \$200 is multiplied by the number of children of the individual who are under the age of 18 years at any time in the taxation year, and with respect to whom an amount is deductible by the individual pursuant to paragraph 118(1)(b)

or (d) of the Federal Act from his or her tax payable pursuant to Part I of the Federal Act for the taxation year, to a maximum of \$800; and

(D) \$200, in the case of an individual who has attained the age of 65 years before the end of the taxation year; exceeds 5% of that part of the net income of the individual for the taxation year that exceeds \$10,000".

Section 6 amended4(1) Clause 6(1)(c) is repealed and the following substituted:

"(c) commencing on January 1, 1986 and ending on December 31, 1988, 17%;

"(d) commencing on January 1, 1989, 15%".

(2) Clause 6(4.1)(b) is repealed and the following substituted:

"(b) with respect to the period:

(i) ending on December 31, 1988, 17%;

(ii) commencing on January 1, 1989, 15%;

of the amount equal to the corporation's total taxable income earned in Saskatchewan during the taxation year less any amounts to which the 10% rate is applied in accordance with clause (a)".

(3) Clause 6(5.1)(b) is repealed and the following substituted:

"(b) with respect to the period:

(i) ending on December 31, 1988, 17%;

(ii) commencing on January 1, 1989, 15%;

of the amount equal to the credit union's total taxable income earned in Saskatchewan during the taxation year less any amounts to which the 10% rate is applied in accordance with clause (a)".

(4) Subsection 6(7) is amended by adding "with respect to the period ending on December 31, 1988," after "Notwithstanding subsections (1) and (4),".

Section 7 amended5 Subclause 7(1)(a)(iii) is repealed and the following substituted:

"(iii) commencing on January 1, 1986 and ending on December 31, 1988, 17%;

"(iii.1) commencing on January 1, 1989, 15%".

Section 7.1 amended

6(1) Subclause 7.1(1)(c)(i) is amended by striking out "pursuant to The Business Corporations Act or The Co-operatives Act".

(2) Clause 7.1(6)(f) is amended by adding "unless otherwise prescribed in the regulations," before "has

purchased".

(3) Subsections 7.1(7) and (8) are repealed and the following substituted:

"(7) Unless otherwise prescribed in the regulations, a corporation is not entitled to a deduction pursuant to this section for a taxation year if, at any time during the 12-month period prior to its incorporation, any of its shareholders owned directly or indirectly:

(a) more than 10% of the issued shares of any class of capital stock; or

(b) more than 10% of any other equity interest;

in a business of a similar nature.

"(8) Notwithstanding any other provision of this section, a corporation is not entitled to a deduction pursuant to this section if the minister is of the opinion that:

(a) the principal purpose of a transaction or event or a series of transactions or events is to enable the corporation to claim a deduction of tax pursuant to this section that it would not otherwise be entitled to; or

(b) the corporation does not constitute a separate or independent business operation".

Section 8.3 amended

7 Clause 8.3(1)(d) is amended by striking out "clause (c)" and substituting "subclauses (c)(i) to (iv)".

Section 18 repealed

8 Section 18 is repealed.

New sections 19 and 20

9 Sections 19 and 20 are repealed and the following substituted:

Application of certain provisions of Federal Act

"19(1) Subject to subsection (2) and section 20, subsections 70(2) and 104(2), paragraph 104(23)(e), sections 158, 159 and 160, subsection 160.1(1), sections 160.2 and 160.3 and subsections 161(1), (2), (2.1), (2.2), (3), (4), (4.1), (5), (6), (6.1), (7), (9) and (11) of the Federal Act apply, with any necessary modification, to the payment of tax pursuant to this Act.

"(2) In applying subsection 160.1(1) of the Federal Act pursuant to subsection (1), 'refund' includes a

refund that arises by reason of a provision of this Act that:

- (a) allows a taxpayer to deduct an amount from the tax payable pursuant to this Act; or
- (b) deems an amount to have been paid by a taxpayer as or on account of the tax payable pursuant to this Act by the taxpayer.

Interest on instalments

"20 Where:

- (a) a collection agreement is in effect; and
- (b) a taxpayer is deemed pursuant to subsection 161(4) of the Federal Act to be liable to pay, with respect to his or her tax payable pursuant to Part I of the Federal Act for a taxation year, a part or instalment computed by reference to an amount described in paragraph 161(4)(c) or (d) of the Federal Act;

notwithstanding subsection 161(4) of the Federal Act, as it applies for the purposes of this Act, in applying subsection 161(2) of the Federal Act pursuant to subsection 19(1), the taxpayer is deemed to be liable to pay, with respect to his or her tax payable pursuant to this Act for the taxation year, a part or instalment computed by reference to an amount described in the paragraph of the Federal Act that is applied pursuant to clause (b)".

New sections 21 to 22.2

10 Sections 21 and 22 are repealed and the following substituted:

Returns"21(1) Every person who fails to file a return of income for a taxation year as required by subsection 11(1) is liable to a penalty equal to the aggregate of:

- (a) an amount equal to 5% of his or her tax for the taxation year that was unpaid when the return was required to be filed; and
- (b) the product of:
 - (i) 1% of his or her tax for the taxation year that was unpaid when the return was required to be filed; and
 - (ii) the number of complete months, not exceeding 12, in the period commencing on the day on which the return was required to be filed and ending on the day on which the return was filed.

"(2) Every person:

- (a) who fails to file a return of income for a taxation year as required by subsection 11(1);
- (b) on whom a demand for a return for the taxation year has been made pursuant to subsection 11(2); and
- (c) who, at the time of failure, had been assessed for a penalty pursuant to subsection (1) or this subsection with respect to a return of income for any of the three preceding taxation years;

is liable to a penalty in the amount determined pursuant to subsection (3).

"(3) The amount of a penalty pursuant to subsection (2) is the aggregate of:

- (a) an amount equal to 10% of the person's tax for the taxation year that was unpaid when the return was required to be filed; and
- (b) the product of:
 - (i) 2% of the person's tax for the taxation year that was unpaid when the return was required to be filed; and
 - (ii) the number of complete months, not exceeding 20, in the period commencing on the day on which the return was required to be filed and ending on the day on which the return was filed.

"(4) Every person who fails to file a return as required by subsection 11(3) is liable to a penalty of \$10 for each day of default to a maximum of \$50.

"(5) Every person who fails to provide any information required on a prescribed form pursuant to this Act, the regulations or a provision of the Federal Act or the Federal Regulations that applies for the purposes of this Act is liable to a penalty of \$100 for every failure unless:

- (a) in the case of an individual, the Minister of Finance has waived the penalty; or
- (b) in the case of information required with respect to another person, a reasonable effort was made by the person to obtain the information from that other person.

"(6) Every person who fails to:

- (a) make an information return as required by; or
- (b) comply with a duty or obligation imposed by;

this Act, the regulations or a provision of the Federal Act or the Federal Regulations that applies for the purposes of this Act is liable to the penalty described in subsection (7) for each failure unless another provision of this Act sets out a penalty for the failure.

"(7) The penalty mentioned in subsection (6) is equal to the greater of:

- (a) \$100; and
- (b) the product of:
 - (i) \$25; and
 - (ii) the number of days, not exceeding 100, during which the failure continues.

"(8) Where a collection agreement is in effect, the Minister of Finance may:

- (a) refrain from levying; or
- (b) reduce;

a penalty provided in this section if the person who is liable to the penalty is required to pay a penalty pursuant to section 162 of the Federal Act with respect to the same failure.

Failure to report"22 Every person who:

- (a) fails to report an amount that is required to be included in computing his or her income in a return filed for a taxation year pursuant to section 11; and
- (b) had failed to report an amount that is required to be so included in any return filed for any of the three preceding taxation years pursuant to section 11;

is liable to a penalty equal to 10% of the amount described in clause (a), unless that person is liable to a penalty pursuant to subsection 22.1(2) with respect to that amount.

False statements"22.1(1) In this section, 'return' includes a form, certificate, statement or answer.

"(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed pursuant to this Act or a provision of the Federal Act that applies for the purposes of this Act, has made or participated in, assented to or acquiesced in the making of, a false statement or omission in a return filed or made with respect to a taxation year, as required pursuant to this Act or a regulation or a provision of the Federal Act or the Federal Regulations that applies for the purposes of this Act, is liable to a penalty in the amount that is the greater of:

- (a) \$100; and
- (b) 50% of the amount, if any, by which:
 - (i) the tax for the year that would be payable by that person pursuant to this Act if:

- (A) his or her taxable income for the year was computed by adding to his or her taxable income reported in his or her return for the year, that portion of his or her understatement of income for the year that is reasonably attributable to the false statement or omission; and
- (B) his or her tax payable for the year was computed by subtracting from the deductions from the tax otherwise payable by him or her for the year, that portion of those deductions that is reasonably attributable to the false statement or omission;

exceeds:

- (ii) the tax for the year that would have been payable by that person if his or her tax payable for the year had been assessed on the basis of the information provided in his or her return for the year.

"(3) For the purposes of subsection (2):

- (a) the taxable income reported by a person in his or her return for a taxation year is deemed to be not less than nil; and
- (b) 'understatement of income' for a year of a person means 'understatement of income' as defined in subsection 163(2.1) of the Federal Act.

"(4) Where, in any appeal pursuant to this Act, a penalty assessed by the Minister of Finance pursuant to this section is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister of Finance.

"(5) Where a collection agreement is in effect, the Minister of Finance may:

- (a) refrain from levying; or
- (b) reduce;

a penalty provided in this section if the person who is liable to the penalty is required to pay a penalty pursuant to section 163 of the Federal Act with respect to the same failure or the same false statement or omission, as the case may be.

Penalty re instalments

"22.2 Every person who fails to pay all or any part of an instalment of tax pursuant to this Act for a taxation year on or before the day on which the instalment is required to be paid by this Act or a provision of the Federal Act that applies for the purposes of this Act is liable to a penalty equal to 50% of the amount, if

any, by which:

- (a) the interest payable by that person with respect to all instalments for the year pursuant to section 161 of the Federal Act, as it applies for the purposes of this Act;

exceeds the greater of:

- (b) \$1,000; and
(c) 25% of the interest that would have been payable by that person with respect to all instalments for the year pursuant to section 161 of the Federal Act, as it applies for the purposes of this Act, if no instalment had been made for that year".

New section 2311 Section 23 is repealed and the following substituted:

Refunds"23(1) Subsections 164(1), (1.1), (1.2), (1.3), (1.31), (2), (3), (3.1), (4), (5), (5.1), (6) and (7) of the Federal Act apply, with any necessary modification, to the payment of tax pursuant to this Act.

"(2) Where:

- (a) a collection agreement is in effect; and
(b) by reason of a decision mentioned in subsection 164(4.1) of the Federal Act:
(i) a repayment of tax, interest or penalties pursuant to that Act for a taxation year is made to a taxpayer; or
(ii) any security accepted pursuant to that Act for any tax, interest or penalty pursuant to that Act is surrendered to a taxpayer;
subsection 164(4.1) of the Federal Act applies, with any necessary modification, to any overpayment of tax, interest or penalties pursuant to this Act for the year that arises by reason of the decision".

Section 60 amended12 Subsection 60(6) is repealed and the following substituted:

"(6) Subsections 227(8.3) and (9.2) of the Federal Act apply, with any necessary modification, to the payment of tax pursuant to this Act.

"(6.1) Interest computed pursuant to any of subsections 161(1), (2) and (11), 164(3), (3.1) and (4) and 227(8.3) and (9.2) of the Federal Act, as they apply for the purposes of this Act, shall be compounded daily and, where interest is computed on an

amount pursuant to any of those provisions and is unpaid on the day that it would, but for this subsection, have ceased to be computed pursuant to that provision, interest at the rate provided by the provision shall be compounded daily on the unpaid interest from that day to the day on which it is paid".

Coming into force13(1) Subject to subsections (2) to (4), this Act comes into force on the day of assent.

- (2) Sections 3 to 7 of this Act come into force on the day of assent but are retroactive and are deemed to have been in force on and from January 1, 1989.
- (3) Sections 8 and 9 of this Act come into force on the day of assent but are retroactive and are deemed to have been in force on and from October 29, 1985.
- (4) Section 11 of this Act comes into force on the day of assent but is retroactive and is deemed to have been in force on and from January 1, 1985.