

**1998**

**CHAPTER 25**

An Act to amend *The Income Tax Act*

(Assented to June 11, 1998)

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

**Short title**

**1** This Act may be cited as *The Income Tax Amendment Act, 1998*.

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

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

**Section 3 amended**

**3** **Clauses 3(3)(o) and (p) are repealed and the following substituted:**

“(o) 50% with respect to the 1986 to 1997 taxation years;

“(p) 49% with respect to the 1998 taxation year;

“(q) 48% with respect to the 1999 and subsequent taxation years”.

**Section 7.2 amended**

**4(1)** **Subsection 7.2(5) is amended by striking out “share of the trust” and substituting “share”.**

**(2)** **Subsection 7.2(7) is amended by striking out “of the partnership”.**

**Section 7.3 amended**

**5(1)** **Subsection 7.3(6) is amended by striking out “share of the trust” and substituting “share”.**

**(2)** **Subsection 7.3(8) is amended by striking out “of the partnership”.**

**(3)** **Subsections 7.3(11) and (12) are repealed and the following substituted:**

“(11) A corporation may renounce its investment tax credit that would otherwise be claimable with respect to all qualified property acquired by it in a taxation year on or before the date by which the corporation is required to file its return of income for that taxation year pursuant to section 150 of the Federal Act.

“(12) If a corporation renounces its investment tax credit pursuant to subsection (11) with respect to all qualified property acquired by it in a taxation year:

(a) the qualified property shall not be taken into account in calculating the investment tax credit for the corporation at the end of that or any other taxation year; and

(b) the corporation is deemed for all purposes never to have received, never to have been entitled to receive and never to have had a reasonable expectation of receiving that investment tax credit”.

**Section 7.31 amended**

**6(1) Subsection 7.31(12) is amended by striking out “share of the trust” and substituting “share”.**

**(2) Subsection 7.31(14) is amended by striking out “of the partnership”.**

**New section 7.7**

**7 The following section is added after section 7.6:**

**“Research and development tax credit**

**7.7(1) In this section:**

(a) **‘amalgamation’** means an amalgamation as defined in subsection 87(1) of the Federal Act;

(b) **‘eligible expenditure’** means an expenditure with respect to scientific research and experimental development carried out in Saskatchewan that:

(i) was incurred after March 19, 1998 by a corporation that has a permanent establishment in Saskatchewan; and

(ii) is a qualified expenditure within the meaning of subsections 127(9) and (11.1) of the Federal Act, but includes only the portion of the corporation’s prescribed proxy amount pursuant to paragraph (b) of the definition of qualified expenditure in subsection 127(9) of the Federal Act that can reasonably be considered to relate to scientific research and experimental development carried out in Saskatchewan;

(c) **‘research and development tax credit’** means the amount calculated pursuant to subsection (3);

(d) **‘winding-up’** means a winding-up of a corporation to which subsection 88(1) of the Federal Act applies.

(2) A corporation may deduct from its tax otherwise payable pursuant to this Act for a taxation year ending after March 19, 1998 an amount not more than the lesser of:

(a) its research and development tax credit at the end of the taxation year; and

(b) its tax otherwise payable pursuant to this Act for the taxation year.

(3) The research and development tax credit of a corporation at the end of a taxation year is the amount RDTC, if it is positive, calculated in accordance with the following formula:

$$\text{RDTC} = (\text{RD} + \text{RDPY} + \text{OA} + \text{OAPY}) - \text{PD}$$

where:

RD is 15% of the sum of all amounts, each of which is an eligible expenditure incurred by the corporation in the taxation year, determined without reference to subsection 13(7.1) of the Federal Act;

RDPY is 15% of the sum of all amounts, each of which is an eligible expenditure incurred by the corporation in any of the seven taxation years preceding or the three taxation years following that taxation year, determined without reference to subsection 13(7.1) of the Federal Act;

OA is the sum of all amounts, each of which is an amount required by subsection (4) or (6) to be added in computing the corporation's research and development tax credit at the end of the taxation year;

OAPY is the sum of all amounts, each of which is an amount required by subsection (4) or (6) to be added in computing the corporation's research and development tax credit at the end of any of the seven taxation years preceding or the three taxation years following that taxation year; and

PD is the sum of all amounts, each of which:

(a) is an amount deducted pursuant to this section from tax otherwise payable pursuant to this Act by the corporation for a preceding taxation year; and

(b) is related to an eligible expenditure incurred in the taxation year, in any of the seven taxation years preceding the taxation year or the three taxation years following the taxation year.

(4) In calculating its research and development tax credit at the end of a taxation year, a corporation that is a beneficiary under a trust shall add its share of the amount that the trust would be required to calculate as the amounts RD and RDPY pursuant to subsection (3) for that taxation year if the trust were a taxpayer.

(5) For the purposes of subsection (4), a corporation's share is the amount that would reasonably be considered as its share, having regard to all circumstances including the terms and conditions of the trust.

(6) In calculating its research and development tax credit at the end of a taxation year, a corporation that is a partner shall add its share of the amount that the partnership would be required to calculate as the amounts RD and RDPY pursuant to subsection (3) for that taxation year if the partnership were a taxpayer.

(7) For the purposes of subsection (6), a corporation's share is the amount that would reasonably be considered as its share, having regard to all circumstances including the terms and conditions of the partnership.

(8) For the purposes of calculating the research and development tax credit of a new corporation that is the result of an amalgamation, the new corporation is deemed to be the continuation of each of its predecessor corporations if:

(a) the amalgamation took place after March 19, 1998; and

(b) one of its predecessor corporations had a research and development tax credit, any portion of which was not deducted in any taxation year by the predecessor corporation in calculating its tax otherwise payable pursuant to this Act.

(9) For the purposes of calculating the research and development tax credit of a parent corporation a subsidiary of which has been wound-up, the parent corporation is deemed to be the continuation of its subsidiary if:

(a) the winding-up took place after March 19, 1998; and

(b) the subsidiary corporation had a research and development tax credit, any portion of which was not deducted in any taxation year by the subsidiary corporation in calculating its tax otherwise payable pursuant to this Act.

(10) A corporation may renounce its research and development tax credit that would otherwise be claimable with respect to all or any of its eligible expenditures incurred during a taxation year on or before the date by which the corporation is required to file its return of income for that taxation year pursuant to section 150 of the Federal Act.

(11) If a corporation renounces its research and development tax credit pursuant to subsection (10) with respect to all or any of its eligible expenditures incurred during a taxation year:

(a) the eligible expenditures shall not be taken into account in calculating the research and development tax credit for the corporation at the end of that or any other taxation year; and

(b) the corporation is deemed for all purposes never to have received, never to have been entitled to receive and never to have had a reasonable expectation of receiving that research and development tax credit.

(12) Notwithstanding clause (1)(b), for the purpose of determining the research and development tax credit of a corporation, the amount of a contract payment paid or payable by a person to the corporation for an eligible expenditure made by the corporation is deemed to be nil if:

(a) the person is not entitled to treat the contract payment as an eligible expenditure pursuant to this section; or

(b) the person is a corporation that has renounced the research and development tax credit with respect to the contract payment pursuant to subsection (10).

(13) No research and development tax credit of a corporation is eligible to be deducted for a taxation year of the corporation that ends before March 20, 1998”.

**Section 8.3 amended**

**8(1) Subsection 8.3(1) is amended:**

**(a) by striking out “and” after subclause (c)(iv);**

**(b) by adding the following subclause after subclause (c)(v):**

“(vi) section 12 of *The Film Employment Tax Credit Act*”; and

**(c) by adding “and” after clause (d).**

**(2) The following subsection is added after subsection 8.3(3):**

“(4) If all or any part of a corporation’s film employment tax credits allowed pursuant to section 12 of *The Film Employment Tax Credit Act* for a taxation year remains unused after the deduction pursuant to subsection (1), the minister shall:

(a) apply the unused portion to pay:

(i) any tax, interest or penalty owing by the corporation for that or any prior taxation year pursuant to this Act, the Federal Act or the corporation income tax legislation of any agreeing province;

- (ii) any contribution, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Canada Pension Plan*; and
- (iii) any premium, interest or penalty owing by the corporation for that or any prior taxation year pursuant to the *Employment Insurance Act* (Canada); and
- (b) pay any of the unused portion not applied pursuant to clause (a) to the corporation”.

**New section 8.5**

**9 The following section is added before section 9:**

**“Saskatchewan Child Benefit**

**8.5(1)** In this section:

- (a) **‘adjusted income’** means adjusted income as defined in section 122.6 of the Federal Act;
  - (b) **‘base taxation year’** means the base taxation year as defined in section 122.6 of the Federal Act;
  - (c) **‘cohabiting spouse’** means cohabiting spouse as defined in section 122.6 of the Federal Act;
  - (d) **‘eligible individual’** means an individual who is an eligible individual as defined in section 122.6 of the Federal Act;
  - (e) **‘government institution’** means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;
  - (f) **‘qualified dependant’** means a qualified dependant as defined in section 122.6 of the Federal Act;
  - (g) **‘return of income’** means a return of income as defined in section 122.6 of the Federal Act.
- (2) Clause 60(9)(h) does not apply with respect to references to Canada in applying the following provisions of the Federal Act for the purposes of this section:
- (a) the definitions of ‘eligible individual’ and ‘return of income’ in section 122.6;
  - (b) paragraph 122.61(3)(a) and the portion of subsection 122.61(3) that precedes paragraph (a) when read for the purposes of applying paragraph (a).
- (3) Subject to subsection (4), an overpayment on account of an individual’s liability pursuant to this Act for a taxation year is deemed to have arisen during a month in relation to which the taxation year is the base taxation year, in an amount determined in accordance with the regulations made pursuant to subsection (7) where:
- (a) the individual has filed a return of income for the taxation year;
  - (b) if the Minister of Finance so demands, the individual’s cohabiting spouse at the end of the taxation year has filed a return of income for the taxation year; and

- (c) the individual was resident in Saskatchewan for a period that commenced before the first day of the month and that included that day.
- (4) No overpayment is deemed to have arisen pursuant to this section in any month prior to July 1, 1998.
- (5) Subsection 122.61(2), paragraph 122.61(3)(a) and subsections 122.61(3.1) and 122.62(1), (2), (4), (5) and (6) of the Federal Act apply for the purposes of this section.
- (6) A refund of an amount deemed by this section to be an overpayment on account of a person's liability pursuant to this Act for a taxation year:
- (a) cannot be charged or given as security;
  - (b) cannot be assigned except pursuant to a prescribed Act;
  - (c) cannot be garnished or attached;
  - (d) is exempt from execution and seizure; and
  - (e) cannot be retained by way of deduction or set-off pursuant to *The Financial Administration Act, 1993*.
- (7) The Lieutenant Governor in Council may make regulations:
- (a) defining, enlarging or restricting the meaning of any word or expression used in this section but not defined in this section;
  - (b) designating additional provisions of the Federal Act that apply for the purposes of this section;
  - (c) limiting the application of section 60 with respect to any provisions of the Federal Act that apply for the purposes of this section;
  - (d) governing the interpretation of any provisions of the Federal Act that apply for the purposes of this section;
  - (e) prescribing Acts for the purposes of clause (6)(b);
  - (f) governing the determination of the amount of an individual's deemed overpayment pursuant to subsection (3);
  - (g) prescribing any matter or thing required or authorized by this section to be prescribed in the regulations;
  - (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this section.
- (8) Regulations pursuant to subsection (7) may be made retroactive to a day not earlier than July 1, 1998.
- (9) The minister may specify forms that are to be used for the purposes of this section.
- (10) Where this section is administered by the Government of Canada on behalf of Saskatchewan, any government institution may provide to officials of the Government of Canada information required by the Government of Canada to administer this section or co-ordinate the application of this section with the application of sections 122.6 to 122.64 of the Federal Act”.

**Section 12 amended**

**10 Section 12 is amended by striking out “152(1)” and substituting “152(1), (1.2)”.**

**Section 14 amended**

**11(1) Section 14 is amended by renumbering it as subsection 14(1).**

**(2) The following subsection is added after subsection 14(1):**

“(2) Notwithstanding that the normal reassessment period for a taxpayer has elapsed with respect to a taxation year, the Minister of Finance may redetermine the amount, if any, deemed pursuant to section 8.5 to be an overpayment on account of the taxpayer’s liability pursuant to this Act for that taxation year”.

**Section 19 amended**

**12(1) Subsection 19(1) is amended:**

**(a) by adding “of this Act” after “section 20”; and**

**(b) by striking out “subsection 160.1(1)” and substituting “subsections 160.1(1), (2.1), (3) and (4)”.**

**(2) Subsection 19(2) is amended by striking out “subsection 160.1(1)” and substituting “subsections 160.1(1), (2.1), (3) and (4)”.**

**Section 23 amended**

**13 Subsection 23(1) is amended by adding “, (2.2)” after “(2)”.**

**Section 26 amended**

**14 Clause 26(2)(a) is amended:**

**(a) by striking out “or” after subclause (i);**

**(b) by striking out “or” after subclause (ii);**

**(c) by striking out “and” after subclause (iii) and substituting “or”; and**

**(d) by adding the following after subclause (iii):**

“(iv) the amount that, pursuant to subsection 122.62(5) or (6) of the Federal Act as it applies for the purposes of section 8.5 of this Act, is deemed to be the individual’s adjusted income; and”.

**Coming into force**

**15(1) Subject to subsections (2) to (7), this Act comes into force on assent.**

**(2) Sections 3 and 8 come into force on assent but are retroactive and are deemed to have been in force on and from January 1, 1998.**

**(3) Section 4 comes into force on assent but is retroactive and is deemed to have been in force on and from April 1, 1993.**

**(4) Sections 5 and 6 come into force on assent but are retroactive and are deemed to have been in force on and from February 16, 1995.**

**(5) Section 7 comes into force on assent but is retroactive and is deemed to have been in force on and from March 20, 1998.**

**(6) Subject to subsection (7), sections 9 to 14 come into force on July 1, 1998.**

(7) If sections 90 to 94 of the *Budget Implementation Act, 1998* (Canada), introduced as Bill C-36 in the first session of the thirty-sixth Parliament, do not receive assent before July 1, 1998, sections 9 to 14 of this Act come into force on the day on which sections 90 to 94 of the *Budget Implementation Act, 1998* (Canada) receive assent, but are retroactive and are deemed to have been in force on and from July 1, 1998.