

## HOTEL ROOM TAX ACT

### CHAPTER 183

#### Interpretation

##### 1. In this Act

“accommodation” means the provision of lodging in hotels and motels, and other lodging designated by the Lieutenant Governor in Council, but does not include lodging let to the same person for a continuous period of more than 2 months, or lodging exempted by the Lieutenant Governor in Council;

“director” means the person authorized by the minister to administer this Act;

“minister” means the Minister of Finance;

“operator” means a person who, in the normal course of his business, sells, offers to sell, provides, or offers to provide, accommodation within the Province;

“purchaser” means a person who acquires accommodation for his own use or for use by other persons at his expense, or on behalf of, or as the agent for, a principal who desires to acquire accommodation for use by the principal or other persons at his expense;

“purchase price” means the price for which accommodation is purchased, including the price in money, the value of services rendered, and other considerations accepted by the operator in return for the accommodation provided.

1971-26-1.

#### Tax on purchaser

2. Every purchaser shall pay to Her Majesty in right of the Province, at the time of making a purchase of accommodation, a tax of 5% of the purchase price of that accommodation.

1971-26-2.

#### Registration of operator

3. (1) No operator shall sell, offer to sell, provide, or offer to provide accommodation in the Province unless he is registered and has been granted, on his application in the form prescribed by the director, a registration certificate under authority of this Act and the certificate is in force at the time of sale.

(2) The registration certificate granted under subsection (1) shall be kept at the principal place of business of the operator in the Province and shall not be transferable, and shall be presented for inspection by the director, or by a person designated by him, on request.

(3) Subject to the approval of the minister, the director may cancel or suspend a registration certificate where a person is guilty of an offence against this Act, or has failed to post the security required under this Act, and may refuse to issue a registration certificate to a person who is guilty of an offence against this Act, or who has failed to post the security required under this Act.

1971-26-3.

**Operator deemed agent of minister and to collect tax**

4. Every operator is deemed to be an agent for the minister and as such shall levy and collect the tax imposed by this Act on the purchaser.

1971-26-4.

**Collector acts under *Revenue Act***

5. Every person who collects tax imposed under this Act is deemed to act subject to sections 22 to 28 of the *Revenue Act*; but, notwithstanding any other Act, no person acting under this section is thus made ineligible as a member of the Legislative Assembly.

1971-26-5.

**Tax collected at time of sale on full purchase price**

6. The tax imposed under this Act, whether the price be stipulated to be payable in cash, or on terms, or by instalments, or otherwise, shall be collected at the time of the sale on the total amount of the purchase price and shall be remitted to the director at the times and in the manner prescribed by the regulations.

1971-26-6.

**Remuneration to operators for collection of tax**

7. The minister may make an allowance to operators for their services in collecting and forwarding the tax to the minister, as prescribed in the regulations; but, notwithstanding any other Act, no person accepting an allowance under this section is thus made ineligible as a member of the Legislative Assembly.

1971-26-7.

**Return of tax collections**

8. Every operator shall make returns to the director, and shall keep records in the form and containing information as prescribed by the regulations and failure to do so is an offence against this Act.

1971-26-8.

**Returns**

9. Information given and returns made under this Act shall be disclosed only to persons authorized by the minister and for the purpose of this Act and, except for the purpose of this Act, those persons shall not communicate the information to any other person not legally entitled to it.

1971-26-9.

**Powers of inspection**

10. (1) A person appointed by the director may enter at a reasonable time the business premises occupied by a person, or the premises where his records are kept, to determine whether or not

- (a) the person is an operator, or the premises is accommodation within the meaning of this Act; or
- (b) this Act and the regulations are being and have been complied with, or to inspect, audit and examine books of account, records or documents; and

the person in charge of or occupying the premises shall answer all questions pertaining to these matters and shall produce the books of account, records or documents as required.

(2) Where it appears from the inspection, audit or examination, or from information available to him, that the person is an operator or the premises is accommodation within the meaning of this Act, or that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax collected or due in a manner and by a procedure the director considers adequate and expedient, and the director shall assess the operator or the person occupying the premises for the amount of the tax calculated, but the person assessed may appeal the amount of the assessment under section 11 of this Act.

(3) Evidence that an assessment under subsection (2) has been made is proof in the absence of evidence to the contrary that the amount stated in it is due and owing, and the onus of proving otherwise rests on the person assessed.

1971-26-10.

### **Appeal of determination**

**11.** (1) If a person disputes an assessment made under section 10 (2), he may, within 60 days after receipt of the notice of assessment, serve notice of appeal on the minister.

(2) The notice of appeal shall be in writing and shall be addressed to the minister at Victoria.

(3) The notice shall set out clearly the reasons for the appeal and all facts relative to it.

(4) On receipt of the notice, the minister shall consider the matter and affirm or amend the estimate or assessment and notify the appellant promptly in writing of his decision.

1971-26-11.

### **Appeal to court**

**12.** (1) If the appellant is dissatisfied with the decision of the minister, he may appeal to the Supreme Court, or to the County Court within the territorial limits of which the appellant resides or carries on business.

(2) The appellant shall, within 60 days from the date of the receipt of the notice of the decision complained of, serve on the director a notice in writing of his intention to appeal to the Supreme Court or County Court, as the case may be, and the notice shall be signed by the appellant or by his solicitor or agent, and shall set forth the grounds of the appeal. The appellant shall file a copy of the notice in the office of the registrar of the court.

(3) Within 14 days after the service on the director of the notice of appeal, the appellant shall apply to the court for the appointment of a day for the hearing of the appeal, and shall serve on the director, not less than 14 days before the hearing, a written notice of the day appointed for the hearing.

(4) The court shall hear the appeal and the evidence given before it by the appellant and by Her Majesty in right of the Province in a summary manner, and shall decide the matter of the appeal.

(5) On request made to the court by a party to the appeal, the hearing may be held in camera.

(6) The director shall cause to be produced before the court on the hearing all papers and documents in his possession affecting the matter of the appeal.

(7) The costs of the appeal shall be in the discretion of the court, and it may make an order for costs in favour of or against Her Majesty in right of the Province, and may fix the amount.

(8) There shall be an appeal from the decision of the court to the Court of Appeal on any point of law raised on the hearing of the appeal, and the rules governing appeals to that court apply.

1971-26-12.

#### **Irregularities do not affect validity**

**13.** An assessment made by the director under section 10 shall not be varied or disallowed because of an irregularity, informality, omission or error on the part of a person in the observation of a directory provision up to the date of the issuing of the notice of assessment.

1971-26-13.

#### **Collection of taxes unaffected by pending appeals**

**14.** Neither the giving of a notice of appeal by a person, nor a delay in the hearing of the appeal, shall affect the due date, interest, penalties or liability for payment provided under this Act for taxes due and payable, or that have been collected on behalf of Her Majesty in right of the Province that are the subject matter of the appeal, or delay the collection of those taxes; but, in the event of the assessment of the director being set aside or reduced on appeal, the minister shall refund the amount or excess amount of taxes that have been paid or collected and of any additional interest and penalty imposed and paid.

1971-26-14.

#### **Purchaser liable for tax**

**15.** The purchaser is and remains liable for the tax imposed under this Act until the tax has been paid to an operator, and, in the event of the failure on the part of an operator to collect the tax, he shall immediately notify the director, and the purchaser may be sued for the amount of the tax in a court of competent jurisdiction; but action against the purchaser under this section does not affect the liability of the operator under this Act for failure to collect the tax.

1971-26-15.

#### **Liability for payment of tax collected**

**16.** Every person who collects a tax under this Act is deemed to hold it in trust for Her Majesty in right of the Province and for the payment over of it in the manner and at the time provided under this Act or the regulations. The amount, until paid, forms a lien and charge on the entire assets of that person, or of his estate in the hands of any trustee, having priority over all other claims of any person.

1971-26-16.

**Notice to taxpayer before taking proceedings**

**17.** Before taking proceedings for the recovery of taxes that are due and payable under this Act or that have been collected on behalf of Her Majesty in right of the Province, the director shall give notice to the operator, or purchaser, of his intention to enforce payment, but failure to give the notice in a case does not affect the validity of proceedings taken for the recovery of taxes or money collected as taxes under this Act.

1971-26-17.

**Recovery of taxes due or collected by court action**

**18.** The amount of taxes due and payable under this Act, or that have been collected on behalf of Her Majesty in right of the Province, may be recovered by action in a court of competent jurisdiction as for a debt due to Her Majesty in right of the Province, and the court may make an order as to the costs of the action in favour of or against Her Majesty in right of the Province.

1971-26-18.

**Summary proceedings without action**

**19.** Where default is made in the payment of taxes due and payable under this Act, or that have been collected on behalf of Her Majesty in right of the Province, or any part of them, the director may issue his certificate stating the amount due, the amount remaining unpaid, including interest and penalties, and the name of the person by whom it is payable, and may file the certificate with a district registrar of the Supreme Court, or with the registrar of any County Court, and, when filed, the certificate is of the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court for the recovery of a debt of the amount stated in the certificate against the person named in it.

1971-26-19.

**Demand on third party**

**20.** (1) Where the director has knowledge that a person is or is about to become indebted to a taxpayer, or operator, he may demand of that person that the money otherwise payable by him to the taxpayer or operator be, in whole or in part, paid to the director on account of the taxpayer's or operator's liability under this Act.

(2) The receipt of the director for money paid under subsection (1) constitutes a good and sufficient discharge of the liability of that person to the taxpayer or operator to the extent of the amount referred to in the receipt.

(3) A person discharging a liability to a taxpayer or operator after receipt of a demand under this section is personally liable to Her Majesty in right of the Province to the extent of the liability discharged as between him and the taxpayer or operator, or the extent of the liability of the taxpayer or operator for the taxes due and payable under this Act, or that have been collected on behalf of Her Majesty in right of the Province but not remitted, including interest and penalties, whichever is the lesser amount.

1971-26-2.

**Application for injunction**

**21.** In addition to the penalties provided in this Act, the director, subject to the approval of the minister, may apply to the Supreme Court for an injunction against an operator who, being guilty of an offence against this Act, continues to sell or provide,

or offer to sell or provide, accommodation taxable under this Act, ordering him to cease selling or providing the accommodation until he fulfils his obligations under this Act and the regulations and pays the costs of the application.

1971-26-21.

#### **Exercise of powers for recovery of taxes or collections**

**22.** The powers conferred by this Act for the recovery of taxes or money collected as taxes by action in court and by filing a certificate may be exercised separately, or concurrently, or cumulatively. The liability of a person for the payment of tax under this Act, or the liability to remit taxes collected, is not affected in any way by the fact that a fine or penalty has been imposed on, or paid by, him for a contravention of this Act.

1971-26-22.

#### **Penalty and interest**

**23.** (1) In addition to any other penalty, the director may assess a penalty equal to 10% of the amount due, and may assess interest on the amount due at a rate prescribed by the Lieutenant Governor in Council, against a person who fails to remit to the director a tax collected under this Act within the time required, or who fails to pay a tax that he is required to pay under this Act.

(2) The penalty and interest under this section form part of the lien provided for in section 16.

1971-26-23; 1977-76-13.

#### **Bond deposit**

**24.** (1) Where the operator has failed to collect or to remit tax in accordance with this Act, the director may require him to deposit with the minister a bond by way of cash or other security satisfactory to the minister.

(2) The amount of the bond shall be determined by the director, but shall not be greater than an amount equal to 6 times the tax, or the estimated tax, that would normally be collected by the operator each month under this Act.

(3) Where an operator, who has deposited a bond under subsection (1), fails to collect, or to remit, tax in accordance with this Act, the director may, after giving written notice to the operator either by registered mail or by service of the notice on the operator, apply the bond in whole or in part to the amount that should have been collected, remitted or paid by the operator as the amount due to Her Majesty in right of the Province as of the date of the notice.

1971-26-24.

#### **Tax not to be absorbed by seller**

**25.** No operator who sells or provides accommodation shall advertise or hold out or state to the public, or to a purchaser, directly or indirectly, that the tax or part of it imposed under this Act will be assumed or absorbed by him, or that it will not be considered as an element in the price to the purchaser or, if added, that it or part of it will be refunded.

1971-26-25.

**Offence**

**26.** Every person contravening this Act or the regulations commits an offence against this Act, and each separate sale or transaction in violation of this Act, and each day the violation continues, constitutes a separate offence

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**Liability of corporation officers**

**27.** If a corporation is guilty of an offence against this Act, and, if an officer, director, employee or agent of the corporation directed, authorized, assented to, acquiesced or participated in the commission of the offence, that person is a party to and guilty of the offence, but this does not affect the liability of the corporation for the penalties provided for the offence

1971 26-27

**Offence**

**28.** Every person who makes a false statement in any form or return prescribed by this Act or regulations commits an offence against this Act

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**Penalties**

**29.** (1) Subject to subsection (2), a person guilty of an offence against this Act is liable on conviction to a fine of not less than \$10 and not more than \$1,000 and costs, and, in default of payment, to imprisonment for a term not exceeding 3 months, and, in addition, shall be ordered by the justice to pay the tax owing, including arrears, penalties and interest, on or before the date fixed by the justice and, in default, the justice shall order imprisonment for a period of not more than 30 days

(2) Every person who fails to collect the tax imposed by this Act is liable on conviction to a fine equal to the amount of the tax, including arrears, penalties and interest, that should have been collected, as determined under subsection (3), and, in addition, not less than \$10 and not more than \$1,000 and costs, and, in default of payment, to imprisonment for a term not exceeding 3 months

(3) The director shall determine the amount of the tax referred to in subsection (2) from information available to him, and shall issue a certificate as to the amount, but, except where he considers there has been deliberate evasion of this Act, the director shall not consider a period of greater than 3 years in determining the amount of tax

(4) In a prosecution under subsection (2), a certificate signed or purported to be signed by the director stating the amount of tax that should have been collected shall be evidence of the amount of tax that should have been collected, and conclusive evidence of the authority of the person giving or making the certificate without proof of appointment or signature

(5) Any information or complaint for an offence under this Act may be for one or more than one offence, and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to 2 or more offences

(6) Nothing in this section, or the enforcement of a penalty under this section, shall suspend or affect a remedy for the recovery of tax or amount payable under this Act

(7) Fines collected under this Act shall be paid to the minister on behalf of Her Majesty in right of the Province and shall be paid into the consolidated revenue fund.

1971-26-29.

#### **Onus of proof**

**30.** In a prosecution for failure to pay the tax or to collect or forward the tax, the onus of proving that the tax was paid, collected or forwarded, as the case may be, to the director, is on the defendant.

1971-26-30.

#### **Limitation**

**31.** An information or complaint for an offence against this Act shall be laid or made within 6 years of the time when the matter of the information or complaint arose, except that in the case of fraud no limitation applies.

1971-26-31.

#### **Prosecution evidence**

**32.** (1) In a prosecution brought against an operator who is required to register under this Act, his application form is evidence that the person charged is an operator registered under this Act, and his return form is evidence that he collected the tax.

(2) Where the operator is described as a partnership on the application form, the application form is evidence that the persons named on it are partners registered as such under this Act, and the return form is evidence that the partnership firm collected the tax.

1971-26-32.

#### **Tax paid into consolidated revenue fund**

**33.** The proceeds of the tax imposed under this Act shall be paid into the consolidated revenue fund.

1971-26-33.

#### **Regulations**

**34.** The Lieutenant Governor in Council may make regulations and orders, including those

- (a) prescribing the forms and records to be used and kept for this Act or the regulations;
- (b) prescribing the method of collection and remittance of the tax and any other conditions or requirements affecting collection and remittance;
- (c) determining the remuneration and conditions on which it is to be paid to operators for collecting and forwarding the tax to the Province;
- (d) prescribing types of accommodation and prices for them to which this Act will not apply;
- (e) defining an expression used in this Act or regulations and not defined; and
- (f) exempting certain lodgings or persons from this Act or regulations.

1971-26-34.