



[Français](#)

## Employer Health Tax Act

R.S.O. 1990, CHAPTER E.11

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**Definitions**

[1.](#) (1) In this Act,

“assessment” includes reassessment; (“cotisation”)

“auditor” means a person appointed by the Minister to carry out audits and examinations under this Act; (“vérificateur”)

“bankrupt”, when used as a noun, means a person who makes an assignment under the *Bankruptcy and Insolvency Act* (Canada) or against whom a receiving order has been made under that Act and, when used as an adjective, means the legal status of that person; (“failli”)

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever and an adventure or concern in the nature of trade, but does not include an office or employment; (“entreprise”, “affaire”)

“eligible employer” means, in respect of a particular time, an employer who is not, at that time,

- (a) a person in the public sector, as described in clauses 1 (a) to (i) and section 2 of the Schedule to the *Social Contract Act, 1993*, and not subject to tax under Part I of the *Income Tax Act* (Canada),
- (b) the Crown in right of Canada or of another province or the government of a territory,
- (c) any of the following persons who are not subject to tax under Part I of the *Income Tax Act* (Canada) for the year:
  - 1. an agency of the Crown,
  - 2. an authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Governor General in Council or a member of the Privy Council or by a Lieutenant Governor in Council or a member of the Executive Council of a province,
- (d) a person that is exempt throughout the year from tax under Part I of the *Income Tax Act* (Canada) under any of paragraphs 149 (1) (a) to (d.6), (h.1), (o) to (o.2), (o.4) to (s.2) and (u) to (z) of that Act, or
- (e) a person prescribed not to be an eligible employer for the purposes of section 2.1; (“employeur admissible”)

“employee” means,

- (a) an individual employed by an employer,
- (b) an individual who holds office from an employer and receives remuneration in respect of the performance of the duties of the office,
- (c) an individual who was formerly an employee within the meaning of clause (a) or (b); (“employé”)

“employer” means a person or a government, including the government of a province, a territory or Canada, who pays remuneration to an employee; (“employeur”)

“Minister” means the Minister of Finance; (“ministre”)

“Ministry” means the Ministry of Finance; (“ministère”)

“place of business” means a place where an undertaking or activity, including a function of government, is carried on, whether or not carried on for gain or profit; (“lieu d’affaires”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“quarter”, in respect of an instalment of tax under this Act, refers to a period of three consecutive months; (“trimestre”)

“registered charity” has the same meaning as in subsection 248 (1) of the *Income Tax Act* (Canada); (“organisme de bienfaisance enregistré”)

“regulations” means regulations made under this Act; (“règlements”)

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that, by reason of section 5, 6 or 7 of the *Income Tax Act* (Canada), are required, or would be required if the individual were resident in Canada, to be included in the income of the individual for the purposes of that Act and, without limiting the generality of the foregoing, includes salaries and wages, bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated, but does not include a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of the employee; (“rémunération”)

“taxpayer” means a person who is an employer, whether or not that person is liable to pay tax under this Act; (“contribuable”)

“total Ontario remuneration”, in respect of an employer, means the total remuneration paid,

- (a) to or on behalf of all of the employees of the employer who report for work at a permanent establishment of the employer in Ontario, and
  - (b) to or on behalf of all of the employees of the employer who are not required to report for work at a permanent establishment of the employer but whose remuneration is paid from or through a permanent establishment of the employer in Ontario.
- (“rémunération totale en Ontario”) R.S.O. 1990, c. E.11, s. 1 (1); 1994, c. 8, s. 1 (1-8); 1994, c. 17, s. 57 (1); 1996, c. 18, s. 4 (1); 1996, c. 24, s. 1 (1-3); 1999, c. 9, s. 106; 2001, c. 23, s. 71; 2004, c. 16, Sched. D, Table; 2009, c. 18, Sched. 11, s. 1 (1, 2) ; 2012, c. 8, Sched. 13, s. 1; 2013, c. 15, s. 1.

## Interpretation

(1.1) Where this Act uses the word “person” to refer to an employer who is liable to pay a tax under subsection 2 (1), “person” shall be deemed to include an unincorporated association, a partnership and a trust. 1994, c. 17, s. 57 (2); 2004, c. 16, Sched. D, Table.

## Remuneration

(1.2) The following rules apply in determining for the purposes of this Act the amount of remuneration or total Ontario remuneration paid by an employer:

1. An amount paid by the employer to a trustee or custodian, as the case may be, for the benefit of an employee under an employees profit sharing plan, employee benefit plan, employee trust or salary deferral arrangement is deemed to be remuneration paid by the employer to or on behalf of the employee if the amount, upon payment or allocation to the employee, is by reason of section 5, 6 or 7 of the *Income Tax Act*

(Canada) required to be included in the income of a person under that Act.

2. An amount or benefit that is received or enjoyed, or deemed to be received or enjoyed, by an employee in respect of his or her employment with the employer and that is required to be included in the income of a person under the *Income Tax Act* (Canada) by reason of section 5, 6 or 7 of that Act is deemed to be remuneration paid by the employer to or on behalf of the employee.
3. The amount of a benefit referred to in paragraph 2 is deemed to be the amount that is required to be included in the income of a person under the *Income Tax Act* (Canada). 2004, c. 31. Sched. 12, s. 1.

### **Rules for determining amount of total Ontario remuneration**

[\(1.3\)](#) For the purposes of the definition of “total Ontario remuneration” in subsection (1), the total remuneration paid to or on behalf of an employee who reports for work at a permanent establishment of an employer in Ontario at any time during a year includes all remuneration paid to or on behalf of the employee during the year, even if the employee also reports for work at a permanent establishment of the employer outside Ontario at any time during the year. 2004, c. 31. Sched. 12, s. 1.

### **Exception**

[\(1.4\)](#) Despite subsection (1.3), no remuneration paid to or on behalf of an employee is included in an employer’s total Ontario remuneration for a year if the Minister is satisfied that the employee reported for work at a permanent establishment of the employer outside Ontario for all or substantially all of the year. 2004, c. 31. Sched. 12, s. 1.

### **Exception, application after 2001 only**

[\(1.5\)](#) Subsection (1.3) does not apply for any year before 2002 to a professional sports team that was a party to the application in the matter of *Toronto Blue Jays Baseball Club v. Ontario (Minister of Finance)*, decided by the Ontario Superior Court of Justice on April 27, 2004. 2004, c. 31. Sched. 12, s. 1.

### **Permanent establishment, employer**

[\(2\)](#) In this Act,

“permanent establishment”, in respect of an employer, includes any fixed place of business, including an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse and a workshop and, without limiting the generality of the foregoing,

- (a) a corporation has a permanent establishment in the place designated in its charter or by-laws as being its head or registered office,
- (b) a person shall be deemed to have a permanent establishment in a jurisdiction in which the person carries on business through an employee or an agent either of whom has general authority to contract for the person,
- (c) a person shall be deemed to have a permanent establishment in a jurisdiction in which an employee or agent of the person has a stock of merchandise owned by the person from which the employee or agent fills orders received by the employee or agent,
- (d) land or premises owned or leased by an employer is a permanent establishment of the employer,
- (e) an employer shall be deemed to have a permanent establishment in the place where and at the time when the employer uses substantial machinery or equipment,

- (f) an insurance corporation has a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business,
- (g) an employer, who does not otherwise carry on business in Canada in a year, has a permanent establishment at any place where the employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, anything in Canada, whether or not the employer exports that thing without selling it prior to exportation, and
- (h) an employer who has no fixed place of business shall be deemed to have a permanent establishment in the principal place in which the employer conducts business and in each place from which the employer carries on or transacts a substantial portion of the business. R.S.O. 1990, c. E.11, s. 1 (2); 1994, c. 8, s. 1 (9); 2004, c. 16, Sched. D, Table.

(3) Repealed: 2009, c. 18, Sched. 11, s. 1 (3).

### **Reporting for work at a permanent establishment**

(3.1) For the purposes of this Act, an employee is considered to report for work at a permanent establishment of an employer,

- (a) if the employee comes to the permanent establishment in person to work; or
- (b) if, although the employee does not come to the permanent establishment in person to work, he or she may reasonably be regarded as attached to the permanent establishment. 2002, c. 22, s. 65; 2004, c. 16, Sched. D, Table.

(4), (5) Repealed: 2009, c. 18, Sched. 11, s. 1 (3).

### **Associated employers**

(5.1) For the purposes of determining if two or more employers are associated at any time in a year,

- (a) section 256 of the *Income Tax Act* (Canada) applies for the purposes of this Act;
- (b) if an employer is an individual, the employer shall be deemed to be a corporation, all the issued shares of the capital stock of which have full voting rights under all circumstances and are owned by the individual;
- (c) if an employer is a partnership or trust, it shall be deemed to be a corporation having only one class of issued shares which have full voting rights under all circumstances, and each member of the partnership or beneficiary of the trust, as the case may be, shall be deemed to own at a particular time the greatest proportion of the number of issued shares of the capital stock of the corporation that,
  - (i) the member's or beneficiary's share of the income or loss of the partnership or trust for the fiscal period of the partnership or trust that includes that time, is of,
  - (ii) the income or loss of the partnership or trust for that period,
 and for the purposes of this clause, if the income and loss of the partnership or trust for that period are nil, that proportion shall be computed as if the partnership or trust had income for that period in the amount of \$1;
- (d) employers that are corporations, or are deemed to be corporations, that would be associated with each other under the *Income Tax Act* (Canada) at any time in the year

- shall be deemed to be employers that are associated with each other at that time; and
- (e) if two employers would, but for this clause, not be associated with each other at any time, but are associated at that time with another employer, they shall be deemed to be associated with each other at that time. 1996, c. 18, s. 4 (3); 2004, c. 16, Sched. D, Table.

### **Remuneration of former employees**

(6) Remuneration received or deemed to be received after May 7, 1996 by an individual who is no longer employed by an employer shall be included in the total Ontario remuneration of the employer if the remuneration is in respect of the previous employment with the employer or is received or deemed to be received by virtue of the individual's having been employed by the employer. 1996, c. 24, s. 1 (4).

### **Deemed remuneration**

(7) If all of the following circumstances exist, an amount paid to an employee of an employer by a third person after December 31, 1998 shall be deemed to be remuneration paid by the employer to the employee:

1. The amount is paid to the employee for providing a service in Ontario to a person other than the employer.
2. The service is substantially similar to employment functions that can reasonably be expected to be performed by an employee of the employer in the normal course of employment.
3. At the time the employee provides the service, he or she is an employee of the employer.
4. It is reasonable to believe that the employee would not have been engaged to provide the service if he or she was not employed by the employer.
5. The employer does not pay the employee any reasonable amount of remuneration or other compensation for providing the service.
6. The amount is not otherwise included in the employer's total Ontario remuneration paid for the year. 1998, c. 34, s. 59.

### **Same**

(8) An amount that is deemed to be remuneration paid by an employer to an employee under subsection (7) shall be deemed, for the purposes of subsection 3 (4), to be paid by the employer in the same month or quarter, as applicable, in which the third person pays the amount to the employee. 1998, c. 34, s. 59.

### **Same, definition**

(9) For the purposes of subsections (7) and (8),

“third person” includes a partnership, an unincorporated association, syndicate or organization, a trust, a government, an agency, a statutory authority, a board or commission and any other type of entity, whether or not it is a person at law. 1998, c. 34, s. 59; 2004, c. 16, Sched. D, Table.

### **Tax**

2. (1) Every employer shall pay to the Crown in right of Ontario a tax calculated in accordance with this Act. R.S.O. 1990, c. E.11, s. 2 (1).

(1.1) Repealed: 2009, c. 18, Sched. 11, s. 2.



## Calculation of tax

(2) The amount of tax payable by an employer for a year is the amount equal to the product of the taxable total Ontario remuneration paid by the employer during the year multiplied by,

- (a) where the total Ontario remuneration paid by the employer during the year does not exceed \$200,000, a rate of 0.98 per cent;
- (b) where the total Ontario remuneration paid by the employer during the year exceeds \$200,000 but does not exceed \$400,000, the rate set out in the Table opposite the range of remunerations which includes the total Ontario remuneration paid by the employer during the year; or
- (c) where the total Ontario remuneration paid by the employer during the year exceeds \$400,000, a rate of 1.95 per cent.

TABLE

Total Ontario Remuneration	Rate
More than \$200,000 to and including \$230,000	1.101 per cent
More than \$230,000 to and including \$260,000	1.223 per cent
More than \$260,000 to and including \$290,000	1.344 per cent
More than \$290,000 to and including \$320,000	1.465 per cent
More than \$320,000 to and including \$350,000	1.586 per cent
More than \$350,000 to and including \$380,000	1.708 per cent
More than \$380,000 to and including \$400,000	1.829 per cent

R.S.O. 1990, c. E.11, s. 2 (2); 1996, c. 18, s. 5 (2).

(2.1)-(2.3) Repealed: 2009, c. 18, Sched. 11, s. 2.

## Amounts included in total Ontario remuneration

(3) In determining the tax payable under this Act by any person, a payment made by the person, including a payment in kind, may be deemed by the Minister to be part of the total Ontario remuneration paid by the person where,

- (a) the payment is made to an employee of the person or to another person who at the time of the payment did not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), with an employee of the person; and
- (b) it is reasonable for the Minister to consider that the payment is made by the person in consideration for services rendered to the employer by the employee or the other person who did not deal at arm's length with an employee of the person. R.S.O. 1990, c. E.11, s. 2 (3); 1996, c. 24, s. 2 (1).

## Stock option benefits

(3.1) If an employer has agreed to sell or issue to an employee a security of the employer, the amount of any benefit deemed to be received in a year by the employee under section 7 of the *Income Tax Act* (Canada) in respect of the security or the agreement to sell or issue the security is deemed to be remuneration paid to the employee by the employer in the designated year. 2001, c. 23, s. 72 (1); 2004, c. 31, Sched. 12, s. 2 (1).

## Stock option benefits, connected corporation

(3.2) If an employer or a corporation or mutual fund trust connected to the employer has

agreed to sell or issue to an employee of the employer a security of the employer or of a corporation or mutual fund trust connected to the employer, the amount of any benefit deemed to be received by the employee under section 7 of the *Income Tax Act* (Canada) in respect of the security or the agreement to sell or issue the security is deemed to be remuneration paid to the employee by the employer in the designated year. 2001, c. 23, s. 72 (1); 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 12, s. 2 (2).

### **Stock option benefits, former employee**

[\(3.3\)](#) Despite subsections (3.1) and (3.2), if an employer or a corporation or mutual fund trust connected to the employer has agreed to sell or issue to an employee of the employer a security of the employer or of a corporation or mutual fund trust connected to the employer, the amount of any benefit in respect of the security or the agreement to sell or issue the security that is deemed to be received by the employee under section 7 of the *Income Tax Act* (Canada) after the employee has ceased to be employed by the employer is deemed to be remuneration paid to the employee by the employer in the designated year. 2001, c. 23, s. 72 (1); 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 12, s. 2 (3).

### **Connected corporation**

[\(3.4\)](#) For the purposes of subsections (3.2) and (3.3), a corporation or a mutual fund trust is connected to an employer if the employer and the corporation or trust do not deal at arm's length with each other within the meaning of section 251 of the *Income Tax Act* (Canada). 2001, c. 23, s. 72 (1); 2004, c. 16, Sched. D, Table.

### **Designated year**

[\(3.5\)](#) For the purposes of subsections (3.1) to (3.3), the designated year in respect of a security or an agreement to sell or issue a security is,

- (a) the year in which the amount of the benefit is deemed to be received by the employee under paragraph 7 (1) (a) of the *Income Tax Act* (Canada), as that paragraph is modified by subsection 7 (1.1) of that Act, if that paragraph applies and if, at both the time the agreement to sell or issue the security is entered into and the time the security is acquired under the agreement,
  - (i) the person who agreed to sell or issue the security to the employee is a Canadian-controlled private corporation, within the meaning assigned by subsection 125 (7) of the *Income Tax Act* (Canada), and
  - (ii) the security is a share of the capital stock of a Canadian-controlled private corporation;
- (b) the year in which the employee acquired the security, in any other case where paragraph 7 (1) (a) of the *Income Tax Act* (Canada) applies and clause (a) does not apply; or
- (c) the year in which the amount of the benefit, other than a benefit deemed to be received under paragraph 7 (1) (a) of the *Income Tax Act* (Canada), is deemed to be received by the employee under section 7 of that Act, if that section, other than paragraph 7 (1) (a), applies. 2004, c. 31, Sched. 12, s. 2 (4).

### **Exemptions under other Acts**

[\(4\)](#) No person otherwise subject to tax under this Act is exempt therefrom by reason of an exemption granted to the person, or to or in respect of the personal or real property of the person, by or under any other Act unless the other Act expressly mentions this Act. R.S.O. 1990, c. E.11, s. 2 (4).



**Definition**

(5) In this section,

“security” has the meaning assigned by subsection 7 (7) of the *Income Tax Act* (Canada).  
2013, c. 15, s. 2

(6)-(11) Repealed: 2013, c. 15, s. 2.

**Taxable total Ontario remuneration**

2.1 (1) For the purposes of subsection 2 (2), the taxable total Ontario remuneration paid by an employer during a year is,

- (a) in the case of an employer who is an eligible employer at any time in the year, the amount by which the total Ontario remuneration paid by the employer during the year exceeds the employer’s exemption amount for the year; or
- (b) in the case of an employer who is not an eligible employer at any time in the year, the amount of the total Ontario remuneration paid by the employer during the year. 2013, c. 15, s. 3.

**Exemption amount after 2013, remuneration less than or equal to exemption threshold**

(2) If the total Ontario remuneration paid by an employer during a year beginning after December 31, 2013 is less than or equal to the exemption threshold for the employer and the employer is an eligible employer at any time in the year and is not associated with any other employers at any time in the year, the exemption amount of the employer for the year is the amount calculated using the formula,

$$A \times B/C$$

in which,

“A” is \$450,000 for a year in the five-year period consisting of 2014 to 2018 or, for a year in a subsequent five-year period, is the adjusted amount determined for that period under section 2.1.1 for the year,

“B” is the number of days in the year in which the employer,

- (a) has one or more permanent establishments in Ontario, and
- (b) is an eligible employer, and

“C” is the number of days in the year.

2013, c. 15, s. 3.

**Same, associated employers**

(3) If the aggregate of the total Ontario remuneration paid during a year beginning after December 31, 2013 by an employer who is an eligible employer at any time in the year (the “first employer”) and by each employer who is an eligible employer at any time in the year and that is associated with the first employer at any time in the year is less than or equal to the exemption threshold for the group of employers, the exemption amount for the year of the first employer and of each associated employer shall be determined in accordance with subsection (4). 2013, c. 15, s. 3.

**Same**

(4) If all of the employers who are associated with each other at any time in a year beginning after December 31, 2013 and who are eligible employers at any time in the year enter into an agreement in which they allocate to one or more of them for the year an exemption

amount that does not exceed the highest exemption amount that would be determined under subsection (2) for any of them if they were not associated in the year, the exemption amount for the year for each of them is the lesser of,

- (a) the amount allocated to that employer; and
- (b) the amount that would be that employer's exemption amount for the year under subsection (2) if that employer were not associated. 2013, c. 15, s. 3.

### **Exemption amount after 2013, remuneration more than exemption threshold**

(5) If the total Ontario remuneration paid by an employer during a year beginning after December 31, 2013 is more than the exemption threshold for the employer and the employer is not associated with any other employers at any time in the year, the exemption amount of the employer for the year is nil. 2013, c. 15, s. 3.

### **Same, associated employers**

(6) If the aggregate of the total Ontario remuneration paid during a year beginning after December 31, 2013 by an employer who is an eligible employer at any time in the year (the "first employer") and by each employer who is an eligible employer at any time in the year and that is associated with the first employer at any time in the year is more than the exemption threshold for the group of employers, the exemption amount for the year of the first employer and of each associated employer is nil. 2013, c. 15, s. 3.

### **Exemption threshold**

(7) For the purposes of subsections (2) and (5), the exemption threshold for an employer for a year is the amount calculated using the formula,

$$\$5,000,000 \times D/E$$

in which,

"D" is the number of days in the year in which the employer,

- (a) has one or more permanent establishments in Ontario, and
- (b) is an eligible employer, and

"E" is the number of days in the year.

2013, c. 15, s. 3.

### **Exemption threshold, associated employers**

(8) For the purposes of subsections (3) and (6), the exemption threshold for a year for a group of employers who are associated with each other at any time in the year is the amount that is equal to the highest exemption threshold that would be determined under subsection (7) for any of them if they were not associated in the year. 2013, c. 15, s. 3.

### **Special rule re registered charities**

(9) Despite subsection (5) or (6), the exemption amount for a year beginning after December 31, 2013 of an eligible employer who is a registered charity shall be determined in accordance with subsection (2), regardless of the amount of the total Ontario remuneration paid during the year by the registered charity. 2013, c. 15, s. 3.

### **Same**

(10) If an employer who is not a registered charity is associated at any time in the year with an employer who is a registered charity, the aggregate of the total Ontario remuneration for the purposes of determining the exemption amount for a year beginning after December 31,

2013 of the employer who is not a registered charity shall be calculated without including the total Ontario remuneration paid during the year by the employer who is a registered charity. 2013, c. 15, s. 3.

### Same

[\(11\)](#) The Minister may make regulations providing for special rules that apply to employers who are registered charities and to employers who are associated with registered charities, including rules that exempt those employers from a provision of this section.

### Exemption amount after 2000 and before 2014 2013, c. 15, s. 3.

[\(12\)](#) For a year that begins after December 31, 2000 and before January 1, 2014, the exemption amount of an employer who is an eligible employer at any time in the year and who is not associated at any time in the year with one or more employers who are eligible employers at any time in the year is the amount calculated using the formula,

$$\$400,000 \times F/G$$

in which,

“F” is the number of days in the year in which the employer,

(a) has one or more permanent establishments in Ontario, and

(b) is an eligible employer, and

“G” is the number of days in the year.

2013, c. 15, s. 3.

### Same, associated employers

[\(13\)](#) If all of the employers who are associated with each other at any time in a year beginning after December 31, 2000 and before January 1, 2014 and who are eligible employers at any time in the year enter into an agreement in which they allocate to one or more of them for the year an exemption amount that does not exceed the highest exemption amount that would be determined under subsection (12) for any of them if they were not associated in the year, the exemption amount for the year for each of them is the lesser of,

(a) the amount allocated to that employer; and

(b) the amount that would be that employer’s exemption amount for the year under subsection (12) if that employer were not associated. 2013, c. 15, s. 3.

### Delivery of agreement

[\(14\)](#) A copy of the agreement referred to in subsection (4) or (13) shall be delivered to the Minister by at least one of the employers on or before the date on which the return for the year is required to be delivered under section 5. 2013, c. 15, s. 3.

### If no agreement

[\(15\)](#) If an eligible employer who is associated at any time in a year with one or more eligible employers does not enter into an agreement for the year that complies with subsection (4) or (13), the exemption amount for the year for each of the employers who is associated is nil. 2013, c. 15, s. 3.

### Adjustment of exemption amount

[2.1.1 \(1\)](#) For each five-year period beginning with the period consisting of the calendar years 2019 to 2023, the amount of “A” that is referred to in subsection 2.1 (2) shall be adjusted to the amount calculated using the formula,

$$X + [X \times (Y/Z - 1)]$$

in which,

“X” is \$450,000 for a year in the five-year period consisting of the calendar years 2019 to 2023 and, for a year in each succeeding five-year period, is the amount that would have been the amount of “A” used for the preceding five-year period if it was not rounded to the nearest ten-thousand under subsection (3),

“Y” is the Consumer Price Index for the 12-month period that ended on September 30 of the year immediately preceding the first year in the five-year period, and

“Z” is the Consumer Price Index for the 12-month period ending on September 30 that is five years preceding the 12-month period in the description of “Y”.

2013, c. 15, s. 3.

### **Rounding**

(2) For the purposes of subsection (1), the amount of “(Y/Z – 1)” shall be rounded to the nearest one-thousandth or, if the result obtained is equidistant between two consecutive one-thousandths, to the higher one-thousandth. 2013, c. 15, s. 3.

### **Same**

(3) The amount of “A” that is referred to in subsection 2.1 (2), as adjusted under this section, shall be rounded to the nearest ten-thousand or, if the result obtained is equidistant between two consecutive ten-thousands, to the higher ten-thousand. 2013, c. 15, s. 3.

### **Consumer price index**

(4) In this Act, the Consumer Price Index for any 12-month period is the result arrived at by,

- (a) determining the sum of the Consumer Price Index for Ontario as published by Statistics Canada under the authority of the *Statistics Act* (Canada), adjusted in the prescribed manner, for each month in that period;
- (b) dividing the sum obtained under clause (a) by 12; and
- (c) rounding the result obtained under clause (b) to the nearest one-thousandth or, if the result obtained is equidistant between two consecutive one-thousandths, to the higher one-thousandth. 2013, c. 15, s. 3.

### **Exclusion of certain stock option benefits from remuneration**

2.2 (1) This section applies with respect to an employer for a year before 2010 if an amount is deemed to be remuneration paid by the employer to an employee under subsection 2 (3.1), (3.2) or (3.3) during the year. 2004, c. 31, Sched. 12, s. 3 (1).

### **Status of benefit**

(2) Despite any other provision of this Act, a benefit described in subsection 2 (3.1), (3.2) or (3.3) is not deemed to be remuneration paid by the employer to the employee during a year,

- (a) if the employee is entitled to the benefit by virtue of an eligible agreement described in subsection (3);
- (b) if the event giving rise to the benefit occurs after May 2, 2000; and
- (c) if the employer meets all of the conditions described in subsection (4) with respect to the year. 2000, c. 42, s. 45.

## Eligible agreement

**(3)** An agreement between an employee and his or her employer or between an employee and a corporation with which his or her employer does not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), is an eligible agreement referred to in clause (2) (a),

- (a) if they entered into the agreement in the course of, or because of, the employee's employment relationship with the employer;
- (b) if the agreement entitles the employee to acquire a security of the employer or of a corporation with which the employer does not deal at arm's length;
- (c) if the employee is entitled to deduct an amount under paragraph 110 (1) (d) or (d.1) of the *Income Tax Act* (Canada) in respect of a benefit relating to the agreement in computing his or her taxable income for a taxation year; and
- (d) if the agreement is entered into before May 18, 2004. 2000, c. 42, s. 45; 2001, c. 23, s. 73 (1); 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 12, s. 3 (2).

## Preconditions

**(4)** The following are the conditions referred to in clause (2) (c) that the employer must meet:

1. The employer must carry on business through a permanent establishment in Ontario in the taxation year of the employer preceding the taxation year that ends in the year (the "preceding taxation year").
2. The employer must directly undertake scientific research and experimental development within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada) at a permanent establishment in Ontario in the preceding taxation year.
3. The employer's eligible expenditures for the preceding taxation year must not be less than \$25 million or 10 per cent of the employer's total expenses for that taxation year, whichever is less.
4. The employer's specified eligible expenditures for the preceding taxation year must not be less than \$25 million or 10 per cent of the employer's adjusted total revenue for that taxation year, whichever is less. 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

## Interpretation, start-ups

**(5)** For the purposes of subsection (4), if the taxation year of an employer that ends in the year referred to in subsection (2) is the first taxation year of the employer after it is incorporated or is the first taxation year in which the employer carries on business, references to the preceding taxation year are to be read as references to that first taxation year. 2000, c. 42, s. 45.

## Amalgamations

**(5.1)** For the purposes of subsection (4), if the taxation year of an employer that ends in the year referred to in subsection (2) is the first taxation year of the employer ending after an amalgamation to which section 87 of the *Income Tax Act* (Canada) applies, references to the preceding taxation year are to be read as references to the taxation year of each of the predecessor corporations (as referred to in section 87 of that Act) that ended immediately before the amalgamation. 2001, c. 23, s. 73 (2).

## Interpretation, eligible expenditures



(6) For the purposes of paragraph 3 of subsection (4) and subsection (9), the amount of an employer's eligible expenditures for a taxation year is calculated using the formula,

$$A + B - C$$

in which,

"A" is the total amount of the expenditures incurred by the employer in the taxation year at a permanent establishment in Ontario each of which would be a qualified expenditure under subsection 12 (1) of the *Corporations Tax Act* and is,

- (a) an amount described in subparagraph 37 (1) (a) (i) or 37 (1) (b) (i) of the *Income Tax Act* (Canada), or
- (b) a prescribed proxy amount of the employer for the taxation year referred to in paragraph (b) of the definition of "qualified expenditure" in subsection 127 (9) of the *Income Tax Act* (Canada),

"B" is the reduction, if any, in the amount of "A" required under subsections 127 (18) to (20) of the *Income Tax Act* (Canada) in respect of a contract payment, and

"C" is the total of all amounts each of which is paid or payable by the employer in the taxation year that is included in the amount of "A" and that would be a contract payment as defined in subsection 127 (9) of the *Income Tax Act* (Canada) made to the recipient of the amount.

2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### Same

(7) For the purposes of subsection (4), in determining the share of the eligible expenditures of a partnership to be attributed to a partner who is a specified member of the partnership within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada), the eligible expenditures, total expenses and total revenue of the partnership shall be deemed to be nil. 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### Interpretation, total expenses

(8) For the purposes of paragraph 3 of subsection (4), the employer's total expenses are as determined in accordance with generally accepted accounting principles, but they exclude expenses that are extraordinary items and the consolidation and equity methods of accounting are not to be used in determining the total expenses. 2000, c. 42, s. 45.

### Interpretation, specified eligible expenditures

(9) For the purposes of paragraph 4 of subsection (4), the amount of an employer's specified eligible expenditures for a taxation year is the amount that is the total of,

- (a) the employer's eligible expenditures for the taxation year;
- (b) the employer's proportionate share of any expenditures incurred by a partnership of which the employer is a member during a fiscal period of the partnership that ends in the taxation year that would be eligible expenditures if they had been incurred by the employer; and
- (c) all expenditures each of which is incurred by a corporation that is associated with the employer throughout the taxation year and that has a permanent establishment in Canada for any taxation year of the associated corporation that ends in the employer's taxation year, including the associated corporation's proportionate share of any expenditures incurred by a partnership of which the corporation is a member during a



fiscal period of the partnership that ends in the associated corporation's taxation year, that would be eligible expenditures if they had been incurred by the employer. 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### **Interpretation, adjusted total revenue**

(10) For the purposes of paragraph 4 of subsection (4), the adjusted total revenue of an employer for a taxation year is the amount that is the total of,

- (a) the employer's total revenue for the taxation year;
- (b) the employer's proportionate share of the total revenue of a partnership of which the employer is a member during a fiscal period of the partnership that ends in the taxation year; and
- (c) the total revenue of each corporation that is associated with the employer throughout the taxation year and that has a permanent establishment in Canada for any taxation year of the associated corporation that ends in the employer's taxation year, including the associated corporation's share of the total revenue of any partnership of which the corporation is a member for a fiscal period of the partnership ending in the associated corporation's taxation year. 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### **Same, total revenue**

(11) For the purposes of clauses (10) (a) and (c), an entity's total revenue for a taxation year is the amount that would be its gross revenue for the taxation year, as determined in accordance with generally accepted accounting principles (except that the consolidation and equity methods must not be used), if the gross revenue excluded revenue from transactions with,

- (a) corporations that are associated with the entity throughout the taxation year and that have a permanent establishment in Canada in the taxation year; or
- (b) partnerships in which the entity or a corporation described in clause (a) is a member. 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### **Same**

(12) For the purposes of clauses (10) (b) and (c), the total revenue of a partnership for a fiscal period is the amount that would be the gross revenue of the partnership for the fiscal period, as determined in accordance with generally accepted accounting principles (except that the equity method must not be used), if the gross revenue excluded revenue of the partnership from transactions with,

- (a) the employer; or
- (b) corporations that are associated with the employer throughout the employer's taxation year in which the fiscal period ends and that have a permanent establishment in Canada in that taxation year. 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### **Short or multiple taxation years**

(13) In determining the amount of an employer's eligible expenditures, total expenses and total revenue for a taxation year for the purposes of this section, the following rules apply:

1. If the taxation year is less than 51 weeks and is the only taxation year ending in a calendar year, the eligible expenditures, total expenses and total revenue for the taxation year are the amounts otherwise determined, multiplied by the ratio of 365 to the number of days in the taxation year.

2. If the taxation year is not the only taxation year of the employer ending in the same calendar year, the amount of the employer's eligible expenditures, total expenses and total revenue for the taxation year is the total of those amounts for all taxation years ending in that calendar year, as otherwise determined, multiplied by the ratio of 365 to the total number of days in those taxation years.
3. If the taxation year of a corporation that is associated with the employer is less than 51 weeks and is the only taxation year of the associated corporation ending in the employer's taxation year, the corporation's eligible expenditures, total expenses and total revenue for that taxation year are the amounts otherwise determined, multiplied by the ratio of 365 to the number of days in the taxation year.
4. If a fiscal period of a partnership of which the employer or the associated corporation is a member is less than 51 weeks and is the only fiscal period of the partnership ending in the taxation year of the employer or the associated corporation, as the case may be, the eligible expenditures, total expenses and total revenue of the partnership for that fiscal period are the amounts otherwise determined, multiplied by the ratio of 365 to the number of days in the fiscal period.
5. If a corporation who is associated with the employer has two or more taxation years ending in the employer's taxation year, the eligible expenditures, total expenses and total revenue of the associated corporation for the taxation year ending in the employer's taxation year are the total of those amounts for all of its taxation years ending in the employer's taxation year, as otherwise determined, multiplied by the ratio of 365 to the total number of days in all of those taxation years.
6. If a partnership of which the employer or the associated corporation is a member has two or more fiscal periods ending in the taxation year of the employer or the associated corporation, as the case may be, the eligible expenditures, total expenses and total revenue for the fiscal period of the partnership ending in the taxation year of the employer or the associated corporation, as the case may be, are those amounts for all of its fiscal periods ending in the taxation year, as otherwise determined, multiplied by the ratio of 365 to the total number of days in all of the fiscal periods.

2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### **Associated corporation**

**(14)** For the purposes of this section, an employer and a corporation are associated if they would be associated for the purposes of the *Income Tax Act* (Canada). 2000, c. 42, s. 45; 2004, c. 16, Sched. D, Table.

### **Interpretation**

**(15)** In this section,

“fiscal period” means, in respect of a partnership, its fiscal period for the purposes of the *Income Tax Act* (Canada); (“exercice”)

“security” has the meaning assigned by subsection 7 (7) of the *Income Tax Act* (Canada); (“titre”)

“taxation year” means, in respect of an employer or a corporation, the employer or corporation's taxation year for the purposes of the *Income Tax Act* (Canada). (“année d'imposition”) 2000, c. 42, s. 45; 2001, c. 23, s. 73 (3); 2004, c. 16, Sched. D, Table.

### **Instalments**

**3. (1)** Except as otherwise provided, every taxpayer shall pay instalments on account of

the tax payable for a year under this Act as required under the following rules:

1. An employer who pays, for the year 2000 or a subsequent year, total Ontario remuneration for the year that exceeds \$600,000 shall pay monthly instalments to the Minister at the prescribed times.
2. Repealed: 1999, c. 9, s. 107 (1).
3. Repealed: 2009, c. 18, Sched. 11, s. 2.  
1994, c. 8, s. 3 (1); 1999, c. 9, s. 107 (1); 2009, c. 18, Sched. 11, s. 2.

### **Exception, employer**

(2) An employer is not required to pay instalments on account of the tax payable for a year as an employer under this Act if,

- (a) the employer pays total Ontario remuneration for the year of \$600,000 or less;
- (b) the total Ontario remuneration for the year was paid or will be paid by the employer during one month in the year. 1994, c. 8, s. 3 (2); 1999, c. 9, s. 107 (2).

(3) Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Instalment amount, employer**

(4) The amount of an instalment payable by a person as an employer under this section shall be determined according to the following formula:

$$P = (S - E) \times R$$

where:

P is the amount of the instalment in dollars;

S is the total Ontario remuneration, if any, paid by the employer during the month last ending before the date the instalment is required to be paid;

E is,

- (a) the amount, if any, of the employer's exemption amount for the year under section 2.1 that is available for deduction and is deducted by the employer in determining the amount of the instalment, if the employer is an eligible employer at any time in the year, or
- (b) nil, if the employer is not an eligible employer at any time in the year;

R is the rate applicable under subsection 2 (2),

- (a) to the estimated total Ontario remuneration to be paid by the employer during the year both before and after the date the instalment is required to be paid, if the year in respect of which the instalment is being paid is the first or second consecutive year in which the employer is subject to tax under this Act as an employer, or
- (b) to the total Ontario remuneration paid by the employer during the immediately preceding year, if the year in respect of which the instalment is being paid is a year subsequent to the first two consecutive years in which the employer is subject to tax under this Act as an employer.

1996, c. 18, s. 6; 1999, c. 9, s. 107 (3); 2001, c. 23, s. 74; 2013, c. 15, s. 4.

### **Same**

**(4.01)** For the purposes of subsection (4), the amount of an eligible employer's exemption amount for a year that is available for deduction in determining the amount of an instalment on account of tax payable for the year is the lesser of,

- (a) the amount, if any, of the employer's exemption amount for the year that has not been deducted in determining the amount of previous instalments paid on account of tax for the year; and
- (b) the total Ontario remuneration, if any, paid by the employer during the month last ending before the date the instalment is required to be paid. 1996, c. 18, s. 6; 1999, c. 9, s. 107 (4).

### **Same**

**(4.02)** If the amount that would have been an employer's exemption amount for a year changes during the year, the amount of any instalments on account of tax required to be paid by the employer during the year shall be adjusted to reflect the change. 1996, c. 18, s. 6.

**(4.1)**, (4.2) Repealed: 2010, c. 26, Sched. 6, s. 3.

**(5)-(8)** Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Remittance of instalment and statement**

**(9)** Every taxpayer shall remit to the Minister each instalment of tax that the taxpayer is required to pay under this Act together with a statement in a form approved by the Minister setting out the amount of the instalment, the amounts on which the instalment was calculated and such other information as may be required by the Minister for the purposes of this Act. 1994, c. 8, s. 3 (3).

### **Multiple accounts**

**(10)** Where, with the consent of the Minister, an employer remits an instalment required under this Act by way of payments made to the credit of more than one tax account maintained for the employer by the Minister, the employer, instead of filing a statement under subsection (9), shall file a statement with each payment for each tax account in a form approved by the Minister, setting out the amount of the payment to be credited to the account, the amount or amounts on which the payment was calculated and such other information as may be required by the Minister for the purposes of this Act. 1994, c. 8, s. 3 (3).

### **When remitted or paid**

**(11)** Any amount required by this Act to be remitted or paid to the Minister is remitted or paid upon,

- (a) receipt of the remittance or payment by the Ministry; or
- (b) receipt and acceptance of the remittance or payment by a branch of a bank or other financial institution that accepts and undertakes to forward to the Minister such remittances and payments. 1994, c. 8, s. 3 (3).

### **Enforceable debt**

**(12)** If a taxpayer fails to remit all or part of an instalment required under this Act, in respect of tax payable for the year by the taxpayer as an employer, by the day such instalment is required under this Act to be remitted, the instalment or the amount of it remaining unpaid, as the case may be, shall constitute a debt due and owing to Her Majesty in right of Ontario and may be enforced and collected under this Act as if it were tax assessed and payable by the taxpayer under this Act. 1994, c. 8, s. 3 (3).

### **ss. 9, 10 and 11 not applicable**

(13) Sections 9, 10 and 11 do not apply in respect of amounts referred to in subsection (12). 1994, c. 8, s. 3 (3).

## **Anti-avoidance**

### **Definition**

4. (1) In this section,

“Ontario resident” means a person who has a permanent establishment in Ontario. R.S.O. 1990, c. E.11, s. 4 (1); 2004, c. 16, Sched. D, Table.

### **Deemed employer**

(2) An Ontario resident who enters into an agreement with a non-resident employer under which work is performed or services are provided during a year for the benefit of the Ontario resident by an individual employed by the non-resident employer, the Ontario resident shall be deemed to be the employer of the individual and the individual shall be deemed to be an employee of the Ontario resident during any period in the year when the work is performed or the services are provided, if,

- (a) the non-resident employer does not have a permanent establishment in Ontario during the period and is not subject to tax under this Act calculated by reference to remuneration paid to the individual performing the work or providing the services for the benefit of the Ontario resident during the period;
- (b) the work is performed or the services are provided in Ontario;
- (c) the Ontario resident and the non-resident employer do not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), at any time during the period or did not deal at arm's length at the time they entered into the agreement or arrangement; and
- (d) the work being performed or the services being provided by the individual for the benefit of the Ontario resident are under the approval and direction of the Ontario resident and are of a nature which, in the Minister's opinion, could be expected to be carried out by an employee of a person for whose benefit the work is performed or the services are provided. R.S.O. 1990, c. E.11, s. 4 (2); 2004, c. 16, Sched. D, Table.

### **Deemed payment of remuneration**

(3) Where an Ontario resident referred to in subsection (2) is deemed by that subsection to be the employer of an individual employed by a non-resident employer during a period in a year,

- (a) the Ontario resident shall be deemed to pay remuneration to the individual during the period in which the individual is deemed to be an employee of the Ontario resident in an amount equal to the remuneration paid or to be paid by the non-resident employer to the individual in respect of the work performed or the services provided by the individual in the period for the benefit of the Ontario resident; and
- (b) the individual shall be deemed to be an employee who reports for work at a permanent establishment of the Ontario resident in Ontario. R.S.O. 1990, c. E.11, s. 4 (3); 2004, c. 16, Sched. D, Table.

4.1, 4.2 Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Annual return**

5. (1) Every taxpayer who is liable to pay tax under this Act for a year shall deliver to the Minister, on or before the prescribed date applicable to that taxpayer, a return in a form approved



by the Minister setting out the amount of tax payable for the year under this Act, the amount or amounts on which the tax was calculated and such other information as may be required by the Minister for the purposes of this Act. 1994, c. 8, s. 5 (1).

### **Demand for return**

[\(1.0.1\)](#) Every person who receives a written demand for a return from the Minister or from an officer of the Ministry shall deliver the return to the Minister. 2004, c. 31, Sched. 12, s. 4.

### **Returns for multiple accounts**

[\(1.1\)](#) Where, with the consent of the Minister, an employer has more than one tax account maintained for the employer by the Minister, the employer shall file a separate return for each tax account in a form approved by the Minister, setting out the amount of tax payable by the employer for the year with respect to the portion of the total Ontario remuneration reported through the tax account, the amount or amounts on which the tax was calculated and such other information as may be required by the Minister for the purposes of this Act. 1994, c. 8, s. 5 (1).

[\(1.2\)](#) Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Cessation of permanent establishment**

[\(2\)](#) An employer who ceases to have a permanent establishment in Ontario before the end of a year shall deliver all returns required under this section for the year to the Minister on or before the prescribed day. R.S.O. 1990, c. E.11, s. 5 (2); 1994, c. 8, s. 5 (2); 2004, c. 16, Sched. D, Table.

### **Annual return, taxpayer who becomes bankrupt**

[\(2.1\)](#) Despite subsection (1), every taxpayer who is liable to pay tax for a year under this Act and becomes a bankrupt shall deliver to the Minister within forty days from the day the taxpayer becomes a bankrupt,

- (a) a return for the part of the year ending on the day before the taxpayer becomes a bankrupt setting out the amount of tax payable by the taxpayer with respect to that part of the year and any other information that may be required by the Minister for the purposes of this Act; and
- (b) unless required to be delivered before the day the taxpayer becomes bankrupt, the return for the previous year. 1996, c. 24, s. 4 (1).

[\(3\)](#) Repealed: 2010, c. 26, Sched. 6, s. 4 (1).

### **Supplemental return**

[\(4\)](#) The Minister may at any time require a taxpayer to deliver to the Minister a return in respect of any period of time setting out such information as the Minister may specify for the purposes of this Act. R.S.O. 1990, c. E.11, s. 5 (4); 1994, c. 8, s. 5 (4).

### **Requirements re returns**

[\(4.1\)](#) A person who delivers a return under this section, or in respect of whom a return is delivered under this section, shall satisfy the prescribed requirements in respect of accuracy and completeness of the return. 2010, c. 26, Sched. 6, s. 4 (2).

### **Unpaid tax**

[\(5\)](#) The Minister may require the taxpayer to remit to the Minister with the return under subsection (4) any tax under this Act that was not previously paid in respect of the period. R.S.O. 1990, c. E.11, s. 5 (5); 1994, c. 8, s. 5 (5).

### **Extension of time**



(6) The Minister may extend the time for delivering a return or paying an amount required to be paid under this Act, with or without interest. R.S.O. 1990, c. E.11, s. 5 (6).

### **Notice of appointment, trustee in bankruptcy**

(6.1) Every trustee in bankruptcy appointed to administer, manage, wind-up, control or otherwise deal with the property, business, estate or income of a taxpayer shall notify the Minister in writing of the trustee's appointment within 10 days of the appointment. 1996, c. 24, s. 4 (1).

### **Returns by trustee in bankruptcy, etc.**

(7) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a taxpayer shall, if the taxpayer has not delivered a return as required under this section, deliver the return for the taxpayer on or before the prescribed date. 1996, c. 24, s. 4 (2).

(8)-(10) Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Remittance of balance of tax**

(11) Every person required to deliver a return under this section shall remit to the Minister the unpaid balance of tax, if any, to which the return relates, at the time the return is required to be delivered. 1994, c. 8, s. 5 (6).

### **Exception**

(12) Subsection (11) does not apply if the return is delivered after the taxpayer becomes a bankrupt and the return relates to tax payable by the taxpayer for a period of time before the taxpayer becomes bankrupt. 1996, c. 24, s. 4 (3)

### **Refunds**

6. (1) If the return required to be delivered by a taxpayer under this Act is delivered within four years from the day the return is required to be delivered under section 5,

- (a) the Minister may refund the amount of any overpayment made on account of the tax payable under this Act for the year whether or not the taxpayer has requested the refund; and
- (b) the Minister shall refund the amount the Minister determines under subsection 8 (1) to be an overpayment made on account of the tax payable under this Act for the year if the taxpayer applies in writing to the Minister for the refund within four years after the day on which the return was required to be delivered under section 5. 2001, c. 23, s. 75.

### **Application to other liability**

(2) Instead of making a refund under subsection (1), the Minister may, where the taxpayer is liable or is about to become liable to make a payment under this Act or under any other Act administered by the Minister, apply the amount of the overpayment to the liability and in such case the Minister shall notify the taxpayer that such action was taken. R.S.O. 1990, c. E.11, s. 6 (2); 1994, c. 8, s. 6 (2).

### **Interest**

#### **Interest charged, employer**

7. (1) Where, on a particular date, the debt payable by a taxpayer as an employer under this Act in respect of a particular year and all amounts in respect of that year which were at any time before that date either refunded to the taxpayer or applied under this Act exceed the aggregate of all payments previously made in respect of the year by the taxpayer as an employer,

the taxpayer shall be charged interest payable to the Minister at the prescribed rate and calculated in the prescribed manner on the excess amount from that date to the date payment of the excess amount is received by the Minister. 1996, c. 29, s. 6 (1).

### Exception

(1.1) The amount of interest payable under subsection (1) by an employer in respect of a particular year shall be calculated without regard to any amount the employer failed to pay as an instalment on account of the tax payable by the employer for the year, if the employer's total Ontario remuneration for the prior year was not more than \$600,000. 2001, c. 23, s. 76.

### Same

(1.2) If an employer,

- (a) was formed in a year as a result of an amalgamation under section 87 of the *Income Tax Act* (Canada);
- (b) was formed and acquired property in the year as a result of a qualifying exchange under section 132.2 of the *Income Tax Act* (Canada); or
- (c) was formed and acquired in the year all or substantially all of the property of a transferor in a transfer to which subsection 85 (1) or (2) or 97 (2) of the *Income Tax Act* (Canada) applies,

the total Ontario remuneration paid by the employer for the year shall be determined, for the purposes of subsection (1.1), by multiplying the total Ontario remuneration paid by the employer for the year by the ratio of 365 to the number of days in the year. 2002, c. 22, s. 66.

### Same

(1.3) Subsection (1.1) does not apply to the following employers for a particular year if the condition specified with respect to the employer is satisfied:

1. An employer that was formed in the year as a result of an amalgamation under section 87 of the *Income Tax Act* (Canada), if the total Ontario remuneration for the prior year of at least one of the predecessor corporations that amalgamated to form the employer in that year was more than \$600,000.
2. An employer that acquired property in the year in the course of a winding-up to which subsection 88 (1) or (2) of the *Income Tax Act* (Canada) applies, if the total Ontario remuneration for the prior year of the corporation that transferred the property to the employer in the year in the course of the winding-up was more than \$600,000.
3. An employer that acquired property in the year as a result of a qualifying exchange under section 132.2 of the *Income Tax Act* (Canada), if the total Ontario remuneration for the prior year of the corporation or trust that disposed of the property to the employer in the year was more than \$600,000.
4. An employer that acquired in the year all or substantially all of the property of a transferor in a transfer to which subsection 85 (1) or (2) or 97 (2) of the *Income Tax Act* (Canada) applies, if the total Ontario remuneration for the prior year of the transferor was more than \$600,000. 2002, c. 22, s. 66.

### Interest paid, employer

(2) Where, on a particular date, the aggregate of all payments previously made by a taxpayer as an employer under this Act in respect of a particular year exceeds the debt payable in respect of the year under this Act as of that date by the taxpayer as an employer and all amounts in respect of that year which were at any time before that date either refunded to the taxpayer or

applied under this Act, the Minister shall pay, credit or apply under this Act interest at the prescribed rate and calculated in the prescribed manner on the excess amount from that date to the date the amount of the excess is refunded to the taxpayer or applied in accordance with this Act. 1996, c. 29, s. 6 (1).

[\(2.1\)](#), (2.2) Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Compound interest**

[\(3\)](#) Interest under this section shall be computed and compounded daily to the date on which it is paid, refunded or applied under this Act. R.S.O. 1990, c. E.11, s. 7 (3); 1994, c. 8, s. 7 (2).

### **Amount of debt, employer**

[\(4\)](#) In this section, the amount of the debt payable under this Act as of a particular date by a taxpayer as an employer in respect of a particular year is the amount, if any, by which,

(a) the aggregate of,

- (i) any instalment of tax under this Act in respect of the particular year payable before the particular date by the taxpayer as an employer,
- (ii) the amount by which the amount of tax for the year, if any, payable under this Act before the particular date by the taxpayer as an employer exceeds all instalments of tax in respect of the year payable by the taxpayer as an employer,
- (iii) all penalties having an effective date on or before the particular date that have been assessed under this Act in respect of the year against the taxpayer as an employer,
- (iv) the total of all amounts each of which is an amount of interest in respect of the year charged under this section before the particular date to the taxpayer as an employer, and
- (v) all other amounts in respect of the year that on or before the particular day became payable under this Act in respect of the taxpayer as an employer, or became collectible and enforceable as if they were tax payable under this Act by the taxpayer as an employer,

exceeds,

(b) the aggregate of,

- (i) the amount, if any, by which all instalments of tax in respect of the year payable before the particular date by the taxpayer as an employer exceeds the amount of tax payable for the year under this Act by the taxpayer as an employer, and
- (ii) all amounts each of which is an amount of interest in respect of the year credited under this section before the particular date to the taxpayer as an employer. 1996, c. 29, s. 6 (2).

[\(5\)](#) Repealed: 2009, c. 18, Sched. 11, s. 2.

### **Effective date of penalties**

[\(6\)](#) For the purposes of this section, the effective date of a penalty assessed under this Act is as follows:

1. If the penalty is assessed under section 30, the effective date of the penalty is the date that the person is required under this Act to deliver the return, statement or other

document to which the penalty relates.

2. If the penalty is assessed under any other section of this Act, the effective date of the penalty is the date the penalty is assessed. 1996, c. 29, s. 6 (4).

### **No interest until return delivered**

(7) Despite subsection (2), if a return for a year is delivered after the day on or before which it is required to be delivered under section 5, no interest shall be paid, credited or applied under this Act for the period of time from the day on or before which the return was required to be delivered to the Minister to the day after the day the return is delivered to the Minister. 1996, c. 29, s. 6 (4); 2012, c. 8, Sched. 13, s. 2.

### **Tax assessments**

8. (1) The Minister may assess the tax, interest or penalties payable in respect of a year under this Act,

- (a) at any time, if the taxpayer or person delivering the return for the year under this Act,
  - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in delivering the return or in supplying any information under this Act or in omitting to disclose any information, or
  - (ii) has filed with the Minister a waiver in a form approved by the Minister on or before the expiry of the time provided in clause (b); and
- (b) within four years from the later of the day on which the return required under this Act to be delivered was received by the Minister and the day the return was required to be delivered to the Minister. R.S.O. 1990, c. E.11, s. 8 (1); 1994, c. 8, s. 8 (1).

### **Revocation of waiver**

(1.0.1) If a taxpayer or person who has filed a waiver under subclause (1) (a) (ii) subsequently files with the Minister a notice of revocation of the waiver, in the form approved by the Minister, the Minister shall not issue an assessment under subsection (1) in reliance on the waiver more than one year after the date on which the revocation is filed. 1999, c. 9, s. 108.

### **Tax assessment on default of instalments**

(1.1) Despite subsection (1), if an employer has failed to pay all or part of one or more instalments as required under this Act on account of tax payable for a particular year or for the immediately preceding year, and the amount of the instalment or part remains unpaid, the Minister may,

- (a) determine the total amount of tax that would be payable under subsection 2 (2) for the particular year if the total Ontario remuneration paid by the employer during the year were the aggregate of,
  - (i) the total Ontario remuneration paid by the employer prior to that time during the particular year, and
  - (ii) the total Ontario remuneration that can reasonably be expected to be paid subsequently by the employer during the particular year; and
- (b) assess as tax payable by the employer in respect of the particular year the amount determined under clause (a). 1994, c. 8, s. 8 (2).

### **Same**

(1.2) The Minister may make one or more assessments under subsection (1.1) in respect

of a particular year before or after the end of that year. 1994, c. 8, s. 8 (2).

### **Notice of assessment**

(2) Where the Minister assesses tax, interest or penalties under this section, the Minister shall send a notice of assessment to the person liable to pay the amount assessed. R.S.O. 1990, c. E.11, s. 8 (2); 1994, c. 8, s. 8 (3).

### **Continuation of liability**

(3) Liability for tax or interest payable under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. R.S.O. 1990, c. E.11, s. 8 (3).

### **Minister not bound by returns**

(4) The Minister is not bound by a statement, a return or information delivered under this Act by or on behalf of any person and may assess the tax and any interest and penalties payable under this Act whether or not a return has been delivered and despite the contents of any return or information delivered to the Minister. R.S.O. 1990, c. E.11, s. 8 (4).

### **Assessment valid and binding**

(5) An assessment, subject to being varied or vacated on an objection or appeal and subject to further assessment, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act related to the assessment. R.S.O. 1990, c. E.11, s. 8 (5).

### **Payment of assessment**

(6) Every taxpayer shall, within thirty days from the date of sending of an assessment, pay any assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or an appeal from the assessment is outstanding. R.S.O. 1990, c. E.11, s. 8 (6); 1994, c. 8, s. 8 (4).

### **Payment forthwith**

(7) The Minister may direct that all taxes, interest and penalties then remaining unpaid by a taxpayer on the day of sending of a notice of assessment be paid forthwith by the taxpayer if,

- (a) the Minister is of the opinion that the taxpayer is attempting to avoid payment of any amount payable under this Act;
- (b) the Minister made the assessment after the taxpayer failed to deliver a return required under this Act or delivered an incomplete or inaccurate return; or
- (c) the Minister made the assessment under subsection (1.1). 1994, c. 8, s. 8 (5).

8.1 Repealed: 2010, c. 26, Sched. 6, s. 5.

### **Notice of objection**

9. (1) A taxpayer who objects to an assessment may, within 180 days after the day the notice of assessment was sent, serve on the Minister a notice of objection in the form approved by the Minister. 2010, c. 26, Sched. 6, s. 6 (1).

### **Facts and reasons to be given**

(1.1) The notice of objection shall,

- (a) clearly describe each issue raised by way of objection; and
- (b) fully set out the facts and reasons relied on by the taxpayer in respect of each issue. 1997, c. 43, Sched. F, s. 2 (1).

### **Same**

(1.2) If a notice of objection does not fully set out the facts and reasons relied on by the



taxpayer in respect of an issue, the Minister may in writing request the taxpayer to provide the information, and the taxpayer shall be deemed to have complied with clause (1.1) (b) in respect of the issue if the taxpayer provides the information to the Minister in writing within 60 days after the day the request is made by the Minister. 1997, c. 43, Sched. F, s. 2 (1).

### **Computation of time**

(1.3) For the purpose of calculating the number of days mentioned in subsection (1), (1.2) or 10 (2), the day on which a notice of assessment or statement is sent under subsection (1), a request is made under subsection (1.2) or a notification is given under subsection (6) is the date stated in the notice of assessment, statement, request or notification. 1997, c. 43, Sched. F, s. 2 (1).

### **Limitation**

(1.4) A taxpayer shall not raise, by way of objection under this section to a fresh statement or reassessment or to a variation of an assessment or statement under subsection (5), any issue that the taxpayer is not entitled to raise by way of appeal under section 10 in respect of the fresh statement or reassessment or of a variation of the assessment or statement. 1997, c. 43, Sched. F, s. 2 (1).

### **Service of notice of objection**

(2) Service of a notice of objection under this section shall be by registered mail addressed to the Minister or by such other method as is prescribed. R.S.O. 1990, c. E.11, s. 9 (2).

### **Acceptance of notice**

(3) The Minister may accept a notice of objection under this section even though the notice was not served in the manner required by subsection (2). R.S.O. 1990, c. E.11, s. 9 (3).

### **Extension of time**

(4) The time for serving a notice of objection under subsection (1) may be extended by the Minister if the taxpayer makes an application for the extension,

- (a) before the expiry of the time allowed under that subsection; or
- (b) within one year from the day of mailing or delivery of the notice of assessment that is the subject of the objection, if the taxpayer provides an explanation satisfactory to the Minister explaining why the notice of objection could not be served within the time required by subsection (1) and the Minister agrees to the extension of time. 2001, c. 23, s. 78 (2); 2010, c. 26, Sched. 6, s. 6 (2).

### **Minister's duty to reconsider**

(5) Upon receipt of a notice of objection, the Minister shall, as quickly as possible, reconsider the assessment and vacate, confirm or vary it, or make a reassessment. 2010, c. 26, Sched. 6, s. 6 (3).

### **Notice of decision**

(6) The Minister shall notify the taxpayer in writing as to the action taken by the Minister under subsection (5) as quickly as possible after taking the action. R.S.O. 1990, c. E.11, s. 9 (6); 1994, c. 8, s. 10 (4); 1997, c. 43, Sched. F, s. 2 (2).

### **Exception to time limit**

(7) An assessment made by the Minister under this section is not invalid by reason only that it is not made within the time required under section 8. 1994, c. 8, s. 10 (5); 2010, c. 26, Sched. 6, s. 6 (4); 2012, c. 8, Sched. 13, s. 3.



**Subsequent assessment not to invalidate**

[\(8\)](#) An assessment by the Minister in respect of tax, interest or penalties that relates to the same year in relation to which a notice of objection to assessment is delivered to the Minister or an appeal from assessment is commenced in accordance with this Act does not invalidate the objection or appeal. R.S.O. 1990, c. E.11, s. 9 (8).

**Tax appeal**

[10. \(1\)](#) Where the Minister has given the notification required by subsection 9 (6), the person who served the notice of objection may appeal to the Superior Court of Justice to have the assessment vacated or varied. 1994, c. 8, s. 11 (1); 2001, c. 23, s. 79 (1); 2010, c. 26, Sched. 6, s. 7 (1).

**Time limit for instituting appeal**

[\(2\)](#) No appeal under subsection (1) shall be instituted after the expiration of ninety days from the day the notification required by subsection 9 (6) was mailed to the person who served the notice of objection. 1994, c. 8, s. 11 (1).

**Appeal, how instituted**

- [\(3\)](#) An appeal to the Superior Court of Justice shall be instituted by,
- (a) filing a notice of appeal with the court in the form approved by the Minister;
  - (b) paying a fee to the court in the same amount and manner as the fee payable under regulations made under the *Administration of Justice Act* on the issue of a statement of claim; and
  - (c) serving on the Minister a copy of the notice of appeal as filed. 1997, c. 43, Sched. F, s. 2 (3); 2001, c. 23, s. 79 (2).

**Limitation**

[\(3.1\)](#) A taxpayer is entitled to raise by way of appeal only those issues raised by the taxpayer in a notice of objection to the assessment being appealed and in respect of which the taxpayer complied or was deemed to have complied with subsection 9 (1.1). 1997, c. 43, Sched. F, s. 2 (3).

**Exception**

[\(3.2\)](#) Despite subsection (3.1), a taxpayer may raise by way of appeal an issue forming the basis of a fresh statement or reassessment or of a variation of an assessment or statement under subsection 9 (5) if the issue was not part of the assessment or statement with respect to which the taxpayer served the notice of objection. 1997, c. 43, Sched. F, s. 2 (3).

**Application, subss. (3.1) and (3.2)**

[\(3.3\)](#) Subsections (3.1) and (3.2) apply only in respect of appeals in respect of which the period of 90 days referred to in subsection (2) begins after December 31, 1997. 1997, c. 43, Sched. F, s. 2 (3).

**Waived right of objection or appeal**

[\(3.4\)](#) Despite subsection (1), no taxpayer shall institute an appeal under this section to have an assessment or statement vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by or on behalf of the taxpayer. 1997, c. 43, Sched. F, s. 2 (3).

**Service**

[\(4\)](#) A notice of appeal shall be served upon the Minister by registered mail or in a prescribed manner. R.S.O. 1990, c. E.11, s. 10 (4).

## **Extension of time**

[\(5\)](#) The Minister may extend a time for instituting an appeal if application for the extension is made before the expiration of the time specified in this section. R.S.O. 1990, c. E.11, s. 10 (5); 2006, c. 33, Sched. I, s. 1.

## **Contents**

[\(6\)](#) The person appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons the person intends to submit in support of the appeal. R.S.O. 1990, c. E.11, s. 10 (6); 1994, c. 8, s. 11 (2).

## **Reply**

[\(7\)](#) The Minister shall, as quickly as possible, serve on the person and file with the court a reply to the notice of appeal admitting or denying the facts alleged and stating such further allegations of fact and all statutory provisions and reasons that the Minister intends to rely on. R.S.O. 1990, c. E.11, s. 10 (7); 1994, c. 8, s. 11 (3).

## **Application**

[\(8\)](#) Where the Minister does not file the reply within 180 days from the date of service of the notice of appeal upon the Minister, the person may, upon twenty-one days notice to the Minister, apply to a judge of the Superior Court of Justice for an order requiring the Minister to serve and file the reply within such time as the judge may order. R.S.O. 1990, c. E.11, s. 10 (8); 1994, c. 8, s. 11 (4); 2001, c. 23, s. 79 (3).

## **Order**

[\(9\)](#) Upon an application under subsection (8), the judge may, if the judge considers it proper in the circumstances, order also that upon the failure of the Minister to serve and file the reply in the time specified in the order, the assessment or part thereof, as the case may be, with respect to which the appeal is taken shall be vacated and any tax paid pursuant to such assessment or the part thereof shall be repaid to the taxpayer. R.S.O. 1990, c. E.11, s. 10 (9); 1994, c. 8, s. 11 (5).

## **Revival**

[\(10\)](#) Nothing in this section revives an appeal that is void or affects an assessment that has become valid and binding under this Act. R.S.O. 1990, c. E.11, s. 10 (10); 1994, c. 8, s. 11 (6); 2010, c. 26, Sched. 6, s. 7 (2).

## **Application under subrule 14.05 (2), Rules of Civil Procedure**

[10.1 \(1\)](#) If the following conditions are satisfied, a person may make an application under subrule 14.05 (2) of the Rules of Civil Procedure to a judge of the Superior Court of Justice:

1. The application is to determine one or more issues of law that depend solely on the interpretation of,
  - i. this Act or the regulations, or
  - ii. this Act or the regulations and another Ontario statute or regulation.
2. The Minister has indicated in writing that the Minister is satisfied that it is in the public interest for the applicant to make the application.
3. The Minister and the applicant have executed a statement of agreed facts on which they both intend to rely and the applicant files the statement as part of the applicant's application record.
4. No facts remain in dispute between the Minister and the applicant that either of them believes may be relevant to the determination of any issue of law that is a subject of

the application. 2006, c. 33, Sched. I, s. 2.

### **Application of rule 38.10, Rules of Civil Procedure**

(2) Rule 38.10 of the Rules of Civil Procedure does not apply to an application referred to in this section, except that the presiding judge may, on the hearing of the application, adjourn the application in whole or in part and with or without terms under clause 38.10 (1) (a). 2006, c. 33, Sched. I, s. 2.

### **Disposition of application**

(3) The court may dispose of an application that is authorized under this section by,

- (a) making a declaration of law in respect of one or more issues of law forming the subject of the application;
- (b) declining to make a declaration of law in respect of any of the issues of law forming the subject of the application; or
- (c) dismissing the application. 2006, c. 33, Sched. I, s. 2.

### **Effect of declaration of law**

(4) No declaration of law made on an application under this section,

- (a) shall be binding on the Minister and the applicant except in relation to the facts agreed to by them in the proceeding; or
- (b) shall otherwise affect the rights of the Minister or the applicant in any appeal instituted under this Act. 2006, c. 33, Sched. I, s. 2.

### **No applications under subrule 14.05 (3)**

(5) No person other than the Minister may bring an application under subrule 14.05 (3) of the Rules of Civil Procedure on or after the day this section comes into force, in respect of any matter arising under this Act. 2006, c. 33, Sched. I, s. 2.

### **Other proceedings**

(6) On the motion of the Minister, the court shall dismiss a proceeding commenced by an application under rule 14.05 of the Rules of Civil Procedure relating to a matter under this Act or the regulations if any condition in subsection (1) has not been satisfied or the application is prohibited under subsection (5). 2006, c. 33, Sched. I, s. 2.

### **Action**

11. (1) Upon the filing of the notice of appeal and reply in the Superior Court of Justice in accordance with section 10, the matter shall be deemed to be an action in that court and the practice and procedure of that court, including the right of appeal, and the practice and procedure relating to appeals, apply to the action. R.S.O. 1990, c. E.11, s. 11 (1); 2001, c. 23, s. 80 (1).

### **Enforcement**

(2) Every judgment or order given or made in the action may be enforced in the same manner and by the same process as a judgment or order in an action commenced in the Superior Court of Justice. R.S.O. 1990, c. E.11, s. 11 (2); 2001, c. 23, s. 80 (2).

### **Irregularity**

(3) An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act. R.S.O. 1990, c. E.11, s. 11 (3); 1994, c. 8, s. 12 (1); 2010, c. 26, Sched. 6, s. 8 (1).

### **Powers of court**

- (4) The court may dispose of an appeal by dismissing it, allowing it or allowing it and,
- (a) vacating the assessment;
  - (b) varying the amount assessed;
  - (c) restoring the assessment; or
  - (d) referring the assessment back to the Minister for reconsideration and reassessment.
- 2010, c. 26, Sched. 6, s. 8 (2).

### **Order for payment**

(5) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax, interest, penalties or costs by the taxpayer or the Minister, as the court considers appropriate. R.S.O. 1990, c. E.11, s. 11 (5); 1994, c. 8, s. 12 (3).

### **Records and books of account**

12. (1) Every person who is or was an employer with a permanent establishment in Ontario shall keep records and books of account in Ontario or at such other place as may be approved by the Minister. 1994, c. 8, s. 13 (1); 2004, c. 16, Sched. D, Table; 2009, c. 18, Sched. 11, s. 3.

### **Form and content**

(2) Every person required by subsection (1) to keep records and books of account shall keep the records and books of account in such form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with. R.S.O. 1990, c. E.11, s. 12 (2); 1994, c. 8, s. 13 (2).

### **Failure to keep records**

(3) The Minister may require a person who has failed to keep records and books of account that comply with subsections (1) and (2) to keep such records and books of account as the Minister specifies. R.S.O. 1990, c. E.11, s. 12 (3); 1994, c. 8, s. 13 (3).

### **Retention of records**

(4) Every person required by this section to keep records and books of account shall, until permission for their disposal is given by the Minister, retain each such record and book of account and every primary source document required to support and verify the entries and information in the records and books of account. R.S.O. 1990, c. E.11, s. 12 (4); 1994, c. 8, s. 13 (4).

### **Audits**

13. (1) The Minister may appoint in writing one or more persons as auditors for the purposes of this Act. R.S.O. 1990, c. E.11, s. 13 (1); 1994, c. 8, s. 14 (1).

### **Entry and audit**

(2) An auditor may at any reasonable time, without a warrant, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are or should be kept pursuant to this Act in order to conduct an audit or examination to determine compliance or non-compliance with this Act. 1994, c. 8, s. 14 (2).

### **Powers to audit and examine**

- (3) Upon an audit or examination under this section, the auditor has the right to,
- (a) examine the premises and the operations carried out on the premises;
  - (b) have free access, at any reasonable time, to all books of account, records, vouchers,

correspondence and any other documents that are or may be relevant for the purposes of determining tax payable under this Act, regardless of the form or medium in which such books, records, vouchers, correspondence and documents are kept, but, if they or any of them are kept in a form or medium that is not legible, the auditor is entitled to require the person apparently in charge of them to produce a legible physical copy for examination and audit by the auditor;

- (c) make, or cause to be made, one or more copies of any document to which the auditor has a right of access under clause (b);
- (d) question any person on the premises with respect to matters that are or may be relevant to an audit or examination under this Act; and
- (e) test the accuracy and integrity of computer programs used in processing information relevant to determining any amount payable under this Act. 1994, c. 8, s. 14 (2).

### **Obstruction of auditor**

[14.](#) No person shall obstruct an auditor or withhold or conceal from an auditor any book of account, record, correspondence or other document that is or may be relevant for the purposes of determining compliance with this Act. 1994, c. 8, s. 15.

### **Demand for information**

[15. \(1\)](#) The Minister may, for the purpose of the administration or enforcement of this Act, by a written notice require from a taxpayer or from a director, employee or agent of a taxpayer, or from any other person,

- (a) any information or additional information or any form; or
- (b) production, or production on oath or affirmation, of books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant to the administration or enforcement of this Act. R.S.O. 1990, c. E.11, s. 15 (1); 1994, c. 8, s. 16 (1); 1997, c. 19, s. 6 (1).

### **Time for production**

[\(2\)](#) A notice under subsection (1) may require that the information or production be given or produced within such reasonable time as is specified in the letter or demand. R.S.O. 1990, c. E.11, s. 15 (2).

[\(3\)](#) Repealed: 2009, c. 18, Sched. 11, s. 4.

### **Copies of documents**

[16.](#) A copy of a book of account, document, correspondence or record, or any part of any of them, certified by an auditor or an employee of the Ministry to be a true copy of the original shall be received in evidence in any proceeding to the same extent and have the same evidentiary value as the material of which it is a copy. R.S.O. 1990, c. E.11, s. 16; 1994, c. 8, s. 17.

### **Administration of oaths**

[17.](#) Any officer or employee of the Ministry who is authorized by the Minister may administer oaths and take or receive affidavits, declarations or affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits. R.S.O. 1990, c. E.11, s. 17.

### **Garnishment**

[18. \(1\)](#) In this section,



“institution” means a bank, credit union, trust corporation or other similar organization. R.S.O. 1990, c. E.11, s. 18 (1).

### **Notice by Minister**

(2) Where the Minister has knowledge or suspects that a person is or will be, within one year, liable to make a payment to a taxpayer who is liable to make a payment under this Act, the Minister may, by a written notice, require the person to pay forthwith, where the money is immediately payable, and, in any other case, as and when the money becomes payable, the money otherwise payable to the taxpayer in whole or in part to the Minister on account of the taxpayer’s liability under this Act. 1994, c. 8, s. 18 (1); 2001, c. 23, s. 81.

### **Same**

- (3) If the Minister has knowledge or suspects that within one year,
- (a) an institution will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer 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 loan or advance money to, or make a payment on behalf of, a taxpayer who the Minister knows or suspects,
    - (i) is engaged in providing services or property to that person, or was or will be within one year, or
    - (ii) where that person is a corporation that is not dealing at arm’s length with the taxpayer,

the Minister may, by a written notice, require the institution or the person, as the case may be, to pay in whole or in part to the Minister, on account of the taxpayer’s liability under this Act, the money that would otherwise be loaned, advanced or paid, and any money paid to the Minister shall be deemed to have been loaned, advanced or paid, as the case may be, to the taxpayer. 1994, c. 8, s. 18 (1); 2004, c. 16, Sched. D, Table; 2011, c. 9, Sched. 13, s. 1.

### **Same**

(4) Where, under this section, the Minister has required a person to pay money otherwise payable by the person to a taxpayer as interest, rent, a dividend, an annuity payment, or other periodic payment,

- (a) the requirement shall apply to all periodic payments to be made by the person to the taxpayer after the date the person receives the Minister’s written notice, until the taxpayer’s liability under this Act has been satisfied; and
- (b) the payments required to be made to the Minister shall be made from each periodic payment in the amount or amounts designated in the Minister’s written notice. 1994, c. 8, s. 18 (1).

### **Receipt of the Minister**

(5) The receipt of the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. 1994, c. 8, s. 18 (1).

### **Liability for failure to comply**

(6) Every person who fails to comply with a requirement under subsection (2), (3) or (4) is liable to pay to the Crown in right of Ontario an amount equal to the amount that the person was required under subsection (2), (3) or (4), as applicable, to pay to the Minister. R.S.O. 1990, c. E.11, s. 18 (6); 1994, c. 8, s. 18 (2).



**Idem**

(7) Every institution or person who fails to comply with a requirement under subsection (2), (3) or (4) with respect to money to be loaned, advanced or paid is liable to pay to the Crown in right of Ontario an amount equal to the lesser of,

- (a) the aggregate of money so loaned, advanced or paid; or
- (b) the amount that the institution or person was required by subsection (2), (3) or (4) to pay to the Minister. R.S.O. 1990, c. E.11, s. 18 (7); 1994, c. 8, s. 18 (3).

***Wages Act***

(8) This section is subject to the *Wages Act*. R.S.O. 1990, c. E.11, s. 18 (8).

**Liability of receivers, etc.**

19. (1) Every trustee or other person required by this Act to file an annual return for a taxpayer in respect of a year shall, within thirty days from the day of mailing of a notice of assessment issued by the Minister, pay all taxes, interest and penalties payable under this Act by the taxpayer to the extent that the person has or had, at any time since the year, in the person's control or possession property belonging to the taxpayer or to the estate of the taxpayer and shall thereupon be deemed to have made the payment on behalf of the taxpayer. 1994, c. 8, s. 19 (1).

**Certificate of taxes paid**

(2) Every assignee, liquidator, receiver, receiver-manager and other agent, other than a trustee in bankruptcy, before distributing any property of the taxpayer under such person's control, shall obtain a certificate from the Minister certifying that all taxes, interest and penalties that have been assessed under this Act and are chargeable against or payable out of the property of the taxpayer have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under this Act. R.S.O. 1990, c. E.11, s. 19 (2); 1994, c. 8, s. 19 (2).

**Personal liability of receivers**

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein is personally liable to the Crown in right of Ontario for an amount equal to the taxes, interest and penalties under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act. R.S.O. 1990, c. E.11, s. 19 (3).

**Recovery of tax, interest and penalties**

20. (1) Upon default of payment by a taxpayer of any tax, interest or penalty imposed by this Act,

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office, may be continued by his or her successor in office as if no change had occurred and shall be tried without a jury;
- (b) the Minister may issue a warrant, directed to the sheriff for an area in which any property of a taxpayer is located or situate, to enforce payment of the following amounts and the warrant has the same force and effect as a writ of execution issued out of the Superior Court of Justice:
  - (i) any amount required under this Act to be paid by the taxpayer,

- (ii) interest on that amount from the date of the issue of the warrant, and
- (iii) the costs, expenses and poundage of the sheriff. R.S.O. 1990, c. E.11, s. 20 (1); 1994, c. 8, s. 20 (1, 2); 2001, c. 23, s. 82; 2011, c. 9, Sched. 13, s. 2 (1).

### **Application of subrule 60.07 (2), Rules of Civil Procedure**

[\(1.1\)](#) Subrule 60.07 (2) of the Rules of Civil Procedure does not apply in respect of a warrant issued by the Minister under clause (1) (b). 2010, c. 26, Sched. 6, s. 9.

### **Security**

[\(2\)](#) The Minister may, if the Minister considers it advisable, accept security for the payment of taxes by a taxpayer by way of a mortgage or other charge of any kind upon the property of the taxpayer or of any other person, or by way of a guarantee of the payment of the taxes by another person. 1994, c. 8, s. 20 (3).

### **Deemed tax**

[\(2.1\)](#) A debt due to the Crown under section 8.1 of the *Financial Administration Act* in respect of a payment or remittance under this Act is deemed, except for the purposes of sections 9, 10 and 11, to be tax assessed and payable under this Act by the taxpayer in respect of whom the payment or remittance is payable, and may be collected and enforced as tax under the provisions of this Act once written notice of the debt has been mailed to the taxpayer. 1994, c. 8, s. 20 (3).

### **Recovery of costs**

[\(3\)](#) The Minister is entitled to recover from a taxpayer the reasonable costs and charges incurred by or on behalf of the Minister in the course of obtaining payment of any amount required to be paid under this Act by the taxpayer, if the costs and charges relate to any of the following things:

1. Service of a notice or other document.
2. Registration of a notice of lien and charge, including any charges for related searches and for enforcement activities.
3. An action under clause 20 (1) (a) for the recovery of any amount payable under this Act.
4. Issuance and execution of a warrant referred to in clause 20 (1) (b), to the extent that the costs and charges are not recovered by the sheriff upon execution of the warrant.
5. Other prescribed payments made by or on behalf of the Minister to a third party. 2011, c. 9, Sched. 13, s. 2 (2).

### **Idem**

[\(4\)](#) For the purpose of collecting debts owed by a taxpayer to the Crown in right of Ontario under this Act, the Minister may purchase or otherwise acquire any interest in the property of a taxpayer that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and the Minister may dispose of an interest so acquired in such manner as the Minister considers reasonable. R.S.O. 1990, c. E.11, s. 20 (4); 1994, c. 8, s. 20 (5).

### **Out-of-province employer**

[21. \(1\)](#) In this section,

“out-of-province employer” means an employer who does not ordinarily maintain a permanent establishment in Ontario but will establish a permanent establishment in Ontario for a

period not exceeding twenty-four months. R.S.O. 1990, c. E.11, s. 21 (1); 2004, c. 16, Sched. D, Table.

## Security

(2) Before establishing a permanent establishment in Ontario, an out-of-province employer shall provide security to the Minister for the tax which may become payable by the employer under this Act and shall obtain a certificate in duplicate from the Minister that the requirements of this section have been met. R.S.O. 1990, c. E.11, s. 21 (2); 2004, c. 16, Sched. D, Table.

## Form of security

(3) The security referred to in subsection (2), and any security in replacement thereof, shall be in a form and of a kind acceptable to the Minister, and the Minister may demand additional or replacement security from time to time if the Minister considers that the original security is insufficient in relation to the out-of-province employer's liabilities which will arise under this Act. R.S.O. 1990, c. E.11, s. 21 (3).

## Waiver by Minister

(4) In the certificate issued under subsection (2), or in any replacement thereof issued after a request by the out-of-province employer, the Minister may waive the requirement that the out-of-province employer provide security if the Minister is satisfied at the time the certificate or replacement certificate is issued that,

- (a) the out-of-province employer will be maintaining a permanent establishment in Ontario for more than twenty-four consecutive months after the issuance of the certificate; or
- (b) the total Ontario remuneration in respect of the out-of-province employer for the year in which the certificate or replacement certificate is issued and for all subsequent years in which the out-of-province employer will be maintaining a permanent establishment in Ontario will be nil. R.S.O. 1990, c. E.11, s. 21 (4); 2004, c. 16, Sched. D, Table.

## Duty of person making payment to out-of-province employer

(5) Any person making a payment to an out-of-province employer without first obtaining the duplicate copy of the certificate to be issued under this section shall,

- (a) deduct 1.95 per cent of all amounts payable to the out-of-province employer and pay such amount to the Minister on behalf of or as agent for the out-of-province employer on account of tax payable by the out-of-province employer under this Act; or
- (b) provide security in a form and of a kind acceptable to the Minister for 1.95 per cent of the total amount payable to the out-of-province employer to secure payment of the tax payable by the out-of-province employer under this Act. R.S.O. 1990, c. E.11, s. 21 (5); 1994, c. 8, s. 21.

## Liability

(6) If a person dealing with an out-of-province employer fails to comply with subsection (5), the person is personally liable for payment of that portion of the tax imposed by this Act each year on the out-of-province employer that is determined in accordance with the following formula:

$$L = T \times (A/R)$$

where:

L is the amount of the liability of the person for the year under this subsection, expressed in dollars;

T is the total amount of tax payable by the out-of-province employer for the year;

A is the portion of the total Ontario remuneration for the year paid by the out-of-province employer in connection with carrying out the terms of all contracts between the person and the out-of-province employer; and

R is the total Ontario remuneration for the year paid by the out-of-province employer.

R.S.O. 1990, c. E.11, s. 21 (6).

### **Computation of interest**

(7) For the purposes of computing interest payable to any person under section 7, any cash deposit paid to the Minister to be held as security under this section shall be considered to be a payment made under this Act, but nothing in this section relieves an out-of-province employer from the requirement to pay instalments under section 3 or any other amount required by this Act to be paid. R.S.O. 1990, c. E.11, s. 21 (7).

### **Compromises**

22. (1) Where there is uncertainty as to the liability of a taxpayer to pay any tax imposed under this Act, or where, owing to special circumstances, it is inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper in satisfaction of any tax, interest and penalties under this Act. R.S.O. 1990, c. E.11, s. 22; 1994, c. 8, s. 22 (1).

### **Minister's discretion to pay interest**

(2) If the Minister believes that the amount of instalments required to be paid by a taxpayer under this Act on account of tax payable for a year exceeds and is inequitable in relation to the amount of tax payable for the year, the Minister may at his or her discretion pay interest at the prescribed rate on part or all of the excess from the date when the Minister considers it equitable to deem an overpayment to have occurred to the date of any refund or application of the excess under subsection 6 (2). 1994, c. 8, s. 22 (2).

### **Lien on real property**

23. (1) Any tax or instalment payable or required to be remitted under this Act by any taxpayer is, upon registration by the Minister in the proper land registry office of a notice claiming a lien and charge conferred by this section, a lien and charge on any interest the taxpayer liable to pay or remit the tax or instalment has in the real property described in the notice. 1994, c. 8, s. 23.

### **Lien on personal property**

(2) Any tax or instalment payable or required to be remitted under this Act by any taxpayer is, upon registration by the Minister with the registrar under the *Personal Property Security Act* of a notice claiming a lien and charge under this section, a lien and charge on any interest in personal property in Ontario owned or held at the time of registration or acquired afterwards by the taxpayer liable to pay or remit the tax or instalment. 1994, c. 8, s. 23.

### **Amounts included and priority**

(3) The lien and charge conferred by subsections (1) and (2) is in respect of all amounts for which the taxpayer is liable under this Act at the time of registration of the notice or any renewal of it and all amounts for which the taxpayer afterwards becomes liable while the notice

remains registered and, upon registration of a notice of lien and charge, the lien and charge has priority over,

- (a) any perfected security interest registered after the notice is registered;
- (b) any security interest perfected by possession after the notice is registered; and
- (c) any encumbrance or other claim that is registered against or that otherwise arises and affects the taxpayer's property after the notice is registered. 1994, c. 18, s. 1.

### **Exception**

[\(3.1\)](#) For the purposes of subsection (3), a notice of lien and charge under subsection (2) does not have priority over a perfected purchase money security interest in collateral or its proceeds and shall be deemed to be a security interest perfected by registration for the purpose of the priority rules under section 28 of the *Personal Property Security Act*. 1994, c. 18, s. 1.

### **Lien effective**

[\(4\)](#) A notice of lien and charge under subsection (2) is effective from the time assigned to its registration by the registrar or branch registrar and expires on the fifth anniversary of its registration unless a renewal notice of lien and charge is registered under this section before the end of the five-year period, in which case the lien and charge remains in effect for a further five-year period from the date the renewal notice is registered. 2001, c. 23, s. 83.

### **Same**

[\(5\)](#) Where any amount payable or required to be remitted under this Act remains outstanding and unpaid at the end of the period, or its renewal, referred to in subsection (4), the Minister may register a renewal notice of lien and charge; the lien and charge remains in effect for a five-year period from the date the renewal notice is registered, until the amount is fully paid, and shall be deemed to be continuously registered since the initial notice of lien and charge was registered under subsection (2). 2001, c. 23, s. 83.

### **Where taxpayer not registered owner**

[\(6\)](#) Where a taxpayer has an interest in real property but is not shown as its registered owner in the proper land registry office,

- (a) the notice to be registered under subsection (1) shall recite the interest of the taxpayer in the real property; and
- (b) a copy of the notice shall be sent to the registered owner at the owner's address to which the latest notice of assessment under the *Assessment Act* has been sent. 1994, c. 8, s. 23.

### **Secured party**

[\(7\)](#) In addition to any other rights and remedies, if taxes or other amounts owed by a taxpayer remain outstanding and unpaid, the Minister has, in respect of a lien and charge under subsection (2),

- (a) all the rights, remedies and duties of a secured party under sections 17, 59, 61, 62, 63 and 64, subsections 65 (4), (5), (6) and (7) and section 66 of the *Personal Property Security Act*;
- (b) a security interest in the collateral for the purpose of clause 63 (4) (c) of that Act; and
- (c) a security interest in the personal property for the purposes of sections 15 and 16 of the *Repair and Storage Liens Act*, if it is an article as defined in that Act. 1994, c. 8, s. 23.



## Registration of documents

[\(8\)](#) A notice of lien and charge under subsection (2) or any renewal of it shall be in the form of a financing statement or a financing change statement as prescribed under the *Personal Property Security Act* and may be tendered for registration at a branch office established under Part IV of that Act, or by mail addressed to an address prescribed under that Act. 1994, c. 8, s. 23.

## Errors in documents

[\(9\)](#) A notice of lien and charge or any renewal thereof is not invalidated nor is its effect impaired by reason only of an error or omission in the notice or in its execution or registration, unless a reasonable person is likely to be materially misled by the error or omission. 1994, c. 8, s. 23.

## Bankruptcy and Insolvency Act (Canada) unaffected

[\(10\)](#) Subject to Crown rights provided under section 87 of that Act, nothing in this section affects or purports to affect the rights and obligations of any person under the *Bankruptcy and Insolvency Act* (Canada). 1994, c. 8, s. 23.

## Definition

[\(11\)](#) In this section,

“real property” includes fixtures and any interest of a taxpayer as lessee of real property. 1994, c. 8, s. 23.

## Remedies

[24. \(1\)](#) The use of a remedy provided by this Act does not bar or affect any of the other remedies provided by this Act. R.S.O. 1990, c. E.11, s. 24 (1).

## Additional remedies

[\(2\)](#) The remedies provided by this Act for the recovery or enforcement of the payment of any tax, interest and penalty or any of them imposed by this Act are in addition to any other remedies existing by law. R.S.O. 1990, c. E.11, s. 24 (2).

## Priorities

[25.](#) No action or other proceeding taken under this Act in any way prejudices, limits or affects any charge or priority existing under this Act or otherwise. R.S.O. 1990, c. E.11, s. 25.

## Evidence

[26. \(1\)](#) For the purpose of a proceeding under this Act, an affidavit by the Minister or an officer of the Ministry is, in the absence of evidence to the contrary, proof of the facts set out in the affidavit without proof of the signature or office of the Minister or officer of the Ministry. R.S.O. 1990, c. E.11, s. 26.

## Print-out admissible in evidence

[\(2\)](#) If a return, statement or other document has been delivered by a person to the Minister on computer disk or by other electronic medium, a document, accompanied by the certificate of the Minister, or of a person authorized by the Minister, stating that the document is a print-out of the return, statement or document received by the Minister from the person and certifying that the information contained in the document is a true and accurate representation of the return, statement or document delivered by the person, is admissible in evidence and shall have the same probative force as the original return, statement or document would have had if it had been delivered as a paper return, statement or document. 1994, c. 8, s. 24.

## Same

**(3)** The Minister or a person authorized by the Minister may, for any purpose related to the administration or enforcement of this Act, reproduce from original data stored electronically any document previously issued by the Minister under this Act, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way. 1994, c. 8, s. 24.

### Same

**(4)** If the data contained on a return, statement or other document received by the Minister from a person has been stored electronically by the Minister on computer disk or other electronic medium and the paper return, statement or other document has been destroyed by a person so authorized by the Minister, a document, accompanied by the certificate of the Minister or of a person authorized by the Minister, stating that the document is a print-out of the data contained on the return, statement or other document received and stored electronically by the Minister and certifying that the information contained in the document is a true and accurate representation of the data contained on the return, statement or document delivered by the person, is admissible in evidence and shall have the same probative force as the original return, statement or document would have had if it had been proved in the ordinary way. 1994, c. 8, s. 24.

### Confidentiality

**27.** Every person employed or formerly employed in the administration or enforcement of this Act or in the development and evaluation of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person except,

- (a) as may be required in connection with the administration or enforcement of this Act, any other Act administered by the Minister or the *Income Tax Act* (Canada) or the regulations made under any of them;
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario;
- (c) with the consent of the person to whom the information or material relates;
- (d) to counsel for the person required by this section to preserve secrecy. R.S.O. 1990, c. E.11, s. 27; 1994, c. 8, s. 25.

### Exchange of information

**28.** The Minister may, for the purpose of administering this Act, enter into agreements with the Government of Canada or any province or territory of Canada, or with a ministry or a prescribed board, commission or agency of such a government, under which the government, ministry, board, commission or agency will be allowed access to information obtained by the Minister under this Act and will allow the Minister access to information the government, ministry, board, commission or agency has obtained under statutory authority. 1994, c. 8, s. 26.

### Service of documents

**29. (1)** Any notice or other document required by this Act to be served or given may be served personally, may be sent by registered mail addressed to the person to whom the notice or other document is to be served or given at the last known address of the person or may be served in the prescribed manner. R.S.O. 1990, c. E.11, s. 29 (1).

### Address

(2) A notice by the Minister under this Act is validly addressed,

- (a) to a person, if addressed to the person in the name or style under which the person carries on business;
  - (b) to persons who carry on business in partnership, if addressed to the partnership.
- R.S.O. 1990, c. E.11, s. 29 (2); 1994, c. 8, s. 27 (1, 2); 2004, c. 16, Sched. D, Table.

### **Personal service**

(3) A notice by the Minister under this Act is validly served,

- (a) upon a person, if left with an adult person employed at the place of business of the person to whom the notice is addressed;
- (b) upon persons who carry on business in partnership, if served on one of the partners or left with an adult person employed at the place of business of the partnership. R.S.O. 1990, c. E.11, s. 29 (3); 1994, c. 8, s. 27 (3); 2004, c. 16, Sched. D, Table.

### **Registered mail**

(4) A notice or other document sent by registered mail in accordance with subsection (1) shall be deemed to have been served or given on the fifth day after the day of mailing unless the person to whom the notice or other document is sent establishes that, although acting in good faith, the person did not receive the notice or did not receive the notice until a later date. R.S.O. 1990, c. E.11, s. 29 (4).

### **Delivery to Minister**

(5) A return or other document under this Act that is delivered to the Minister shall be deemed to be delivered on the day it is received by the Minister. R.S.O. 1990, c. E.11, s. 29 (5).

### **Penalties**

#### **Penalties, failure to deliver return**

30. (1) Every person who fails to deliver a return in respect of 2003 or a previous year at the time and in the manner required by this Act or the regulations shall pay a penalty, when assessed therefor, equal to 5 per cent of the amount determined under subsection 7 (1) to be the excess amount in respect of the year as of the date on which the return was required to be delivered, before taking into consideration the penalty imposed under this subsection, if the excess amount as of that date is at least \$1,000. 2004, c. 31, Sched. 12, s. 5; 2012, c. 8, Sched. 13, s. 4.

#### **Same, return 2004 and subsequent years**

(1.1) Subject to subsection (1.3), every person who fails to deliver a return in respect of 2004 or a subsequent year at the time and in the manner required by this Act or the regulations shall pay a penalty, when assessed therefor, in the amount calculated using the formula,

$$(0.05 \times D) + M (0.01 \times D)$$

in which,

“D” is the amount, if any, that is determined under subsection 7 (1) to be the excess amount in respect of the year as of the date on which the return was required to be delivered, before taking into consideration the penalty imposed under this subsection, and

“M” is the number of complete months, not exceeding 12, from the date on which the return was required to be delivered to the date on which it is delivered,

if the amount of “D” is at least \$1,000.

2004, c. 31, Sched. 12, s. 5.

**Repeated failures to deliver a return**

(1.2) Subject to subsection (1.3), every person who fails to deliver a return in respect of 2004 or a subsequent year at the time and in the manner required by this Act or the regulations and who has received a demand for the return under subsection 5 (1.0.1) is liable to a penalty determined in accordance with the following formula, instead of a penalty under subsection (1.1), if, on or before the day on which the tax to which the return relates is assessed, a penalty was assessed against the person under subsection (1) or (1.1) or this subsection in respect of a return required to be delivered under this Act for any of the three previous years:

$$(0.10 \times D) + MM (0.02 \times D)$$

in which,

“D” has the same meaning as in subsection (1.1), and

“MM” is the number of complete months, not exceeding 20, from the date on which the return was required to be delivered to the date on which it is delivered,

if the amount of “D” is at least \$1,000.

2004, c. 31, Sched. 12, s. 5.

**Exception**

(1.3) Subsections (1.1) and (1.2) do not apply,

- (a) to an employer referred to in clause 3 (2) (b), if the total Ontario remuneration for the year was paid by the employer during May 2004 or an earlier month;
- (b) to an employer who ceased to have a permanent establishment in Ontario on or before May 18, 2004; or
- (c) to a person who is required to deliver a return under subsection 5 (7), if the taxpayer for whom the person is required to deliver the return became bankrupt on or before May 18, 2004. 2004, c. 31, Sched. 12, s. 5.

**Same**

(1.4) Subsection (1) applies, with necessary modifications, to a person described in subsection (1.3) if the person fails to deliver a return in respect of 2004 at the time and in the manner required by this Act or the regulations. 2004, c. 31, Sched. 12, s. 5.

**Penalty, failure to deliver statement**

(2) Every person who fails to deliver a statement at the time and in the manner required by this Act or the regulations shall pay a penalty when assessed therefor equal to 5 per cent of the instalment or portion of the instalment required to be accounted for on the statement that was unpaid on the date the statement was required to be delivered, if the instalment or portion is at least \$1,000. 1994, c. 8, s. 29.

**Exception**

(2.1) Subsection (2) does not apply to an employer for a year if the employer’s total Ontario remuneration for the prior year was \$600,000 or less. 2001, c. 23, s. 84.

**Same**

(2.2) If an employer,

- (a) was formed in a year as a result of an amalgamation under section 87 of the *Income Tax Act* (Canada);

- (b) was formed and acquired property in the year as a result of a qualifying exchange under section 132.2 of the *Income Tax Act* (Canada); or
- (c) was formed and acquired in the year all or substantially all of the property of a transferor in a transfer to which subsection 85 (1) or (2) or 97 (2) of the *Income Tax Act* (Canada) applies,

the total Ontario remuneration paid by the employer for the year shall be determined, for the purposes of subsection (2.1), by multiplying the total Ontario remuneration paid by the employer for the year by the ratio of 365 to the number of days in the year. 2002, c. 22, s. 67.

### Same

[\(2.3\)](#) Subsection (2.1) does not apply to the following employers for a particular year if the condition specified with respect to the employer is satisfied:

1. An employer that was formed in the year as a result of an amalgamation under section 87 of the *Income Tax Act* (Canada), if the total Ontario remuneration for the prior year of at least one of the predecessor corporations that amalgamated to form the employer in that year was more than \$600,000.
2. An employer that acquired property in the year in the course of a winding-up to which subsection 88 (1) or (2) of the *Income Tax Act* (Canada) applies, if the total Ontario remuneration for the prior year of the corporation that transferred the property to the employer in the year in the course of the winding-up was more than \$600,000.
3. An employer that acquired property in the year as a result of a qualifying exchange under section 132.2 of the *Income Tax Act* (Canada), if the total Ontario remuneration for the prior year of the corporation or trust that disposed of the property to the employer in the year was more than \$600,000.
4. An employer that acquired in the year all or substantially all of the property of a transferor in a transfer to which subsection 85 (1) or (2) or 97 (2) of the *Income Tax Act* (Canada) applies, if the total Ontario remuneration for the prior year of the transferor was more than \$600,000. 2002, c. 22, s. 67.

### Failure to complete

[\(3\)](#) Every person who fails to complete the information required on a return, statement or other document required to be filed under the Act is liable to a penalty when assessed therefor equal to,

- (a) in the case of a return or statement, the greater of 1 per cent of the tax or the instalment or portion of the instalment to which the return or statement relates, or \$50, up to a maximum of \$200; or
- (b) in the case of any other document, \$50. 1994, c. 8, s. 28.

### False statements

[\(4\)](#) Where a taxpayer or a person acting or purporting to act on behalf of a taxpayer, knowingly, or in circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of an incorrect statement or an omission in a return, certificate or other document delivered or made under this Act or the regulations, the taxpayer is liable to a penalty when assessed therefor of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable under this Act if the amount on which the tax for the year had been computed included any amount that was not included by reason



of the incorrect statement or omission,

exceeds,

- (b) the tax for the year that would have been payable by the taxpayer under this Act had the tax payable for the year been calculated on the basis of the information provided in the return, certificate or other document, as the case may be. 1994, c. 8, s. 28.

## **Offence, returns and records**

### **Offences, statements**

[31. \(1\)](#) Every person who makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer or other document delivered or made as required by or under this Act or the regulations is guilty of an offence. R.S.O. 1990, c. E.11, s. 31 (1).

### **Idem, records**

[\(2\)](#) Every person who, to evade payment of the tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a taxpayer is guilty of an offence. R.S.O. 1990, c. E.11, s. 31 (2); 1994, c. 8, s. 30 (1).

### **Idem**

[\(3\)](#) Every person who makes, assents to or acquiesces in the making of false or deceptive entries in records or books of account of a taxpayer is guilty of an offence. R.S.O. 1990, c. E.11, s. 31 (3); 1994, c. 8, s. 30 (2).

### **Offences, material facts**

[\(4\)](#) Every person who omits, or assents to or acquiesces in the omission, to enter a material particular in records or books of account of a taxpayer is guilty of an offence. R.S.O. 1990, c. E.11, s. 31 (4); 1994, c. 8, s. 30 (3).

### **Offence, compliance**

[\(5\)](#) Every person who wilfully in any manner evades or attempts to evade compliance with this Act or payment of the tax imposed by this Act is guilty of an offence. R.S.O. 1990, c. E.11, s. 31 (5).

### **Offence, conspiracy**

[\(6\)](#) Every person who conspires with any other person to commit an offence described in subsections (1) to (5) is guilty of an offence. R.S.O. 1990, c. E.11, s. 31 (6).

### **Punishment**

[\(7\)](#) Every person who is guilty of an offence under subsection (1), (2), (3), (4), (5) or (6), in addition to any other penalty, is liable on conviction to,

- (a) a fine of not less than the greater of \$500 and 25 per cent of the amount of the tax that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the tax which should have been shown to be payable or which was sought to be evaded;
- (b) imprisonment for a term of not more than two years; or
- (c) both a fine under clause (a) and imprisonment under clause (b). R.S.O. 1990, c. E.11, s. 31 (7).

### **Refund obtained by fraud**

[\(8\)](#) Every person who, by deceit, falsehood, or by any fraudulent means, obtains or attempts to obtain a refund of tax under this Act or the regulations to which the person is not

entitled is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than an amount that is double the amount of the refund obtained or sought to be obtained, or to a term of imprisonment of not more than two years, or to both. 1994, c. 8, s. 30 (4); 2010, c. 26, Sched. 6, s. 10.

### **Offence, failure to deliver return**

32. Every person who fails to deliver a return at the time and in the manner required by this Act or the regulations, or who fails to supply information or fails to produce material as required by section 15, is guilty of an offence and is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues. 1994, c. 8, s. 31.

### **Offence, records and books of account**

33. (1) Every person who fails to keep records and books of account in accordance with this Act and the regulations is guilty of an offence. R.S.O. 1990, c. E.11, s. 33 (1).

#### **Idem**

(2) Every person who fails to keep such records and books of account as the Minister specifies under subsection 12 (3) is guilty of an offence. R.S.O. 1990, c. E.11, s. 33 (2).

#### **Idem**

(3) Every person who fails to retain records, books of account and source documents required by this Act until permission for disposal is given by the Minister is guilty of an offence. R.S.O. 1990, c. E.11, s. 33 (3).

#### **Fine**

(4) Every person who is guilty of an offence under subsection (1), (2) or (3) is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues. R.S.O. 1990, c. E.11, s. 33 (4).

### **Offence, obstruction**

34. Every person who obstructs an auditor or withholds or conceals from any auditor any record, book of account or other document or information that is relevant or may be relevant for the purposes of determining compliance or non-compliance with this Act is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$5,000 on a first conviction and not less than \$100 and not more than \$10,000 on each subsequent conviction. 1994, c. 8, s. 32.

### **General offence**

35. Every person who contravenes or fails to comply with any provision of this Act or the regulations is guilty of an offence and on conviction, where no other fine is provided in this Act, is liable for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000. R.S.O. 1990, c. E.11, s. 35; 1994, c. 8, s. 33.

### **Officers, etc., of corporations**

36. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. R.S.O. 1990, c. E.11, s. 36; 2004, c. 16, Sched. D, Table.

### **Limitation**

37. Proceedings for an offence under this Act or the regulations shall not be commenced after six years after the date on which the offence was, or is alleged to have been, committed.

R.S.O. 1990, c. E.11, s. 37.

## Regulations

38. (1) The Lieutenant Governor in Council may make regulations,
- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
  - (b) defining any word or expression in this Act that has not been expressly defined in this Act;
  - (c) prescribing rates of interest for the purposes of this Act or a formula for computing the rates and the method of calculating the interest;
  - (d) requiring or permitting the payment of instalments on account of tax payable under this Act at times and with respect to time periods other than as required under section 3, and providing for the method of determining the amount of such instalment payments;
  - (e) requiring or permitting the determination of the amount of an instalment payment in a manner other than as required under section 3;
  - (f) prescribing persons or classes of persons who will be exempt from the payment of tax and from the requirement to make instalment payments under this Act;
  - (g) prescribing classes of individuals or employees whose remuneration shall be deemed not to form part of total Ontario remuneration paid by an employer or a class of employers;
  - (h) Repealed: 2010, c. 26, Sched. 6, s. 11.
  - (i) prescribing the classes of persons who may calculate tax or instalments of tax under this Act as if remuneration paid by such a person were paid by more than one employer, the circumstances in which the classes of persons may calculate tax or instalments in that manner, and the method for determining the amount of the remuneration and the tax or the instalments that will be considered to be paid or payable by each person;
  - (j)-(m) Repealed: 2010, c. 26, Sched. 6, s. 11.

R.S.O. 1990, c. E.11, s. 38 (1); 1994, c. 8, s. 34; 1994, c. 17, s. 60; 2010, c. 26, Sched. 6, s. 11.

(2) Repealed: 1997, c. 19, s. 6 (2).

## Retroactivity

(3) A regulation is, if it so provides, effective with reference to a period before it is filed under Part III (Regulations) of the *Legislation Act, 2006*. R.S.O. 1990, c. E.11, s. 38 (3); 2006, c. 21, Sched. F, s. 136 (1).

## Forms

38.1 The Minister may approve the use of forms for any purpose of this Act and the forms may provide for such information to be furnished as the Minister may require. 1997, c. 19, s. 6 (3).

## The Crown

39. This Act binds the Crown. R.S.O. 1990, c. E.11, s. 39.

## Questionnaires

40. The Minister may for any purpose related to the administration of this Act request

information from any taxpayer by way of a questionnaire, and every taxpayer shall respond within such reasonable time as is specified in the request. R.S.O. 1990, c. E.11, s. 40; 1994, c. 8, s. 35.

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