

Committee Stage - Bill 44

Budget Measures Implementation (Employer Health Tax) Act, 2018

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**HONOURABLE CAROLE JAMES
MINISTER OF FINANCE AND DEPUTY PREMIER**

**BILL 44 – 2018
BUDGET MEASURES IMPLEMENTATION
(EMPLOYER HEALTH TAX) ACT, 2018**

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Explanatory Note

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

PART 1 – INTERPRETATION AND SPECIAL RULES

Definitions

1 In this Act:

"assessment", in relation to an assessment under this Act, includes a reassessment;

"BC remuneration", in relation to an employer, means the total of the following:

- (a) all remuneration paid by the employer to or on behalf of the employer's employees, other than former employees, who
 - (i) subject to section 3 (1) and (2), report for work at a permanent establishment of the employer in British Columbia, or
 - (ii) do not report for work at a permanent establishment of the employer, whether or not in British Columbia, if the remuneration is paid from or through a permanent establishment of the employer in British Columbia;
- (b) all remuneration paid by the employer to or on behalf of any of the employer's former employees who, when the former employee was last employed by the employer,
 - (i) subject to section 3 (3), reported for work at a permanent establishment of the employer in British Columbia, or
 - (ii) did not report for work at a permanent establishment of the employer, whether or not in British Columbia, if remuneration was paid to the former employee from or through a permanent establishment of the employer in British Columbia;

"charitable or non-profit employer" means an employer that is

- (a) a registered charity as defined in section 248 (1) of the *Income Tax Act* (Canada), or
- (b) a non-profit organization,

but does not include

(c) an organization within the government reporting entity as defined in the *Budget Transparency and Accountability Act*, or

(d) an organization in a prescribed class of organizations;

"commissioner" means

(a) subject to paragraph (b), the Commissioner of Income Tax appointed under the *Income Tax Act*, or

(b) another person designated under section 88 [*designation of commissioner*] of this Act by the minister to administer this Act;

"employee" means the following:

(a) an individual employed by an employer;

(b) an individual appointed to an office with an employer who receives remuneration in respect of the performance of the duties of the office;

(c) a former employee;

"employer" means the following:

(a) a person who pays remuneration to an employee;

(b) a trustee in bankruptcy, assignee, liquidator, receiver, administrator or other person administering, managing, winding up, controlling or otherwise dealing with property or business of a person referred to in paragraph (a);

"former employee" means an individual who was formerly an employee within the meaning of paragraph (a) or (b) of the definition of "employee";

"non-profit organization" means an organization described in section 149 (1) (e), (g), (i), (j), (k) or (l) of the *Income Tax Act* (Canada);

"permanent establishment" means any fixed place of business, including, without limitation, an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse or a workshop;

"person" includes the following:

(a) a trust;

(b) an unincorporated association;

(c) the government of British Columbia, another province or Canada;

(d) the government of another jurisdiction in Canada;

"remuneration" includes all payments, benefits and allowances received or deemed to be received by an individual that are required under section 5, 6 or 7 of the *Income Tax Act* (Canada), 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, including, without limitation,

(a) salaries and wages,

- (b) bonuses,
- (c) taxable allowances, and
- (d) 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 the retirement of the former employee;

"tax return" means a tax return required to be filed under any of sections 32 to 34 [*annual return; tax return – bankrupt employer; tax return for part-year permanent establishment*] and 37 [*tax return on demand*].

Remuneration paid by employer

2 (1) The following rules apply for the purposes of this Act:

- (a) 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 required under section 5, 6 or 7 of the *Income Tax Act* (Canada) to be included in the income of a person under that Act;
- (b) all remuneration received, or deemed to be received under section 5, 6 or 7 of the *Income Tax Act* (Canada), by an employee of the employer in respect of the employee's employment by the employer is deemed to be remuneration paid by that employer to or on behalf of the employee.

(2) In subsection (1) (a), **"employee benefit plan"**, **"employee trust"**, **"employees profit sharing plan"** and **"salary deferral arrangement"** have the same meanings as in section 248 (1) of the *Income Tax Act* (Canada).

BC remuneration

3 (1) For the purposes of this Act, the remuneration paid to or on behalf of an employee, other than a former employee, who reports for work at a permanent establishment of the employer in British Columbia at any time during a calendar year includes all remuneration paid to or on behalf of the employee during the calendar year, whether or not the employee also reports for work at a permanent establishment of the employer outside British Columbia at any time during that calendar year.

(2) Despite subsection (1), if the commissioner is satisfied that an employee reported for work at a permanent establishment of an employer outside British Columbia for all or substantially all of the calendar year, no remuneration paid to or on behalf of the employee is to be included in the employer's BC remuneration for that calendar year.

(3) If the commissioner is satisfied that a former employee, in the calendar year during which the former employee was last employed by the former employee's employer, reported for work at a permanent establishment of the employer outside British Columbia for all or substantially all of the period in that calendar year the former employee was employed by that employer, no remuneration paid to or on behalf of the former employee is to be included in the employer's BC remuneration for the calendar year in which the remuneration was paid.

Deemed permanent establishment

4 Without limiting the definition of "permanent establishment", the following rules apply for the purposes of this Act:

- (a) a corporation is deemed to have a permanent establishment in the place designated in its charter, articles of incorporation, constitution or bylaws, as the case may be, as being the corporation's head or registered office;
- (b) an employer is deemed to have a permanent establishment in a jurisdiction if the employer carries on business in the jurisdiction through an employee or agent who has general authority to contract on behalf of that employer;
- (c) an employer is deemed to have a permanent establishment in a jurisdiction if an employee or agent of the employer
 - (i) has a stock of merchandise owned by that employer in the jurisdiction, and
 - (ii) fills orders received by the employee or agent from the stock of merchandise;
- (d) land or premises owned or leased by an employer is deemed to be a permanent establishment of the employer;
- (e) an employer is deemed to have a permanent establishment at the place where and during the time when the employer uses substantial machinery or equipment;
- (f) an insurance corporation is deemed to have 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 calendar year is deemed to have a permanent establishment at any place where the employer, in the calendar year, produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, any thing in Canada, whether or not the employer exports that thing before selling it;
- (h) an employer who has no fixed place of business is 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.

Reporting for work at permanent establishment

- 5 For the purposes of this Act, an employee reports for work at a permanent establishment of the employee's employer if the employee comes to the permanent establishment in person to work or otherwise can reasonably be considered to be attached to the permanent establishment.

Deemed employer

- 6 (1) In this section:

"BC resident" means a person who has a permanent establishment in British Columbia;

"non-resident employer" means an employer that does not have a permanent establishment in British Columbia.

(2) This section applies if a BC resident and a non-resident employer enter into an agreement under which work is performed or services are provided for the benefit of the BC resident by an employee of the non-resident employer.

(3) Subsection (4) applies in respect of the BC resident and employee referred to in subsection (2) if the following requirements are met during the period in a calendar year in which the work is performed or the services are provided:

- (a) the non-resident employer does not have a permanent establishment in British Columbia at any time during the period;
- (b) the non-resident employer is not subject to tax under this Act in respect of the remuneration paid to or on behalf of the employee during the period in respect of the work performed or services provided by the employee for the benefit of the BC resident;
- (c) the work performed or services provided by the employee for the benefit of the BC resident
 - (i) is performed or provided in British Columbia under the direction or approval of the BC resident, and
 - (ii) is of a type that can reasonably be considered to be performed or provided by an employee of the BC resident;
- (d) the BC resident and non-resident employer do not deal with each other at arm's length at any time during the period or did not deal with each other at arm's length at the time the agreement referred to in subsection (2) was entered into.

(4) For the purposes of this Act, if this subsection applies to a BC resident and employee referred to in subsection (2), the following rules apply during the period in the calendar year in which the work is performed or the services are provided:

- (a) the BC resident is deemed
 - (i) to be the employee's employer, and

(ii) to have paid remuneration to or on behalf of the employee during the period in an amount equal to the remuneration paid by the non-resident employer to or on behalf of the employee during the period in respect of the work performed or services provided by the employee for the benefit of the BC resident;

(b) the employee is deemed

(i) to be the BC resident's employee, and

(ii) to report for work during the period at a permanent establishment of the BC resident in British Columbia.

Application of federal provisions – arm's length

7 Section 251 of the *Income Tax Act* (Canada) applies for the purposes of this Act.

PART 2 – IMPOSITION OF TAX

Division 1 – Tax on Employers

Tax on BC remuneration paid in calendar year

8 Subject to this Act, an employer must pay to the government for each calendar year a tax equal to 1.95% of the BC remuneration paid by the employer during the calendar year.

Division 2 – Employers Other Than Associated Employers and Charitable or Non-Profit Employers

Application of Division

9 This Division applies to an employer for a calendar year unless Division 3, 4 or 5 of this Part applies to the employer for the calendar year.

Exemption – BC remuneration not greater than \$500 000

10 Subject to section 12, if the BC remuneration paid during a calendar year by an employer is not greater than \$500 000, no tax is payable under this Part by the employer for the calendar year.

Notch rate – BC remuneration not greater than \$1 500 000

11 Subject to section 12, if the BC remuneration paid during a calendar year by an employer is greater than \$500 000 but not greater than \$1 500 000, the tax payable under this Part by the employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds \$500 000.

Proration for part-year permanent establishment

12 (1) This section applies to an employer for a calendar year if the employer has a permanent establishment in British Columbia for only part of the calendar year.

(2) If the BC remuneration paid during a calendar year by an employer to whom this section applies is not greater than the amount determined by the following formula, no tax is payable under this Part by the employer for the calendar year:

$$\text{amount} = \$500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

(3) If the BC remuneration paid during a calendar year by an employer to whom this section applies is greater than the amount determined by the formula in subsection (2) but not greater than the amount determined by the following formula, the tax payable under this Part by the employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds the amount determined by the formula in subsection (2):

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

Division 3 – Associated Employers

Definition of "associated employers"

13 In this Division, "**associated employers**", in relation to an employer for a calendar year, means all of the following:

- (a) the employer;
- (b) all of the employers that are associated with the employer referred to in paragraph (a) at the end of the calendar year.

Application of Division

14 (1) Subject to subsection (2), this Division applies to an employer for a calendar year if the employer is associated with one or more other employers at the end of the calendar year.

(2) This Division does not apply to an employer for a calendar year if Division 4 or 5 of this Part applies to the employer for the calendar year.

Application of federal provisions – associated employers

15 (1) Subject to this Act, section 256 of the *Income Tax Act* (Canada) applies for the purposes of this Division.

(2) Section 256 (2), (2.1) and (7) to (9) of the *Income Tax Act* (Canada) does not apply for the purposes of this Division.

(3) In applying section 256 of the *Income Tax Act* (Canada) for the purposes of this Division, the following rules apply:

(a) that section is to be read as if the references to "taxation year" were references to "calendar year";

(b) subsections (3) and (4) of that section are to be read as if the references to "Minister" were references to "commissioner".

Other rules – associated employers

16 (1) For the purposes of determining, at any time, whether 2 or more employers are associated with each other, the following rules apply:

(a) if an employer is an individual,

(i) the employer is deemed to be a corporation having issued a capital stock of a single class of voting shares, and

(ii) the individual is deemed to own, at that time, all of the issued shares of that class;

(b) if an employer is a partnership or a trust,

(i) the employer is deemed to be a corporation having issued a capital stock of a single class of voting shares divided into 100 issued shares, and

(ii) each member of the partnership or each beneficiary under the trust is deemed to own, at that time, the number of issued shares of that class that is equal to the proportion of 100 that

(A) 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

(B) the total income or loss of the partnership or trust for that fiscal period.

(2) For the purposes of subsection (1) (b) (ii), if the income or loss of the partnership or trust for a period is zero, the proportion under that subsection is to be determined as if the partnership or trust had income for the period in the amount of \$100.

(3) The following rules apply for the purposes of this Division:

- (a) subject to paragraph (b), if
- (i) 2 employers would not, but for this paragraph, be associated with each other at a particular time, and
 - (ii) each of the 2 employers is associated with the same employer at the particular time,

the 2 employers are deemed to be associated with each other at that particular time;

(b) subject to paragraph (c), if an employer would, but for this paragraph, be associated at a particular time with a charitable or non-profit employer, the 2 employers are deemed not to be associated with each other at the particular time;

(c) if 2 or more employers who are not charitable or non-profit employers would be deemed to be associated with each other under paragraph (a) at a particular time because each of the employers is, but for paragraph (b), associated with the same charitable or non-profit employer, those employers are deemed to be associated with each other at the particular time;

- (d) if it may reasonably be considered that
- (i) the separate existence of 2 or more employers at the end of a calendar year, or
 - (ii) the transfer of a business or part of a business from one employer to another employer in a calendar year

was undertaken or arranged primarily for the purpose of reducing the amount of tax payable under this Act by any one of the employers for the calendar year, those employers are deemed to be associated with each other at the end of the calendar year.

Exemption – associated employers

17 No tax is payable under this Part by an employer for a calendar year if the total BC remuneration paid during the calendar year by all of the associated employers is not greater than

- (a) \$500 000, or
- (b) if each of the associated employers has a permanent establishment in British Columbia for only part of the calendar year, the amount determined by the following formula in respect of the associated employers:

$$\text{amount} = \$500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC = the number of days in the calendar year in which at least

permanent establishment one of the associated employers has one or more permanent establishments in British Columbia.

Allocation agreement

18 (1) In this section:

"allocation agreement" means a written agreement in the form and containing the information required by the commissioner;

"exemption amount", in relation to an employer for a calendar year, means the lesser of the following:

(a) the amount assigned to the employer for the calendar year under the allocation agreement referred to in subsection (2) (b);

(b) the amount determined by the following formula:

$$\text{amount} = \$500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

(2) This section applies to an employer for a calendar year if the following requirements are met:

(a) the total BC remuneration paid during the calendar year by all of the associated employers is

(i) greater than \$500 000 and not greater than \$1 500 000, or

(ii) if each of the associated employers has a permanent establishment in British Columbia for only part of the calendar year,

(A) greater than the amount determined by the formula in section 17 (b), and

(B) not greater than the amount determined by the following formula in respect of the associated employers:

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which at least one of the associated employers has one or more permanent establishments in British Columbia;

(b) the associated employers file with the commissioner an allocation agreement that assigns, for the purposes of this Division, an amount not less than zero to each of the associated employers for the calendar year;

(c) the total of the amounts assigned by the allocation agreement referred to in paragraph (b) does not exceed \$500 000 or the amount referred to in paragraph (a) (ii) (A), as the case may be.

(3) If the BC remuneration paid during a calendar year by an employer to whom this section applies is not greater than the employer's exemption amount for the calendar year, no tax is payable under this Part by the employer for that calendar year.

(4) If the BC remuneration paid during a calendar year by an employer to whom this section applies is greater than the employer's exemption amount for the calendar year, the tax payable under this Part by the employer for that calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds the employer's exemption amount.

Division 4 – Charitable or Non-Profit Employers

Application of Division

19 (1) Subject to subsection (2), this Division applies to an employer for a calendar year if the employer is a charitable or non-profit employer

(a) on the last day of the calendar year, or

(b) in the case of an employer that has a permanent establishment in British Columbia for only part of the calendar year, on the last day in the calendar year that the employer has a permanent establishment in British Columbia.

(2) This Division does not apply to an employer for a calendar year if Division 5 of this Part applies to the employer for the calendar year.

Exemption – BC remuneration not greater than \$1 500 000

20 Subject to section 22, if the BC remuneration paid during a calendar year by a charitable or non-profit employer is not greater than \$1 500 000, no tax is payable under this Part by the charitable or non-profit employer for the calendar year.

Notch rate – BC remuneration not greater than \$4 500 000

21 Subject to section 22, if the BC remuneration paid during a calendar year by a charitable or non-profit employer is greater than \$1 500 000 but not greater than \$4 500 000, the tax payable under this Part by the charitable or non-profit employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds \$1 500 000.

Proration for part-year permanent establishment

22 (1) This section applies to a charitable or non-profit employer for a calendar year if the charitable or non-profit employer has a permanent establishment in British Columbia for only part of the calendar year.

(2) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies is not greater than the amount determined by the following formula, no tax is payable under this Part by the charitable or non-profit employer for the calendar year:

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

(3) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies is greater than the amount determined by the formula in subsection (2) but not greater than the amount determined by the following formula, the tax payable under this Part by the charitable or non-profit employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds the amount determined by the formula in subsection (2):

$$\text{amount} = \$4\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

Division 5 – Charitable or Non-Profit Employers with 2 or More Qualifying Locations

Definition of "qualifying location"

23 (1) In this Division, "**qualifying location**" means a qualifying location within the meaning of subsection (2).

(2) For the purposes of this Division, a qualifying location, in relation to an employer, consists of all of the following:

(a) land or premises that

(i) is, or is part of, a permanent establishment of the employer in British Columbia, and

(ii) meets the following requirements:

(A) the employer has the exclusive right to occupy the land or premises;

(B) the land or premises is used and occupied solely by the employer;

(b) any land or premises contiguous to the land or premises referred to in paragraph (a) that is, or is part of, a permanent establishment of the employer.

Application of Division

24 This Division applies to an employer for a calendar year if the following requirements are met:

(a) the employer is a charitable or non-profit employer

(i) on the last day in the calendar year, or

(ii) in the case of an employer that has a permanent establishment in British Columbia for only part of the calendar year, on the last day in the calendar year that the employer has a permanent establishment in British Columbia;

(b) the employer has 2 or more qualifying locations at any time during the calendar year.

BC remuneration

25 For the purposes of this Division and subject to section 3 [*BC remuneration*], the following rules apply:

(a) subject to paragraph (b) of this section, if an employee reports for work at a qualifying location of a charitable or non-profit employer in a calendar year, the BC remuneration paid by the charitable or non-profit employer to or on behalf of the employee in respect of the qualifying location is deemed to include all remuneration paid to or on behalf of the employee during the calendar year;

(b) if an employee reports for work at 2 or more qualifying locations of a charitable or non-profit employer in a calendar year, the BC remuneration paid by the charitable or non-profit employer to or on behalf of the employee in respect of the qualifying location at which that employee primarily reports for work is deemed to include all remuneration paid to or on behalf of the employee during the calendar year;

(c) if an employee does not report for work at a qualifying location of a charitable or non-profit employer in a calendar year, the BC remuneration paid by the charitable or non-profit employer to or on behalf of the employee is to be attributed to a qualifying location of the

charitable or non-profit employer that is reasonable having regard to all of the circumstances;

(d) without limiting paragraphs (a) to (c) of this section, all of the BC remuneration paid by a charitable or non-profit employer during a calendar year is to be attributed to one or more qualifying locations of the charitable or non-profit employer for the calendar year.

Total tax payable

26 If this Division applies to a charitable or non-profit employer for a calendar year, the tax payable by the charitable or non-profit employer under this Part is equal to the total of the tax payable by the charitable or non-profit employer for the calendar year in respect of each qualifying location of the charitable or non-profit employer.

Exemption for qualifying location – BC remuneration not greater than \$1 500 000

27 Subject to section 30, if the BC remuneration paid during a calendar year by a charitable or non-profit employer in respect of a qualifying location is not greater than \$1 500 000, no tax is payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location.

Notch rate for qualifying location – BC remuneration not greater than \$4 500 000

28 Subject to section 30, if the BC remuneration paid during a calendar year by a charitable or non-profit employer in respect of a qualifying location is greater than \$1 500 000 but not greater than \$4 500 000, the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 2.925% of the amount by which the BC remuneration paid exceeds \$1 500 000.

Tax payable for qualifying location – BC remuneration greater than \$4 500 000

29 Subject to section 30, if the BC remuneration paid during a calendar year by a charitable or non-profit employer in respect of a qualifying location is greater than \$4 500 000, the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 1.95% of the BC remuneration paid.

Proration for part-year permanent establishment

30 (1) This section applies to a charitable or non-profit employer for a calendar year if the charitable or non-profit employer has a permanent establishment in British Columbia for only part of the calendar year.

(2) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies in respect of a qualifying location is not greater than the amount determined by the following formula, no tax is

payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location:

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

(3) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies in respect of a qualifying location is greater than the amount determined by the formula set out in subsection (2) but not greater than the amount determined by the following formula, the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 2.925% of the amount by which the BC remuneration paid exceeds the amount determined by the formula set out in subsection (2):

$$\text{amount} = \$4\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

(4) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies in respect of a qualifying location is greater than the amount determined by the formula set out in subsection (3), the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 1.95% of the BC remuneration paid.

PART 3 – ADMINISTRATION AND ENFORCEMENT

Division 1 – Registration

Registration

31 (1) An employer must apply to the commissioner to be registered for the purposes of this Act on or before December 31 of the first calendar year in respect of which

(a) the employer is liable to pay tax under this Act, or

(b) in the case of an employer to whom Division 5 of Part 2 applies for a calendar year, the BC remuneration paid by the employer during the calendar year is greater than

(i) \$1 500 000, or

(ii) if the employer has a permanent establishment in British Columbia for only part of the calendar year, the amount determined by the formula in section 30 (2) [*proration for part-year permanent establishment*].

(2) An application under subsection (1) must be in the form and contain the information required by the commissioner.

(3) An employer required to file an application under subsection (1) must

(a) file the application electronically in the manner required by the commissioner, and

(b) file, with the application, any other information or records required by the commissioner.

(4) On receiving an application and any other information or records to be filed with the application, the commissioner may register the employer for the purposes of this Act and issue the employer a registration number.

Division 2 – Returns, Instalments, Payment of Tax and Excess Refund

Annual return

32 (1) Subject to subsection (2), an employer must file with the commissioner a tax return for each calendar year.

(2) Subsection (1) does not apply to an employer for a calendar year if,

(a) in the case of an employer to whom Division 5 of Part 2 applies for the calendar year, the BC remuneration paid by the employer during the calendar year is not greater than

(i) \$1 500 000, or

(ii) if the employer has a permanent establishment in British Columbia for only part of the calendar year, the amount determined by the formula in section 30 (2) [*proration for part-year permanent establishment*], or

(b) in any other case, the employer is not liable to pay tax under this Act for the calendar year.

(3) The employer must, without notice or demand, file the tax return under subsection (1) for a calendar year on or before March 31 in the year following the calendar year.

Tax return – bankrupt employer

33 (1) Despite section 32, if that section applies to an employer for a calendar year in which the employer becomes bankrupt, the employer must file with the commissioner a tax return for the portion of the calendar year before the date the employer becomes bankrupt.

(2) The employer must file the tax return under subsection (1) of this section within 90 days after the date the employer becomes bankrupt.

Tax return for part-year permanent establishment

34 Despite section 32, if that section applies to an employer for a calendar year in which the employer ceases to have a permanent establishment in British Columbia, the employer must file with the commissioner the tax return required to be filed under that section within 90 days after the date on which the employer ceases to have a permanent establishment in British Columbia.

Tax return – person dealing with property or business of employer

35 A trustee in bankruptcy, assignee, liquidator, receiver, administrator or any other person administering, managing, winding up, controlling or otherwise dealing with the property or business of an employer who has not filed a tax return required under section 32, 33 or 34 must file the tax return with the commissioner within 90 days after the date on which the person began dealing with the property or business of the employer.

Extension of time

36 The commissioner may at any time extend the time established by section 32, 33, 34 or 35 for filing a tax return under the applicable section.

Tax return on demand

37 (1) On written demand given to a person by the commissioner, the person must file with the commissioner, on or before the date specified in the demand, a tax return for a calendar year.

(2) Subsection (1) applies whether or not a tax return has been or is required to be filed under section 32, 33, 34 or 35.

Form and contents of tax return

38 (1) A tax return must be in the form and contain the information required by the commissioner.

(2) A person required to file a tax return must

(a) file the tax return electronically in the manner required by the commissioner, and

(b) file, with the tax return, any other information or records required by the commissioner.

Duty to obtain certificate before distribution

- 39** A trustee in bankruptcy, assignee, liquidator, receiver, administrator or any other person administering, managing, winding up, controlling or otherwise dealing with the property or business of an employer must not distribute assets of the employer unless a certificate has been obtained from the commissioner certifying that no amount is owing to the government under this Act by the employer.

Trustee in bankruptcy – notice to commissioner

- 40** If a trustee in bankruptcy is appointed to administer, manage, wind up, control or otherwise deal with the property or business of an employer, the trustee in bankruptcy must, within 10 days after the appointment, give written notice of the appointment to the commissioner.

Instalments

- 41** If an employer's tax payable for the preceding calendar year exceeds the prescribed amount, the employer must pay to the government, on account of the employer's tax payable under this Act for the current calendar year, on or before June 15, September 15 and December 15 in the current calendar year, an amount that is not less than 25% of the lesser of
- (a) the employer's tax payable for the preceding calendar year, and
 - (b) the employer's estimated tax payable for the current calendar year.

Payment with filed tax return

- 42** On or before the date an employer is required to file a tax return for a calendar year, the employer must pay to the government the amount remaining unpaid of the employer's tax payable under this Act for the calendar year.

Excess refund

- 43** (1) If it appears from an inspection, audit, examination or investigation or from other information available to the commissioner that an amount has been refunded to an employer in excess of the amount to which the employer was entitled as a refund under this Act, the excess is deemed to be an amount that became payable to the government by the employer on the day on which the amount was refunded.
- (2) If an amount applied under section 69 (2) [*refund of overpayment*] to an amount owing by an employer is in excess of the amount to which the employer is entitled as a refund under this Act, this section applies in respect of the amount applied as if that amount had been refunded to the employer on the day the amount was applied to the amount owing.

Division 3 – Assessments

Definitions

44 In this Division:

"assessable amount", in relation to a person, means

- (a) any tax payable under this Act by the person,
- (b) any penalties payable under this Act by the person,
- (c) an amount payable under section 43 [*excess refund*] by the person, and
- (d) any interest payable under this Act by the person;

"normal reassessment period" means the period referred to in section 46 (1)

- (b) [*assessments – general rules*] for a person for a calendar year.

Examination of tax return and resulting assessment

45 After the commissioner receives an employer's tax return for a calendar year and any other information or records required to be filed with the tax return, the commissioner must

- (a) examine the tax return, and
- (b) assess the employer for any assessable amounts for the calendar year.

Assessments – general rules

46 (1) The commissioner may assess a person for an assessable amount for a calendar year

- (a) at any time, if
 - (i) the person has failed to file a tax return for the calendar year,
 - (ii) the person or a person filing the person's tax return for the calendar year has made any misrepresentation or committed any fraud
 - (A) in filing the tax return, or
 - (B) in supplying, at any time, other information or records under this Act for the calendar year, or
 - (iii) a waiver filed under subsection (2) by the person for the calendar year is in effect at that time, or

- (b) within 6 years after the date of the original notice of assessment for the calendar year, in any other case.

(2) A person may, before the expiration of the normal reassessment period for a calendar year, file with the commissioner a waiver for the calendar year.

(3) A waiver filed under subsection (2) continues in effect until 6 months after the person files with the commissioner a notice revoking the waiver.

(4) A waiver filed under subsection (2) and a notice filed under subsection (3) must be filed in the form and manner, and containing the information, required by the commissioner.

(5) Despite subsection (1), an assessment to which subsection (1) (a) (ii) or (iii) applies in respect of a person for a calendar year may be made after the person's normal reassessment period for the calendar year, but only to the extent that the assessment can reasonably be considered as relating to,

- (a) if subsection (1) (a) (ii) applies to the assessment, any misrepresentation made by the person or another person who filed the person's tax return for the calendar year or any fraud committed by the person or that other person in filing the tax return or in supplying any other information or records under this Act, or
- (b) if subsection (1) (a) (iii) applies to the assessment, a matter specified in the waiver filed with the commissioner for the calendar year.

(6) The authority of the commissioner to assess a person for an assessable amount under sections 47 to 50

- (a) is in addition to the authority to make an assessment under section 45 or this section,
- (b) is not limited by the authority to make an assessment under section 45 or this section, and
- (c) does not limit the authority to make an assessment under section 45 or this section.

Consequential assessments – income taxes

47 (1) Subsection (2) applies in relation to an employer for a calendar year if

- (a) the employer is issued a notice of assessment, reassessment or additional assessment under the *Income Tax Act* (Canada), and
- (b) an amount relevant in calculating an assessable amount under this Act for the employer for the calendar year would be changed if an assessment were made under this Act.

(2) If this subsection applies in relation to an employer for a calendar year,

- (a) the employer must, within 90 days of receiving the notice referred to in subsection (1) (a), file with the commissioner
 - (i) a notice, in the form and manner, and containing the information, required by the commissioner, and
 - (ii) any other information or records required by the commissioner to be filed with the notice, and
- (b) the commissioner may, subject to subsection (3), assess the employer for an assessable amount for the calendar year, but only to the extent that the assessment can reasonably be considered as relating to the assessment, reassessment or additional assessment under the *Income Tax Act* (Canada).

(3) The commissioner may make an assessment under subsection (2) only before the later of

- (a) the last day of the normal reassessment period for the calendar year, and
- (b) the end of the day that is one year after the day that is the earlier of
 - (i) the day that the commissioner is notified under subsection (2) (a), and
 - (ii) the day that the commissioner is otherwise notified of the assessment, reassessment or additional assessment under the *Income Tax Act* (Canada).

Consequential reassessments after appeal

48 (1) This section applies in relation to a person if

- (a) a court has, on the disposition of an appeal by the person in respect of an assessment,
 - (i) allowed the appeal,
 - (ii) varied the decision from which the appeal was made, or
 - (iii) referred the decision back to the commissioner for reconsideration, and
- (b) any further appeal is disposed of or the time for filing any further appeal has expired.

(2) If this section applies in relation to a person, the commissioner must reassess the person for an assessable amount in accordance with the decision of the court.

Assessments of other amounts payable

49 The commissioner may at any time assess a person for any amount payable under section 43 [*excess refund*].

Assessments of penalties and interest

50 (1) The commissioner may assess a person for a penalty to which the person is liable under this Act, and any interest payable in relation to the penalty, but the assessment may not be made after the latest of the applicable dates by which the commissioner may assess, under the following provisions, a person in respect of whose liability the penalty is assessed:

- (a) section 46 [*assessments – general rules*];
- (b) section 47 [*consequential assessments – income taxes*];
- (c) section 48 [*consequential reassessments after appeal*].

(2) The commissioner may at any time reassess a person

- (a) as is necessary to give effect to a cancellation under section 61 [*waiver or cancellation of penalty*] of all or part of a penalty otherwise

payable under this Act by the person, or

(b) as is necessary to give effect to a cancellation under section 68 [*waiver or cancellation of interest*] of all or part of any interest otherwise payable under this Act by the person.

Rules relating to assessments

51 (1) Despite a prior assessment, or if no assessment has been made, a person continues to be liable for an amount owing to the government under this Act.

(2) In making an assessment, the commissioner

(a) is not bound by a tax return filed under this Act or any other information or records supplied under this Act, and

(b) may assess an assessable amount despite the filing of a tax return or the supply of any other information or records under this Act or if no tax return has been filed.

(3) Subject to being amended or varied on appeal or by a reassessment, an assessment is valid and binding despite any error, defect or omission in the assessment or in procedure.

Notice of assessment

52 (1) After making an assessment in respect of a person, the commissioner must give the person a notice of assessment that includes a statement of the assessable amounts.

(2) If a notice of assessment has been given to a person as required by this Act, the assessment is deemed to have been made on the date of the notice.

(3) Evidence that a notice of assessment has been given is proof, in the absence of evidence to the contrary, that the amounts assessed under this Act are due and owing, and the onus of proving otherwise is on the person liable to pay the amounts assessed.

Anti-avoidance rule

53 (1) In this section:

"avoidance transaction" means a transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, or

(b) that is part of a series of transactions that, but for this section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain a tax benefit;

"tax benefit" means a reduction or avoidance of an amount of tax payable under this Act;

"tax consequences", in relation to an employer, means

- (a) the amount of the employer's BC remuneration, or
- (b) any amount, other than an amount referred to in paragraph (a), that is payable or refundable to the employer under this Act or that is relevant for the purposes of calculating that amount;

"transaction" includes an arrangement or event.

(2) For the purposes of this section, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

(3) If a transaction is an avoidance transaction, the commissioner may, by assessment, determine the tax consequences to an employer in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

(4) Subsection (3) applies to a transaction only if the transaction may reasonably be considered to be a transaction that

- (a) would, if this Act were read without reference to this section, result, directly or indirectly, in a misuse of the provisions of this Act or the regulations, or
- (b) would result, directly or indirectly, in an abuse having regard to those provisions, other than this section, read as a whole.

(5) Without limiting subsection (3), in determining the tax consequences to an employer in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from an avoidance transaction, the commissioner may do one or more of the following:

- (a) allow or disallow in whole or in part any amount included or deducted in calculating an amount referred to in paragraph (a) or (b) of the definition of "tax consequences" in subsection (1);
- (b) recharacterize the nature of any payment or other amount.

Division 4 – Administrative Penalties

Penalty for failure to file tax return

54 An employer who fails to file a tax return under section 32 [*annual return*], 33 [*tax return – bankrupt employer*] or 34 [*tax return for part-year permanent establishment*] for a calendar year within the time required under Division 2 of this Part is liable to a penalty equal to the total of

- (a) 5% of the amount remaining unpaid of the employer's tax payable under this Act for the calendar year on the date the tax return was required to be filed, and
- (b) the amount determined by the following formula:

$$\text{amount} = 1\% \times A \times B$$

where

A = the amount remaining unpaid of the employer's tax payable under this Act for the calendar year on the date the tax return was required to be filed;

B = the number of months, not exceeding 12 and rounded down to the nearest whole number, in the period beginning on the date the tax return was required to be filed and ending on the earlier of

(i) the date the tax return was filed, and

(ii) the date the employer is assessed a penalty under this section.

Penalty for repeated failure to file tax return

55 If all of the following apply:

(a) an employer fails to file a tax return under section 32, 33 or 34 for a calendar year within the time required under Division 2 of this Part;

(b) the employer subsequently fails to file a tax return under section 37 [*tax return on demand*] for the calendar year within the time required under that section;

(c) the employer was assessed a penalty under section 54 in respect of a failure to file a tax return referred to in that section for any of the 3 preceding calendar years,

the employer is liable to a penalty equal to the total of

(d) 10% of the amount remaining unpaid of the employer's tax payable under this Act for the calendar year on the date the tax return referred to in paragraph (a) was required to be filed, and

(e) the amount determined by the following formula:

$$\text{amount} = 2\% \times A \times B$$

where

A = the amount remaining unpaid of the employer's tax payable under this Act for the calendar year on the date the tax return referred to in paragraph (a) was required to be filed;

B = the number of months, not exceeding 20 and rounded down to the nearest whole number, in the period beginning on the date the tax return referred to in paragraph (a) was required to be filed and ending on the earlier of

(i) the date the tax return was filed, and

(ii) the date the employer is assessed a penalty under this section.

Penalty for failure to provide required information

56 If a person who is required to file a tax return fails to include in the return any required information or fails to file with the return any other required information or records, the person is liable to a penalty of \$100 for each failure.

Penalties respecting information and records

- 57 (1) A person who fails to comply with a provision specified in subsection (2) is liable, in respect of each failure, to a penalty equal to the greater of
- (a) \$100, and
 - (b) \$25 for each day during which the failure continues, to a maximum of \$2 500.
- (2) For the purposes of subsection (1), the following provisions are specified:
- (a) section 70 (3) (a), (b) or (c) [*production of records and answering questions at specified location*];
 - (b) section 71 [*requirement to provide records*];
 - (c) section 72 (3) [*demand for information*].

Penalty for interfering with inspection or audit

- 58 A person who contravenes section 70 (8) (a) or (b) [*interfering with inspection or audit*] is liable to a penalty of \$100 for each contravention.

Gross negligence

- 59 (1) In this section, "**additional tax**" means the amount by which the tax payable under this Act for the calendar year calculated on the basis of accurate and complete information exceeds the tax payable for the calendar year calculated on the basis of the false statement or omission described in subsection (2).
- (2) If an employer knowingly, or under circumstances amounting to gross negligence, makes, or participates in, assents to or acquiesces in the making of, a false statement or an omission in a tax return, notice, application or other record filed or supplied or in information supplied under this Act for a calendar year, the employer is liable to a penalty equal to the greater of
- (a) \$100, and
 - (b) 50% of the additional tax.

Misrepresentation by third party

- 60 (1) Section 163.2 of the *Income Tax Act* (Canada) applies for the purposes of this Act with the changes the circumstances require for the purposes of this Act.
- (2) Without limiting subsection (1), in applying section 163.2 of the *Income Tax Act* (Canada) for the purposes of this Act, the following rules apply:
- (a) a reference in that section to the *Income Tax Act* (Canada) is to be read as a reference to this Act;
 - (b) a reference in that section to an assessment is to be read as a reference to an assessment under this Act;

(c) that section is to be read without reference to the definition of "excluded activity" in subsection (1) of that section and without reference to subsections (7) and (8) (b) (i) and (ii) of that section;

(d) subsection (5) of that section is to be read as if

(i) the reference to "subsection 163 (2)" were a reference to section 59 (2) of this Act, and

(ii) the reference to "return filed for the purposes of this Act" were a reference to "tax return, notice, application or other record filed or supplied or in information supplied under this Act";

(e) subsection (10) of that section must be read as if the reference to "section 163 (3)" were a reference to subsection (3) of this section;

(f) subsection (15) of that section must be read as if the reference to "or an employee engaged in an excluded activity" were excluded.

(3) In an appeal to the Supreme Court under section 76 [*appeal to court*] of this Act, the onus is on the minister to establish the facts justifying the assessment of a penalty to which a person is liable under this section.

Waiver or cancellation of penalty

61 The commissioner may at any time waive or cancel all or part of any penalty otherwise payable by a person under this Act.

Division 5 – Interest

Interest on unpaid instalments

62 (1) If an employer fails to pay an instalment on or before an instalment due date as required under section 41 [*instalments*], the employer must pay to the government interest on the amount that is equal to 25% of the lesser of

(a) the employer's tax payable for the preceding calendar year, and

(b) the employer's tax payable for the current calendar year.

(2) An employer who is required to pay an instalment under section 41 for a calendar year must pay interest under subsection (3) of this section if the employer pays an instalment on or before an instalment due date that is less than the amount that is equal to 25% of the lesser of

(a) the employer's tax payable for the preceding calendar year, and

(b) the employer's tax payable for the current calendar year.

(3) An employer who must pay interest under this subsection must pay to the government interest on the amount by which the amount referred to in subsection (2) exceeds the instalment paid by the employer.

(4) Interest payable under subsection (1) or (3) is payable from the instalment due date until the earlier of

(a) the date of payment, and

(b) the date the employer is required to file a tax return for the calendar year.

(5) If an employer who must pay interest under this section does not pay the interest on or before the date referred to in subsection (4) (b), the employer must pay to the government interest on the amount of interest unpaid from the day after the date referred to in subsection (4) (b) until the date of payment.

Interest on unpaid taxes

63 If an employer fails to pay tax as required under section 42 [*payment with filed tax return*], the employer must pay to the government interest on the amount unpaid from the date the tax was payable under that section until the date of payment.

Interest on excess refund

64 If an amount is deemed under section 43 (1) [*excess refund*] to be an amount payable by an employer, the employer is liable to pay interest on the amount from the date the amount became payable under that section until the date of payment.

Interest on penalties

65 A person must pay to the government interest on a penalty assessed under this Act as follows:

(a) in the case of a penalty under section 54 [*penalty for failure to file tax return*], from the date on which the tax return was required to be filed until the date of payment;

(b) in the case of a penalty under section 55 [*penalty for repeated failure to file tax return*], from the date on which the tax return referred to in paragraph (a) of that section was required to be filed until the date of payment;

(c) in the case of a penalty under section 56 [*penalty for failure to provide required information*], from the date on which the tax return was filed until the date of payment;

(d) in the case of a penalty under section 59 (2) [*gross negligence*], from the date on which the tax return, notice, application or other record was filed or supplied, or the date on which the information was supplied, until the date of payment;

(e) in the case of any other penalty, from the date of the notice of assessment that specifies the amount of the penalty assessed until the date of payment.

Calculation of interest

66 Interest payable to the government under this Act must be calculated at the prescribed rate and in the prescribed manner.

No interest if full payment within 30 days

67 Despite any other provision of this Division, if

(a) a notice of assessment or statement of account given to a person by the commissioner specifies an amount that is owing to the government under this Act by the person, and

(b) the person, within 30 days after the date of the notice of assessment or statement of account, pays the amount owing in full,

interest is not payable on the amount owing from the date of the notice of assessment or statement of account until the date of payment.

Waiver or cancellation of interest

68 The commissioner may at any time waive or cancel all or part of any interest otherwise payable under this Act by a person.

Division 6 – Refunds

Refund of overpayment

69 (1) If the commissioner believes, based on the results from an inspection, audit, examination or investigation or other information available to the commissioner, that an overpayment has been made by an employer, the minister, on the certificate of the commissioner as to facts, must refund the amount overpaid to the employer from the consolidated revenue fund.

(2) Despite subsection (1), if there is an amount owing to the government under this Act by the employer, the amount overpaid must first be applied in satisfaction of the amount owing, and notice must be given to the employer, accompanied by the refund of the amount overpaid and remaining unapplied.

(3) Despite subsections (1) and (2), if the amount to be refunded under subsection (1) or (2) is less than \$10, the amount overpaid, and, in the case of subsection (2), remaining unapplied, is deemed to be zero.

Division 7 – Inspections and Audits

Inspection and audit powers

70 (1) In this section:

"electronic" has the same meaning as in the *Electronic Transactions Act*;

"specified location" means any place

(a) used by a person in relation to business carried on by the person,
or

(b) where the records of a person are kept.

(2) Subject to subsection (4), the commissioner may, at any reasonable time and for any purpose related to the administration and enforcement of this Act and the

regulations,

- (a) enter a specified location,
- (b) inspect, audit and examine records at the specified location,
- (c) make copies of records, and
- (d) subject to subsection (7), remove records from the specified location for the purpose of making copies.

(3) A person occupying a specified location must do all of the following, as applicable:

- (a) produce or provide electronic access to all records as may be required by the commissioner;
- (b) in the case of records in electronic form, produce or provide electronic access to the records in the form and manner required by the commissioner;
- (c) answer all questions of the commissioner relating to the matters referred to in subsection (2).

(4) The power to enter a specified location under subsection (2) must not be used to enter a specified location that is occupied as a residence without the consent of the occupier except under the authority of a warrant issued under subsection (5).

(5) On being satisfied by evidence on oath that entry on or into any place is necessary for any purpose relevant to the administration and enforcement of this Act and the regulations, a justice may issue a warrant authorizing an individual named in the warrant to enter the place in accordance with the warrant in order to exercise the powers referred to in subsection (2) (a) to (d).

(6) The commissioner may make an application for a warrant under subsection (5) without notice to any other person.

(7) If the commissioner removes records from a specified location for the purpose of making copies, the commissioner must return the records within a reasonable time.

(8) A person must not

- (a) interfere with, hinder or molest a person doing anything that the person is authorized to do under this section, or
- (b) prevent or attempt to prevent a person from doing anything that the person is authorized to do under this section.

Requirement to provide records

71 When required by the commissioner, a person must provide to the commissioner all records that the commissioner considers necessary to determine whether this Act and the regulations are being or have been complied with.

Demand for information

- 72** (1) For any purpose related to the administration or enforcement of this Act or the regulations, the commissioner may, by giving a person a demand notice, require from the person
- (a) any information or additional information,
 - (b) the production of any records, or
 - (c) a written statement.
- (2) A demand notice under subsection (1)
- (a) must be given by leaving the demand notice with the person or by sending the demand notice to the person by registered mail,
 - (b) must specify a reasonable time by which the person must comply with the demand notice, and
 - (c) in relation to a requirement under subsection (1) (c), may require the written statement to be made by way of affidavit or statutory declaration.
- (3) A person to whom a demand notice is given under this section must comply with the notice within the time specified in the notice.
- (4) The commissioner may issue a document certifying one or both of the following, and the document is proof of the facts certified in it:
- (a) a demand notice was given to a person in accordance with subsection (2);
 - (b) a person has failed to comply with subsection (3) in respect of a demand notice given to the person under this section.

Records required to be kept

- 73** (1) An employer must keep adequate records for the purposes of this Act.
- (2) If the records kept by an employer are, in the opinion of the commissioner, not adequate for the purposes of this Act, the commissioner may specify one or more of the following in respect of the records to be kept by the employer:
- (a) the information to be contained in the records;
 - (b) the form or manner in which the records are to be kept.
- (3) An employer who is required to keep records under this section must retain the records for a period of 6 years after the end of the calendar year to which the records relate.

Evidence – copies of records

- 74** A record certified by the commissioner to be a copy of a record obtained by the commissioner under this Act is evidence of the nature and content of the original.

PART 4 – APPEALS

Appeal to minister

75 (1) Subject to this section, an appeal to the minister lies from

- (a) an assessment, and
- (b) a determination under section 84 (13) [*lien – associated corporations*].

(2) Written notice of the appeal must be given to the minister within 90 days after the date of the notice of assessment or the determination, as the case may be.

(3) The appellant must set out in the notice of appeal a statement of all material facts and the reasons in support of the appeal.

(4) On receiving the notice of appeal, the minister must

- (a) consider the matter,
- (b) affirm, amend or change the assessment or determination, as the case may be, and
- (c) promptly give the appellant written notice of the result of the appeal.

(5) An appeal may not be made under this section in relation to an assessment made under any of the following provisions:

- (a) section 49 [*assessments of other amounts payable*];
- (b) section 50 (2) [*assessments of penalties and interest*].

Appeal to court

76 (1) A decision of the minister under section 75 may be appealed to the Supreme Court by way of a petition proceeding.

(2) The Supreme Court Civil Rules relating to petition proceedings, other than Rule 18-3, apply to appeals under this section.

(3) A petition must be filed in the court registry within 90 days after the date of the minister's decision.

(4) In a petition filed under this section, the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".

(5) Within 14 days after the filing of a petition under this section, the petition must be served on the government in accordance with section 8 of the *Crown Proceeding Act*.

(6) An appeal under this section is a new hearing that is not limited to the evidence and issues that were before the minister.

(7) The court may

- (a) dismiss the appeal,
- (b) allow the appeal,

(c) vary the decision from which the appeal is made, or

(d) refer the decision back to the commissioner for reconsideration.

(8) An appeal lies from a decision of the court to the Court of Appeal with leave of a justice of the Court of Appeal.

Irregularities

77 An assessment made under this Act must not be varied or disallowed by a court because of an irregularity, informality, omission or error on the part of a person in the observation of any directory provision up to the date of the notice of assessment.

Tax collection not affected by pending appeal

78 Neither the giving of a notice of appeal by a person nor a delay in the hearing of an appeal

(a) affects the date an amount that is owing to the government under this Act and that is the subject matter of the appeal is payable under this Act,

(b) affects the amount of interest payable on an amount that is owing to the government under this Act and that is the subject matter of the appeal, or

(c) delays the collection of an amount that is owing to the government under this Act and that is the subject matter of the appeal, or any interest payable under this Act on that amount.

If decision set aside or amount reduced on appeal

79 If the commissioner's or minister's decision is set aside, or the amount of an assessment or an amount owing to the government under this Act is reduced on appeal, the minister must refund the amount or excess amount paid to the appellant from the consolidated revenue fund.

PART 5 – RECOVERY OF AMOUNTS OWING

Court proceedings to recover amount owing

80 The government may commence a proceeding in a court of competent jurisdiction to recover an amount owing to the government under this Act as a debt due to the government.

Summary proceedings

81 (1) If a person fails to pay an amount owing to the government under this Act, the commissioner may issue a certificate specifying the amount owed and the name of the person who owes it.

(2) The commissioner may file with the Supreme Court a certificate issued under subsection (1).

(3) A certificate filed under subsection (2) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the government for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

(4) If the amount specified in a certificate is different from the actual amount owing to the government under this Act, the commissioner may correct the amount by issuing a new certificate specifying the revised amount owed and the name of the person who owes it.

(5) The commissioner may file with the Supreme Court a certificate issued under subsection (4).

(6) A certificate filed under subsection (5)

(a) revises the certificate filed under subsection (2) that names the same person,

(b) is deemed to be filed at the same time as the certificate it revises, and

(c) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the government for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

Alternative remedies

82 (1) Remedies available to the government for the recovery of an amount owing to the government under this Act may be exercised separately, concurrently or cumulatively.

(2) The liability of a person for the payment of an amount owing to the government under this Act is not affected by a fine or penalty imposed on or paid by the person for contravention of this Act.

Attachment of funds

83 (1) In this section, "**debtor**" means any person who is liable to pay an amount under this Act.

(2) If the commissioner knows or suspects that a person is or is about to become indebted or liable to make a payment to a debtor, the commissioner may demand that that person pay to the government, on account of the debtor's liability under this Act, all or part of the money otherwise payable to the debtor.

(3) Without limiting subsection (2), if the commissioner knows or suspects that a person is about to advance money to or make a payment on behalf of a debtor, or make a payment in respect of a negotiable instrument issued by a debtor, the commissioner may demand that that person pay to the government, on account

of the debtor's liability under this Act, the money that would otherwise be advanced or paid.

(4) A demand under this section must be given by leaving the demand with the person or by sending the demand to the person by registered mail, electronic mail or fax.

(5) If under this section the commissioner demands that a person pay to the government, on account of a debtor's liability under this Act, money otherwise payable by that person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand

(a) is applicable to all of those payments to be made by the person to the debtor until the liability under this Act is satisfied, and

(b) operates to require payments to the government out of each payment of the amount stipulated by the commissioner in the demand.

(6) Money or a beneficial interest in money in a savings institution

(a) on deposit to the credit of a debtor at the time a demand is given, or

(b) deposited to the credit of a debtor after a demand is given

is money for which the savings institution is indebted to the debtor within the meaning of this section, but money on deposit or deposited to the credit of a debtor as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a debtor in the debtor's capacity as a trustee.

(7) A demand under this section continues in effect until the earliest of the following:

(a) subject to paragraphs (b) and (c), the demand is satisfied;

(b) subject to paragraph (c), 90 days after the demand is given;

(c) 3 years after the demand is given, if the demand is made in respect of an outstanding legal claim or insurance claim that, if resolved in the debtor's favour, will result in money becoming available to the debtor.

(8) Despite subsection (7), if a demand is made in respect of a periodic payment referred to in subsection (5), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is given, in which case the demand ceases to have effect at the end of that period.

(9) Money demanded from a person by the commissioner under this section becomes payable

(a) as soon as the person is given the demand, if that person is indebted or liable to make a payment to the debtor at the time the demand is given, or

(b) as soon as the person becomes indebted or liable to make a payment to the debtor, in any other case.

(10) A person who fails to comply with a demand under subsection (2) or (5) is liable to pay to the government an amount equal to the amount that the person was required to pay under subsection (2) or (5).

(11) A person who fails to comply with a demand under subsection (3) is liable to pay to the government an amount equal to the lesser of

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

(b) the amount that the person was required to pay under subsection (3).

(12) Money paid by any person to the government in compliance with a demand under this section

(a) satisfies the original liability to the extent of the payment, and

(b) is deemed to have been paid by that person to the debtor.

Lien

84 (1) In this section:

"amount owing" means an amount owing to the government under this Act and any interest on that amount;

"associated corporation" includes a corporation that is determined under subsection (13) to be associated with another corporation for the purposes of this section;

"collateral" has the same meaning as in the *Personal Property Security Act*;

"financing statement" has the same meaning as in the *Personal Property Security Act*;

"inventory" has the same meaning as in the *Personal Property Security Act*;

"personal property registry" means the registry under the *Personal Property Security Act*;

"proceeds" has the same meaning as in the *Personal Property Security Act*;

"property", when referring to the property of an associated corporation or a related individual, means property that is used in, or in conjunction with, the business in respect of which the amount referred to in subsection (2) is required to be levied and remitted;

"purchase money security interest" has the same meaning as in the *Personal Property Security Act*;

"related individual" has the same meaning as in the *Property Transfer Tax Act*;

"security interest" has the same meaning as in the *Personal Property Security Act*.

(2) If a person is required to pay an amount to the government under this Act and does not pay the amount, the commissioner may register a lien

- (a) against the real property of
 - (i) the person,
 - (ii) an associated corporation of the person, or
 - (iii) a related individual of the person

by registering a certificate of lien in the prescribed form in the appropriate land title office in the same manner that a charge is registered under the *Land Title Act*, and

- (b) against the personal property of
 - (i) the person,
 - (ii) an associated corporation of the person, or
 - (iii) a related individual of the person

by registering a financing statement in the personal property registry.

(3) On registration of a certificate of lien against the real property of a person under subsection (2) (a), a lien is created on the real property against which the lien is registered for the amount owing.

(4) On registration of a lien against the personal property of a person under subsection (2) (b), a lien is created on the present and after acquired personal property in which the person has a legal or equitable interest for the amount owing.

(5) A lien registered under subsection (2) (b) against personal property does not have priority over

- (a) a security interest that secures unpaid wages under section 87 (3) [*lien for unpaid wages*] of the *Employment Standards Act*, regardless of when that security interest arises, or
- (b) a purchase money security interest in collateral other than collateral that at the time the purchase money security interest attaches is inventory or its proceeds.

(6) In relation to a certificate of lien registered under subsection (2) (a) against the real property of a person, the commissioner may register a certificate of lien in the form prescribed for the purposes of subsection (2) (a) in the appropriate land title office in the same manner that a charge is registered under the *Land Title Act* if

- (a) the certificate of lien registered under subsection (2) (a) against the real property of the person contains a statement of the amount owing, and
- (b) the commissioner is satisfied that the amount referred to in paragraph (a) of this subsection that is stated in that certificate of lien is incorrect.

(7) In relation to a financing statement registered under subsection (2) (b) against the personal property of a person, the commissioner may register a

financing change statement, as defined in the *Personal Property Security Act*, in the personal property registry if

(a) the financing statement registered under subsection (2) (b) against the personal property of the person contains a statement of the amount owing, and

(b) the commissioner is satisfied that the amount referred to in paragraph (a) of this subsection that is stated in that financing statement is incorrect.

(8) A certificate of lien registered under subsection (6) and a financing change statement registered under subsection (7) must contain a revised statement of the amount owing.

(9) On registration of a certificate of lien against the real property of a person under subsection (6), the certificate of lien registered under subsection (2) (a) against the real property of the person is, at the same time it was originally registered, deemed to be revised to set out the amount owing as stated in the certificate of lien registered under subsection (6).

(10) On registration of a financing change statement against the personal property of a person under subsection (7), the financing statement registered under subsection (2) (b) against the personal property of the person is, at the same time it was originally registered, deemed to be revised to set out the amount owing as stated in the financing change statement registered under subsection (7).

(11) Despite section 90 [*communication of information*], the commissioner must,

(a) on the oral or written request of a person, disclose in writing the amount of the lien under this section registered against the personal or real property of the person, or

(b) on the written request of a person accompanied by the written consent of a named person, disclose in writing the amount of the lien under this section registered against the personal or real property of the named person.

(12) If the commissioner believes that one corporation is associated with another corporation within the meaning of section 256 of the *Income Tax Act* (Canada), the commissioner may request one or both of the corporations to provide to the commissioner the records and information required by the commissioner to confirm or rebut that belief.

(13) The commissioner may determine that corporations are associated corporations for the purposes of this section if

(a) a corporation that has been requested to provide records or information to the commissioner under subsection (12) fails or refuses to comply with that request within a period of time considered by the commissioner to be reasonable in the circumstances, or

(b) the records or information provided to the commissioner under this section confirm the commissioner's belief that the corporations are associated.

(14) Immediately after a corporation is determined under this section to be associated with a person referred to in subsection (2) (a) (i) and (b) (i), the commissioner

(a) must notify the corporation of this in writing, and

(b) may register a lien under this section against the real and personal property of the corporation.

(15) The commissioner may seize personal property against which a lien is registered under subsection (14) (b) at any time after the registration of the lien, but must not take any action to realize on those assets until the later of

(a) the date that is 90 days after the date on which the notice required under subsection (14) (a) was given to the corporation, and

(b) if a notice of appeal is given to the minister in respect of the determination within the time provided by section 75 (2) [*appeal to minister*], the date on which the minister upholds the determination under that appeal.

(16) If, at any time, the commissioner becomes convinced that the corporations were not associated within the meaning of section 256 of the *Income Tax Act* (Canada) at the time that the lien was registered under subsection (14) (b) of this section or if the minister or a court of competent jurisdiction upholds the corporation's appeal against the commissioner's determination on the basis that the corporations were not associated at the time that the lien was registered, the commissioner must,

(a) if the commissioner has not realized on any of the assets against which the lien was registered, promptly release the lien, and

(b) if the commissioner has realized on some or all of the assets against which the lien was registered, promptly release the lien against the remaining assets and pay the proceeds realized from the sale of the realized assets minus any costs or expenses incurred in the sale

(i) to the corporation, or

(ii) if the commissioner considers it appropriate to do so, into the Supreme Court under Rule 10-3 of the Supreme Court Civil Rules.

(17) The release of the lien under subsection (16) (a) or the release of the lien and payment of the applicable net sale proceeds under subsection (16) (b) is deemed to be full satisfaction of all claims any person, including the corporation, might have arising out of or in any way connected with the determination made under subsection (13), the registration of the lien or the seizure or sale of any or all of the assets against which the lien was registered.

Responsibility of person having control of property

85 (1) In this section, "**secured party**" has the same meaning as in the *Personal Property Security Act*.

(2) This section applies to a person who, as assignee, liquidator, administrator, receiver, receiver manager, trustee, secured party or similar person, other than a trustee appointed under the *Bankruptcy and Insolvency Act (Canada)*, takes control or possession of the property of a person who has an amount owing to the government under this Act.

(3) Before distributing the proceeds from the realization of the property referred to in subsection (2), a person to whom this section applies must obtain from the commissioner a certificate that the amount that constituted a lien under section 84 has been paid.

(4) If a person to whom this section applies distributes the proceeds from the realization of the property referred to in subsection (2) without having obtained the certificate required by subsection (3), the person is personally liable to the government for an amount equal to the amount required to be paid to obtain the certificate.

(5) An amount payable under subsection (4) in respect of a distribution of the proceeds from the realization of property must be paid on or before the last day of the month after the month in which the disposition occurred.

Notice of enforcement proceedings

86 (1) Before taking proceedings for the recovery of an amount owing to the government under this Act, the commissioner must give to the person who owes the amount notice of the commissioner's intention to enforce payment.

(2) Failure to give notice under subsection (1) does not affect the validity of proceedings taken for the recovery of an amount owing to the government under this Act.

Limitation period

87 (1) In this section, "**collection proceeding**" means

(a) a proceeding for the recovery of an amount owing to the government under section 80,

(b) the filing of a certificate under section 81,

(c) the making of a demand under section 83, and

(d) the registration or enforcement of a lien under section 84.

(2) A collection proceeding may be commenced at any time within 7 years after the date of the notice of assessment for the amount claimed in the collection proceeding.

(3) Despite subsection (2), a collection proceeding that relates to a contravention of this Act or the regulations and that involves wilful default or fraud may be commenced at any time.

(4) If, before the expiry of the limitation period that applies under subsection (2) to an amount claimed, a person acknowledges liability in respect of the amount claimed, the date of the notice of assessment is deemed to be the day on which the acknowledgement is made.

(5) Subsection (4) does not apply to an acknowledgement, other than an acknowledgement referred to in subsection (6), unless the acknowledgement is

(a) in writing,

(b) signed, by hand or by electronic signature within the meaning of the *Electronic Transactions Act*,

(c) made by the person making the acknowledgement or the person's agent, and

(d) made to the government or an agent of the government.

(6) In the case of an amount claimed to which the limitation period under subsection (2) applies, for the purposes of subsection (4), part payment of the amount by the person against whom the claim is or may be made or by the person's agent is an acknowledgement by the person against whom the claim is or may be made of liability in respect of the claim.

(7) Section 24 (2), (4) and (10) of the *Limitation Act* applies for the purposes of this section.

(8) The liability of a person for the payment of an amount owing to the government under this Act is not affected by the expiry of the limitation period that applies under subsection (2) to the amount claimed.

PART 6 – GENERAL

Designation of commissioner

88 The minister may designate a person who is appointed under the *Public Service Act* as commissioner to administer this Act.

Delegation

89 (1) The commissioner may, in writing, delegate any of the commissioner's powers or duties under this Act.

(2) A delegation under subsection (1) may be to a named person or to a class of persons.

Communication of information

90 (1) In this section:

"**authorized person**" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of the government of British Columbia to assist in carrying out the provisions of this Act;

"finance minister" means the member of the Executive Council charged with the administration of the *Financial Administration Act*;

"official" means any person

(a) who is employed in the service of, who occupies a position of responsibility in the service of or who is engaged by or on behalf of the government of British Columbia, another province or Canada, or

(b) who was formerly so employed or formerly occupied such a position or was formerly so engaged;

"police officer" means a police officer as defined in section 462.48 (17) of the *Criminal Code*;

"taxpayer" means an employer that is subject to tax under this Act, whether or not the employer is liable to pay tax;

"taxpayer information" means information of any kind and in any form relating to one or more taxpayers

(a) that is obtained for the purposes of this Act by or on behalf of the minister, or

(b) that is prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates.

(2) Except as authorized by this section, an official must not

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information,

(b) knowingly allow any person to have access to any taxpayer information, or

(c) knowingly use any taxpayer information otherwise than in the course of the administration and enforcement of this Act or for a purpose for which the information was provided under this section.

(3) Despite any other enactment or law, an official must not be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

(4) Subsections (2) and (3) do not apply in respect of legal proceedings referred to in section 241 (3) of the *Income Tax Act* (Canada).

(5) Subject to subsection (6), an official may do one or more of the following:

(a) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of the administration or enforcement of this Act, solely for those purposes;

(b) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of determining

- (i) any tax, interest, penalty or other amount that is or may become payable by the person under this Act,
 - (ii) any refund to which the person is or may become entitled under this Act, or
 - (iii) any other amount that is relevant for the purposes of a determination under subparagraph (i) or (ii);
- (c) provide taxpayer information as follows:
- (i) to an official of the Department of Finance of the Government of Canada solely for the purposes of the formulation or evaluation of fiscal policy;
 - (ii) to an official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty;
 - (iii) to an official solely for the purposes of the administration or enforcement of an enactment of British Columbia or another province that provides for the imposition or collection of a tax or duty;
 - (iv) to an official solely for the purposes of the administration or enforcement of the *Workers Compensation Act*;
 - (v) to an official of the ministry of the finance minister solely for the purposes of the formulation or evaluation of fiscal policy;
 - (vi) to an official solely for the purposes of setting off against any sum of money that may be due or payable by the government of British Columbia a debt due to that government or to the government of another province or of Canada;
- (d) provide taxpayer information, or allow the inspection of or access to taxpayer information, as the case may be, under, and solely for the purposes of,
- (i) sections 44 (1) [*powers of commissioner in conducting investigations, audits or inquiries*] and 61 (1) [*powers, duties and protections of adjudicator*] of the *Freedom of Information and Protection of Privacy Act*, or
 - (ii) sections 15 [*staff in government or government organizations*], 16 [*access to information, documents or things*] and 17 [*summons and requests*] of the *Auditor General Act*;
- (e) provide taxpayer information solely for the purposes of sections 17 to 19 [*write off of assets and uncollectable debts; extinguishment of debts; remissions*] of the *Financial Administration Act*;
- (f) use taxpayer information to compile information in a form that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates;

(g) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by the government in respect of a period during which the authorized person was employed by, or engaged by or on behalf of, the government to assist in the administration or enforcement of this Act, to the extent that the information is relevant for the purpose;

(h) use taxpayer information relating to a taxpayer to provide information to the taxpayer;

(i) provide taxpayer information to a police officer solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, if

(i) the taxpayer information can reasonably be considered necessary for the purpose of ascertaining

(A) the circumstances in which an offence under the *Criminal Code* may have been committed, or

(B) the identity of the person who may have committed an offence,

with respect to an official, or with respect to any person related to that official,

(ii) the official was or is engaged in the administration or enforcement of this Act, and

(iii) the offence can reasonably be considered to be related to that administration or enforcement;

(j) provide taxpayer information to, or allow inspection of or access to taxpayer information by, any person otherwise legally entitled to the information under an enactment of British Columbia solely for the purposes for which that person is entitled to that information.

(6) Except in accordance with an agreement entered into under section 91, an official must not, under subsection (5) (a) to (c) or (e) to (j) of this section, provide taxpayer information to, or allow inspection of or access to taxpayer information by, an official of

(a) a public body, as defined in the *Freedom of Information and Protection of Privacy Act*, other than the ministry of the minister or, under subsection (5) (c) (v) of this section, the ministry of the finance minister,

(b) the government of Canada, or

(c) the government of another province.

(7) Section 241 (3.1), (4.1) and (5) of the *Income Tax Act* (Canada) applies for the purposes of this Act.

(8) In applying section 241 of the *Income Tax Act* (Canada),

- (a) the reference to "the Minister" in subsection (3.1) of that section is to be read as a reference to the minister responsible for this Act,
- (b) the reference to "authorized person" in subsection (4.1) of that section is to be read as a reference to "authorized person" within the meaning of this section, and
- (c) the reference to "official" in subsection (5) of that section is to be read as a reference to official within the meaning of this section.

(9) To the extent of any inconsistency or conflict with sections 32 [*use of personal information*], 33 [*disclosure of personal information*], 33.1 [*disclosure inside or outside Canada*] and 33.2 [*disclosure inside Canada only*] of the *Freedom of Information and Protection of Privacy Act*, this section applies despite that Act.

Information-sharing agreements

91 (1) In this section:

"information-sharing agreement" means an agreement or arrangement to exchange, by electronic data transmission, electronic data matching or any other means, information for a purpose described in section 90 (5);

"taxpayer information" has the same meaning as in section 90.

- (2) The minister may enter into an information-sharing agreement with
- (a) the government of Canada or an agency of that government,
 - (b) the government of a province or other jurisdiction in Canada or an agency of that government, or
 - (c) a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

(3) Subject to subsection (4), taxpayer information obtained by the minister under an information-sharing agreement may only be used or disclosed for the purpose for which it was obtained under the applicable agreement.

- (4) Subsection (3) does not prevent
- (a) any taxpayer information obtained by the minister under an information-sharing agreement with the government of Canada or an agency of that government from being used or disclosed for the purpose of administering and enforcing an enactment administered by the minister that provides for the imposition and collection of a tax, or
 - (b) any taxpayer information obtained by the minister under an information-sharing agreement from being used or disclosed for the purpose of administering and enforcing an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty.

(5) The Lieutenant Governor in Council may prescribe terms and conditions that are to be included in the information-sharing agreements entered into by the minister.

How and when documents are given by commissioner

92 (1) Subject to this Act, if, under this Act, a document must or may be given by the commissioner to a person, the document may be given in accordance with subsection (2).

(2) The commissioner may give a document to a person as follows:

(a) if the person is an individual, by leaving the document with the individual;

(b) if the person is a corporation, by leaving the document with a board member or senior officer of the corporation;

(c) if the person is an extraprovincial corporation, by leaving the document with

(i) a person referred to in paragraph (b), or

(ii) an attorney for the extraprovincial corporation;

(d) if the person is a partnership, by leaving the document with an individual who is a member of the partnership;

(e) by leaving the document with a person apparently employed at the place of business of the person;

(f) by sending the document by ordinary mail or registered mail to the last known address of the person according to the records of the commissioner;

(g) by sending the document by electronic mail to the last known electronic mail address of the person according to the records of the commissioner;

(h) by sending the document by fax to the last known fax number of the person according to the records of the commissioner;

(i) by sending the document by another communication method agreed to by the person and the commissioner.

(3) If a person carries on business under a name or style other than the person's own name or style, a document to be given in accordance with this section may be addressed to the name or style under which the person carries on business.

(4) A document sent by ordinary mail, registered mail, electronic mail, fax or a communication method referred to in subsection (2) (i) is conclusively deemed to have been given on the date the document was sent.

(5) Despite subsection (4), if a notice of assessment is sent by ordinary mail, registered mail or electronic mail, the notice, for the purposes of this Act, is deemed to have been given on the date of that notice.

(6) For the purposes of this Act, the date of a notice given by the commissioner is the date stated on the notice.

Proof of compliance

- 93** In a prosecution or any proceeding for any matter arising under this Act, the facts necessary to establish compliance on the part of the commissioner with section 92 may be sufficiently proved in any court by the production of an affidavit of the commissioner setting out the facts.

Proof of receipt

- 94** (1) Proof of the receipt by a person of a document to which section 92 applies may be established in any court by showing that the document was given in accordance with that section.
- (2) A person seeking to establish that a document referred to in subsection (1) was not received by the person bears the burden of establishing that fact.

How and when documents are given by minister

- 95** If, under this Act, a document must or may be given by the minister to a person,
- (a) the document may be given in accordance with section 92 (2), and
 - (b) if the document is given in accordance with that section, the document is conclusively deemed to have been given on the date of that document.

Electronic payment

- 96** A person required to pay an amount to the government under this Act must pay the amount electronically in the manner required by the commissioner.

When payment is received

- 97** If, under this Act, an amount must or may be paid to the government, the amount is conclusively deemed to be paid on the date it is received by the government.

When documents are filed with or given to commissioner or minister

- 98** (1) If, under this Act, a document must or may be filed with or given to the commissioner or minister, the document is conclusively deemed to be filed or given on the date it is received by the commissioner or minister, as the case may be.
- (2) If, under this Act, a document must or may be given to the minister, the document is conclusively deemed to have been given if delivered to the office of the deputy minister.

PART 7 – OFFENCES

General offences

- 99** A person who does any of the following commits an offence:

- (a) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a tax return, notice, application or other record required to be filed or given under this Act;
- (b) destroys, alters, mutilates, hides or otherwise disposes of a record to evade payment of an amount to be paid to the government under this Act;
- (c) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive entry in a record related to an amount to be paid to the government under this Act;
- (d) omits, or participates in, assents to or acquiesces in the omission of, a material particular in a record required to be kept under this Act;
- (e) makes or uses, or participates in, assents to or acquiesces in the making or use of, a record in a false or deceptive manner in order to obtain a tax benefit;
- (f) wilfully, in any manner, evades or attempts to evade payment of tax payable under this Act;
- (g) conspires with any person to do anything described in paragraphs (a) to (f).

Penalties

- 100** (1) An individual who commits an offence under section 99 is liable to
- (a) a fine of not less than 50% and not more than 200% of the amount of tax that was sought to be evaded,
 - (b) imprisonment for not more than 2 years, or
 - (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.
- (2) A corporation that commits an offence under section 99 is liable to a fine of not less than 50% and not more than 200% of the amount of tax that was sought to be evaded.

Offences for failure to provide records or information required by commissioner or for interference

- 101** (1) A person commits an offence if the person contravenes any of the following provisions:
- (a) section 70 (3) (a), (b) or (c) [*production of records and answering questions at specified location*];
 - (b) section 70 (8) (a) or (b) [*interfering with inspection or audit*];
 - (c) section 71 [*requirement to provide records*];
 - (d) section 72 (3) [*demand for information*].
- (2) An individual who commits an offence under subsection (1) is liable to

- (a) a fine of not more than \$100 000,
- (b) imprisonment for not more than 12 months, or
- (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.

(3) A corporation that commits an offence under subsection (1) is liable to a fine of not more than \$100 000.

Offences in relation to confidential information

102 (1) A person commits an offence if

- (a) the person contravenes section 90 (2) [*communication of information*], or
- (b) the person knowingly contravenes an order made under section 241 (4.1) of the *Income Tax Act* (Canada) as that section applies for the purposes of this Act.

(2) A person

- (a) to whom taxpayer information has been provided for a particular purpose under section 90 (5) (b), (d), (g) or (j), or
- (b) who is an official to whom taxpayer information has been provided for a particular purpose under section 90 (5) (a), (c) or (e)

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of or allows access to that information commits an offence.

(3) An individual who commits an offence under subsection (1) or (2) is liable to

- (a) a fine of not more than \$5 000,
- (b) imprisonment for not more than 12 months, or
- (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.

(4) A corporation that commits an offence under subsection (1) or (2) is liable to a fine of not more than \$5 000.

Offence by corporation

103 (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits that offence, whether or not the corporation is prosecuted for the offence.

(2) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, officer, director or agent of the defendant, whether or not the employee, officer, director or agent is identified or has been prosecuted for the offence.

(3) Subsection (2) does not apply if the defendant establishes that the defendant exercised due diligence to prevent the commission of the offence.

Limitation period for prosecution

104 The time limit for laying an information for an offence under this Act is 6 years after the date when the act or omission that is alleged to constitute the offence occurred.

Section 5 of Offence Act

105 Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

PART 8 – REGULATIONS

General regulation-making authority

106 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.

(3) The authority to make regulations under another provision of this Act does not limit subsection (1) or (2).

(4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:

- (a) delegate a matter to a person;
- (b) confer a discretion on a person;
- (c) make different regulations for different persons, places, things, circumstances or transactions, or for different classes of persons, places, things, circumstances or transactions;
- (d) establish or define classes of persons, places, things, circumstances or transactions.

Other regulations

107 The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing classes of organizations for the purposes of paragraph (d) of the definition of "charitable or non-profit employer" in section 1 [*definitions*];
- (b) prescribing an amount for the purposes of section 41 [*instalments*];
- (c) prescribing interest rates and the manner of calculating interest for the purposes of this Act.

PART 9 – TRANSITIONAL PROVISIONS AND AMENDMENTS TO THIS ACT**Division 1 – Transitional Provisions****Instalments and interest – 2019 calendar year**

108 Despite sections 41 [*instalments*] and 62 [*interest on unpaid instalments*], for the purposes of applying those sections to an employer in the 2019 calendar year, the employer's tax payable for the 2018 calendar year is deemed to be equal to the amount of tax that would have been payable by that employer for that calendar year if this Act and the regulations had come into force on January 1, 2018.

Registration – 2019 calendar year

109 Despite section 31 [*registration*] but subject to section 108, if an employer is required to pay an amount under section 41 [*instalments*] on or before June 15, 2019, the employer must apply to be registered under section 31 (1) on or before May 15, 2019.

Regulations to deal with transitional matters and difficulties

110 (1) Despite this or any other Act, the Lieutenant Governor in Council may make regulations as follows:

(a) respecting any matter that the Lieutenant Governor in Council considers is not provided for, or is not sufficiently provided for, in this Act;

(b) making provisions that the Lieutenant Governor in Council considers appropriate for the purpose of more effectively bringing this Act into operation;

(c) making provisions that the Lieutenant Governor in Council considers appropriate for the purpose of preventing, minimizing or otherwise addressing any difficulties encountered in bringing this Act into effect, including, without limitation, provisions making an exception to or a modification of a provision in this Act or another enactment or providing for the application of an enactment;

(d) resolving any errors, inconsistencies or ambiguities arising in this Act.

(2) A regulation under subsection (1) may be made retroactive to a specified date that is not earlier than the date this section comes into force and, if made retroactive, is deemed to have come into force on the specified date.

(3) To the extent of any conflict between a regulation under subsection (1) and this Act or another enactment, the regulation prevails.

(4) This section and any regulations made under it are repealed 3 years after the date this section comes into force.

Division 2 – Amendments to This Act

111 The title of this Act is repealed and the following substituted:

EMPLOYER HEALTH TAX ACT .

112 The following section is added:

Interest on unpaid fee for attending location outside British Columbia

65 . 1 If an employer fails to pay a fee imposed under section 74.1 [*fee for attending at location outside British Columbia*], the employer must pay to the government interest on the amount unpaid from the date of the first notice of assessment for that fee until the date of payment.

113 The following section is added to Division 7 of Part 3:

Fee for attending at location outside British Columbia

74 . 1 (1) If the commissioner is satisfied that it is necessary to attend at a location outside British Columbia for the purpose of determining whether a person is complying with or has complied with this Act and the regulations, the commissioner may impose on the person a fee payable to the government in an amount not exceeding the amount calculated under subsection (2) in respect of attending at that location.

(2) Subject to the regulations, the commissioner may calculate the amount for the purposes of subsection (1) based on

- (a) fees set by the commissioner, or
- (b) a manner of calculating fees that is set by the commissioner.

(3) For the purposes of subsection (2), the fees and manner set by the commissioner may be different for different circumstances defined by the commissioner or for attending at different locations.

(4) In imposing a fee under subsection (1), the commissioner may not impose a fee in respect of attending at a location more than 4 years before the date of the first notice of assessment for that fee.

114 Section 44 is amended in paragraph (c) of the definition of "assessable amount" by adding "or 74.1 [*fee for attending at location outside British Columbia*]" after "section 43 [*excess refund*]".

115 Section 49 is amended by renumbering the section as section 49 (1) and by adding the following subsection:

(2) If the commissioner imposes a fee under section 74.1 (1) [*fee for attending at location outside British Columbia*] on a person, the commissioner must assess the person for the amount of the fee payable under that section.

116 Section 75 (5) (a) is amended by adding "(1) or (2)" after "section 49".

117 Section 107 is amended by adding the following paragraph:

(d) for the purposes of section 74.1 (2) [fee for attending at location outside British Columbia], respecting the calculation of an amount for the purposes of section 74.1 (1), including, without limitation, respecting a maximum amount that may be calculated.

Commencement

118 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 110	January 1, 2019
3	Sections 112 to 117	By regulation of the Lieutenant Governor in Council

Explanatory Note

This Bill imposes a tax, effective for the 2019 calendar year, on the remuneration paid by employers to or on behalf of employees that report for work in British Columbia.

Subject to the provisions of the Bill that provide otherwise, the tax is paid at a rate of 1.95% of the BC remuneration paid by the employer during the calendar year. If the remuneration paid by the employer is less than \$500 000, no tax is payable. If the remuneration paid by the employer is greater than \$500 000 but not greater than \$1 500 000, tax is paid at a rate of 2.925% of the amount by which the remuneration paid exceeds \$500 000.

The Bill provides for proration of these thresholds if the employer has a permanent establishment in British Columbia for only part of the calendar year.

The Bill provides for different thresholds for charitable or non-profit employers and, in the case of a charitable or non-profit employer with 2 or more qualifying locations, allows the tax payable to be calculated in respect of each qualifying location.

The Bill also does the following:

- provides specific rules for determining the amount of remuneration paid by the employer, determining whether the employer has a permanent establishment in British Columbia and determining whether an employee reports for work at a permanent establishment of the employer;
- provides specific rules for associated employers;
- incorporates, by reference, provisions of the *Income Tax Act* (Canada) and modifies those provisions for the purposes of this Bill;
- provides transitional rules for the purposes of the 2019 calendar year and provides for amendments to this Bill.

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FIRST READING SPEAKING NOTES

Bill 44 – 2018

Budget Measures Implementation (Employer Health Tax) Act, 2018

[After “Introduction of the Bill” is called]

The Minister stands to be recognized by the Speaker.

[The Speaker calls upon the Minister.]

Mr. Speaker, I have the honour to present a Message from Her Honour the Lieutenant Governor.

[Chamber staff takes the Message to the Speaker]

The Minister sits

[The Speaker reads the message.]

[The Speaker calls upon the Minister.]

The Minister stands and states:

I move that the Bill be introduced and read for the first time now.

Mr. Speaker, I am pleased to introduce the *Budget Measures Implementation (Employer Health Tax) Act, 2018*.

The Bill enacts the employer health tax, as was announced in Budget 2018.

B.C. is the only province in Canada with Medical Service Premiums that have been rising, costing families hundreds and hundreds of dollars a year.

As we announced in the February budget, we believe it's time for a different approach - ^{s.13}

s.13

Mr. Speaker, we are delivering on our commitment to the people of BC and giving them the break they need.

We are moving forward with eliminating costly MSP premiums and introducing the Employer Health Tax.

Together, these measures will reduce taxes by approximately \$800 million each year, one of the largest tax cuts in BC's history.

By 2020, individuals will save up to \$900 each year, and families as much as \$1,800 each year.

Mr. Speaker, the EHT will generate revenue to partially replace MSP premium revenues, to support the critical health care services the people of our province depend on.

This Bill enacts an annual tax as other provinces have done, effective for 2019 and subsequent calendar years, based on an employer's BC remuneration.

Mr. Speaker, we are also protecting small businesses that are cornerstones of our communities and sustainable economy.

Employers with BC payroll under \$500,000 will not be required to pay this tax.

Employers with BC payroll between \$500,000 and \$1.5 million will have their rate phased in.

Employers with BC payroll greater than \$1.5 million will pay 1.95 per cent of their total BC remuneration.

With this tax, BC will be tied with Ontario for the lowest tax rate in the country.

Mr. Speaker, this Bill recognizes the unique roll of charities and non-profit organizations in our society.

Similar to other provinces, charities and non-profits with multiple locations will be eligible for an exemption at each location.

And, charities and non-profit organizations will benefit from a higher exemption amount.

Mr. Speaker, the Bill also establishes how the tax will be administered and enforced.

The administration of MSP was costly and inefficient, and transitioning to the EHT will save more than \$50 million annually.

s.13

Mr. Speaker, today, I'm proud to say...

That effective January 1, 2020, there will be no more MSP bills taking money out of people's pockets.

The Minister sits

[The Speaker puts the motion.]

[The Speaker calls upon the Minister.]

The Minister stands and states:

Mr. Speaker, I move that the Bill be placed on the Orders of the Day for Second Reading at the next sitting of the House after today.

[The Speaker puts the motion.]

SECOND READING SPEAKING NOTES

Bill 44 – 2018

Budget Measures Implementation (Employer Health Tax) Act, 2018

[The House Leader calls for Second Reading of Bill 44 entitled
Budget Measures Implementation (Employer Health Tax) Act

The Minister stands to be recognized by the Speaker.

[The Speaker calls upon the Minister.]

I move that Bill 44 be read a second time now.

Mr. Speaker, this Bill enacts the employer health tax. Along with *Budget Measures Implementation (Speculation and Vacancy Tax) Act, 2018*, this Bill enacts important measures announced in *Budget 2018*.

Mr. Speaker, the Government is taking action to make life more affordable for British Columbians.

While other provinces were phasing out Medical Service Premiums, the former administration raised MSP fees year after year.

In fact, under the former government MSP Premiums doubled for hardworking families.

This left individuals paying up to \$900 a year and families paying up to \$1,800 a year.

\$900 for a senior or tradesperson... \$1,800 for young families... That's big bite out of a household's budget.

Mr. Speaker, increasing MSP premiums hit low and middle-income earners much more than higher income earners.

Under this regressive fee, someone earning \$45,000 a year pays the same as someone making \$250,000 a year.

That's just not fair.

That's why we're eliminating premiums and working to make life more affordable for people.

We're working to make sure the tax system works for all British Columbians, not just the few.

We started with a 50% cut this year that is already returning hundreds of dollars to people's pockets.

As a result Mr. Speaker, millions of people will have more money to invest in their communities and in BC businesses.

And employers who paid MSP premiums are also saving 50% this year and next.

And Mr. Speaker on Jan. 1, 2020, MSP Premiums will be fully eliminated, saving individuals up to \$900 a year, and families up to \$1,800 a year.

People across the province have told me these savings will make a real difference in their lives.

After years of rising premiums and out of control housing costs, people need a break.

That's why we're getting rid of MSP premiums....

...and taking a fairer approach and one similar to other provinces.

We're transitioning to the Employer's Health Tax.

MSP premiums raised \$2.6 billion annually while the EHT is expected to raise \$1.85 billion a year.

This means the EHT represents an \$800 million annual tax cut for British Columbians.

One of the largest tax cuts in B.C.'s history.

Mr. Speaker, after the EHT is implemented, B.C. will continue to have one of the most competitive tax systems in the country, including:

- **The lowest personal income taxes in Canada for individuals earning less than \$125,000 annually.**
- **The third lowest general corporate income tax rate among provinces; and**
- **The second lowest small business tax rate among provinces;**

s.13

We also moved quickly to get rid of PST on non-residential electricity, saving B.C. businesses \$150 million every year.

All of this is translating into B.C. having one of

the strongest economies in Canada.

B.C. real GDP is estimated to grow by 2.4% in 2018 – the highest among provinces and above the national average.

We continue to have Canada's lowest unemployment rate.

And wages are finally going up after stagnating under the old government for too long.

Mr. Speaker, these are positive signs for people who have been struggling with affordability.

And they are positive signs for businesses who have been unable to attract and recruit workers, because of B.C.'s affordability crisis.

Mr. Speaker, getting rid of MSP premiums means people have more money in their pockets to spend in their communities, supporting local business and the economy

Our approach means that we are also able to continue delivering the services people need.

Services that improve business competitiveness, as much as they take care of people.

A strong economy needs an education system that trains the next generation of entrepreneurs, engineers and nurses.

A strong economy needs a health care system that takes care of people when they are sick.

A strong economy needs roads, bridges and transportation systems that allow our goods to get to market, and people to get where they need to go.

Mr. Speaker, I'll now take a moment to walk through the details of the EHT and sections of the bill.

I'm proud to note that the EHT is tied for the lowest payroll tax rate in the country...

And the tax's design protects small businesses that are cornerstones to our communities and sustainable economy.

Similar to other provinces, charities and non-profit organizations will also benefit from a higher exemption amount...

And charities and non-profits with multiple locations will be eligible for an exemption at each location.

Mr. Speaker, this Bill contains 9 parts.

Part 1 of the Bill sets out definitions and interpretation rules for the tax. The definitions set out who is considered an employer and what is considered BC payroll for the purposes of the tax.

Mr. Speaker, Part 2 of the Bill outlines the calculation of tax.

Employers with BC payroll under \$500,000 will not be required to pay this tax.

Employers with BC payroll between \$500,000 and \$1.5 million will have their rate phased in; for example, an employer with BC payroll of \$750,000 will have an effective tax rate of 0.98 per cent, and an employer with BC payroll of \$1,250,000 will have an effective tax rate of 1.76 per cent.

Employers with BC payroll greater than \$1.5 million will pay 1.95 per cent of their total BC remuneration.

Mr. Speaker, in order to preserve the integrity of the \$500,000 exemption amount, employers that are part of a group of associated employers must share the \$500,000 exemption amount when determining their tax liability.

To align with the treatment of non-associated employers, if the total BC payroll paid by the group of associated employers is greater than

\$1.5 million, there is no exemption to share amongst them.

Mr. Speaker, similar to other provinces, specific tax treatment is also provided to charities and non-profit organizations.

These organizations are to calculate their tax at each of their locations.

Locations with annual payroll under \$1.5 million will not be subject to the tax.

Locations with annual payroll between \$1.5 million and \$4.5 million will see their tax rate phased in.

Locations with annual payroll greater than \$4.5 million will pay 1.95 per cent on that location's total payroll.

Mr. Speaker, Part 3 establishes the rules to enable administration and enforcement. In particular, it sets out:

-how taxes will be assessed and reassessed;

- the administrator's power to undertake audits;**
- the administrative penalties to enhance compliance;**
- how interest will be charged on unpaid amounts;**
- how overpayments will be refunded; and**
- a general anti-avoidance rule to limit taxpayers' ability to exploit loopholes.**

These provisions are very similar to corresponding provisions in other tax statutes administered by the province.

Mr. Speaker, Part 4 of the Bill sets out the appeal process if a taxpayer disagrees with their tax assessment.

This process is similar to the appeal process under other tax statutes.

Part 5 of this Bill sets out rules for collecting unpaid taxes including the actions

administrators may take in order to collect outstanding taxes.

These rules are similar to the collection provisions in other BC tax statutes.

Mr. Speaker, Part 6 of the Bill sets out a variety of administrative rules.

It provides how documents can be sent and received and provides that the tax will be administered in-house by the BC government.

It also creates rules about how taxpayer information can be used including safeguards to ensure this information is kept in the highest confidence.

Part 7 of the Bill sets out the actions that can result in prosecution as offences including any related penalties if convicted of an offence.

And, Part 8 of the Bill provides the ability for the Lieutenant Governor in Council to make a variety

or certain regulations necessary for the operation of the Act.

It is common in provincial legislation for particular matters to be addressed through regulation.

Finally, Mr. Speaker, Part 9 of this Bill sets out regulatory making ability and transitional rules for the first year of the tax.

Mr. Speaker, our government is working to make life more affordable for British Columbians.

Eliminating MSP Premiums and transitioning to the EHT is a key step that will return hundreds and hundreds of dollars back to the people of BC.

MSP bills have been burdensome for families and businesses, and the administration has been costly for government.

Eliminating the inefficient MSP system and transitioning to the EHT will save more than \$50 million annually.

Mr. Speaker, today, I'm proud to say...

There will be no more MSP bills taking money out of people's pockets...

There will be no more regressive fee for the universal health care that is a cornerstone of our country.

Mr. Speaker, today we are moving forward with eliminating MSP premiums, putting hundreds of millions of dollars back into the B.C. economy, and making life more affordable for people in B.C.

The Minister sits

[Bill is debated]

[When the debate is concluded, the Speaker will recognize the Minister to close debate:]

The Minister stands

The Minister makes final second reading comments followed by:

And with that, Mr. Speaker, I move second reading.

The Minister sits

[The Speaker puts the motion]

[The Speaker calls upon the Minister.]

The Minister stands and states:

Mr. Speaker, I move that the bill be referred to a Committee of the Whole House to be considered at the next sitting of the House after today.

The Minister sits

[The Speaker puts the motion]

COMMITTEE NOTES

BILL 44

*BUDGET MEASURES IMPLEMENTATION ACT (EMPLOYER HEALTH
TAX), 2018*

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SECTION 1

PART 1 – INTERPRETATION AND SPECIAL RULES

Definitions

1 In this Act:

“**assessment**”, in relation to an assessment under this Act, includes a reassessment;

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s.13

“BC remuneration”, in relation to an employer, means the total of the following:

- (a) all remuneration paid by the employer to or on behalf of the employer’s employees, other than former employees, who
 - (i) subject to section 3 (1) and (2), report for work at a permanent establishment of the employer in British Columbia, or
 - (ii) do not report for work at a permanent establishment of the employer, whether or not in British Columbia, if the remuneration is paid from or through a permanent establishment of the employer in British Columbia;
- (b) all remuneration paid by the employer to or on behalf of any of the employer’s former employees who, when the former employee was last employed by the employer,
 - (i) subject to section 3 (3), reported for work at a permanent establishment of the employer in British Columbia, or
 - (ii) did not report for work at a permanent establishment of the employer, whether or not in British Columbia, if remuneration was paid to the former employee from or through a permanent establishment of the employer in British Columbia;

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s.13

“charitable or non-profit employer” means an employer that is

- (a) a registered charity as defined in section 248 (1) of the *Income Tax Act* (Canada), or
- (b) a non-profit organization,

but does not include

- (c) an organization within the government reporting entity as defined in the *Budget Transparency and Accountability Act*, or
- (d) an organization in a prescribed class of organizations;

Page 085

Withheld pursuant to/removed as

s.13

“commissioner” means

- (a) subject to paragraph (b), the Commissioner of Income Tax appointed under the *Income Tax Act*, or
- (b) another person designated under section 88 [*designation of commissioner*] of this Act by the minister to administer this Act;

“employee” means the following:

- (a) an individual employed by an employer;
- (b) an individual appointed to an office with an employer who receives remuneration in respect of the performance of the duties of the office;
- (c) a former employee;

Page 087

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s.13

“employer” means the following:

- (a) a person who pays remuneration to an employee;
- (b) a trustee in bankruptcy, assignee, liquidator, receiver, administrator or other person administering, managing, winding up, controlling or otherwise dealing with property or business of a person referred to in paragraph (a);

“former employee” means an individual who was formerly an employee within the meaning of paragraph (a) or (b) of the definition of “employee”;

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s.13

“non-profit organization” means an organization described in section 149 (1) (e), (g), (i), (j), (k) or (l) of the *Income Tax Act* (Canada);

“permanent establishment” means any fixed place of business, including, without limitation, an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse or a workshop;

Page 091

Withheld pursuant to/removed as

s.13

“person” includes the following:

- (a) a trust;
- (b) an unincorporated association;
- (c) the government of British Columbia, another province or Canada;
- (d) the government of another jurisdiction in Canada;

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that are required under section 5, 6 or 7 of the *Income Tax Act* (Canada), 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, including, without limitation,

- (a) salaries and wages,
- (b) bonuses,
- (c) taxable allowances, and
- (d) 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 the retirement of the former employee;

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s.13

“tax return” means a tax return required to be filed under any of sections 32 to 34 [*annual return; tax return – bankrupt employer; tax return for part-year permanent establishment*] and 37 [*tax return on demand*].

Page 095

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SECTION 2

Remuneration paid by employer

- 2 (1) The following rules apply for the purposes of this Act:
 - (a) 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 required under section 5, 6 or 7 of the *Income Tax Act* (Canada) to be included in the income of a person under that Act;
 - (b) all remuneration received, or deemed to be received under section 5, 6 or 7 of the *Income Tax Act* (Canada), by an employee of the employer in respect of the employee's employment by the employer is deemed to be remuneration paid by that employer to or on behalf of the employee.
- (2) In subsection (1) (a), “**employee benefit plan**”, “**employee trust**”, “**employees profit sharing plan**” and “**salary deferral arrangement**” have the same meanings as in section 248 (1) of the *Income Tax Act* (Canada).

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SECTION 3

BC remuneration

- 3** (1) For the purposes of this Act, the remuneration paid to or on behalf of an employee, other than a former employee, who reports for work at a permanent establishment of the employer in British Columbia at any time during a calendar year includes all remuneration paid to or on behalf of the employee during the calendar year, whether or not the employee also reports for work at a permanent establishment of the employer outside British Columbia at any time during that calendar year.
- (2) Despite subsection (1), if the commissioner is satisfied that an employee reported for work at a permanent establishment of an employer outside British Columbia for all or substantially all of the calendar year, no remuneration paid to or on behalf of the employee is to be included in the employer's BC remuneration for that calendar year.
- (3) If the commissioner is satisfied that a former employee, in the calendar year during which the former employee was last employed by the former employee's employer, reported for work at a permanent establishment of the employer outside British Columbia for all or substantially all of the period in that calendar year the former employee was employed by that employer, no remuneration paid to or on behalf of the former employee is to be included in the employer's BC remuneration for the calendar year in which the remuneration was paid.

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SECTION 4

Deemed permanent establishment

- 4** Without limiting the definition of “permanent establishment”, the following rules apply for the purposes of this Act:
- (a) a corporation is deemed to have a permanent establishment in the place designated in its charter, articles of incorporation, constitution or bylaws, as the case may be, as being the corporation’s head or registered office;
 - (b) an employer is deemed to have a permanent establishment in a jurisdiction if the employer carries on business in the jurisdiction through an employee or agent who has general authority to contract on behalf of that employer;
 - (c) an employer is deemed to have a permanent establishment in a jurisdiction if an employee or agent of the employer
 - (i) has a stock of merchandise owned by that employer in the jurisdiction, and
 - (ii) fills orders received by the employee or agent from the stock of merchandise;
 - (d) land or premises owned or leased by an employer is deemed to be a permanent establishment of the employer;
 - (e) an employer is deemed to have a permanent establishment at the place where and during the time when the employer uses substantial machinery or equipment;
 - (f) an insurance corporation is deemed to have 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 calendar year is deemed to have a permanent establishment at any place where the employer, in the calendar year, produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, any thing in Canada, whether or not the employer exports that thing before selling it;
 - (h) an employer who has no fixed place of business is 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.

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SECTION 5

Reporting for work at permanent establishment

- 5 For the purposes of this Act, an employee reports for work at a permanent establishment of the employee's employer if the employee comes to the permanent establishment in person to work or otherwise can reasonably be considered to be attached to the permanent establishment.

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SECTION 6

Deemed employer

- 6 (1) In this section:
- “**BC resident**” means a person who has a permanent establishment in British Columbia;
- “**non-resident employer**” means an employer that does not have a permanent establishment in British Columbia.
- (2) This section applies if a BC resident and a non-resident employer enter into an agreement under which work is performed or services are provided for the benefit of the BC resident by an employee of the non-resident employer.
- (3) Subsection (4) applies in respect of the BC resident and employee referred to in subsection (2) if the following requirements are met during the period in a calendar year in which the work is performed or the services are provided:
- (a) the non-resident employer does not have a permanent establishment in British Columbia at any time during the period;
 - (b) the non-resident employer is not subject to tax under this Act in respect of the remuneration paid to or on behalf of the employee during the period in respect of the work performed or services provided by the employee for the benefit of the BC resident;
 - (c) the work performed or services provided by the employee for the benefit of the BC resident
 - (i) is performed or provided in British Columbia under the direction or approval of the BC resident, and
 - (ii) is of a type that can reasonably be considered to be performed or provided by an employee of the BC resident;
 - (d) the BC resident and non-resident employer do not deal with each other at arm’s length at any time during the period or did not deal with each other at arm’s length at the time the agreement referred to in subsection (2) was entered into.
- (4) For the purposes of this Act, if this subsection applies to a BC resident and employee referred to in subsection (2), the following rules apply during the period in the calendar year in which the work is performed or the services are provided:
- (a) the BC resident is deemed
 - (i) to be the employee’s employer, and
 - (ii) to have paid remuneration to or on behalf of the employee during the period in an amount equal to the remuneration paid by the non-resident employer to or on behalf of the employee during the period in respect of the work performed or services provided by the employee for the benefit of the BC resident;
 - (b) the employee is deemed
 - (i) to be the BC resident’s employee, and
 - (ii) to report for work during the period at a permanent establishment of the BC resident in British Columbia.

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SECTION 7

Application of federal provisions – arm’s length

7 Section 251 of the *Income Tax Act* (Canada) applies for the purposes of this Act.

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SECTION 8

PART 2 – IMPOSITION OF TAX

Division 1 – Tax on Employers

Tax on BC remuneration paid in calendar year

- 8** Subject to this Act, an employer must pay to the government for each calendar year a tax equal to 1.95% of the BC remuneration paid by the employer during the calendar year.

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SECTION 9

Division 2 – Employers Other Than Associated Employers and Charitable or Non-Profit Employers

Application of Division

- 9** This Division applies to an employer for a calendar year unless Division 3, 4 or 5 of this Part applies to the employer for the calendar year.

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SECTION 10

Exemption – BC remuneration not greater than \$500 000

- 10** Subject to section 12, if the BC remuneration paid during a calendar year by an employer is not greater than \$500 000, no tax is payable under this Part by the employer for the calendar year.

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SECTION 11

Notch rate – BC remuneration not greater than \$1 500 000

- 11** Subject to section 12, if the BC remuneration paid during a calendar year by an employer is greater than \$500 000 but not greater than \$1 500 000, the tax payable under this Part by the employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds \$500 000.

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SECTION 12

Proration for part-year permanent establishment

- 12 (1) This section applies to an employer for a calendar year if the employer has a permanent establishment in British Columbia for only part of the calendar year.
- (2) If the BC remuneration paid during a calendar year by an employer to whom this section applies is not greater than the amount determined by the following formula, no tax is payable under this Part by the employer for the calendar year:

$$\text{amount} = \$500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

- (3) If the BC remuneration paid during a calendar year by an employer to whom this section applies is greater than the amount determined by the formula in subsection (2) but not greater than the amount determined by the following formula, the tax payable under this Part by the employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds the amount determined by the formula in subsection (2):

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

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SECTION 13

Definition of “associated employers”

- 13** In this Division, “**associated employers**”, in relation to an employer for a calendar year, means all of the following:
- (a) the employer;
 - (b) all of the employers that are associated with the employer referred to in paragraph (a) at the end of the calendar year.

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SECTION 14

Application of Division

- 14** (1) Subject to subsection (2), this Division applies to an employer for a calendar year if the employer is associated with one or more other employers at the end of the calendar year.
- (2) This Division does not apply to an employer for a calendar year if Division 4 or 5 of this Part applies to the employer for the calendar year.

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SECTION 15

Application of federal provisions – associated employers

- 15** (1) Subject to this Act, section 256 of the *Income Tax Act* (Canada) applies for the purposes of this Division.
- (2) Section 256 (2), (2.1) and (7) to (9) of the *Income Tax Act* (Canada) does not apply for the purposes of this Division.
- (3) In applying section 256 of the *Income Tax Act* (Canada) for the purposes of this Division, the following rules apply:
- (a) that section is to be read as if the references to “taxation year” were references to “calendar year”;
 - (b) subsections (3) and (4) of that section are to be read as if the references to “Minister” were references to “commissioner”.

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SECTION 16

Other rules – associated employers

- 16** (1) For the purposes of determining, at any time, whether 2 or more employers are associated with each other, the following rules apply:
- (a) if an employer is an individual,
 - (i) the employer is deemed to be a corporation having issued a capital stock of a single class of voting shares, and
 - (ii) the individual is deemed to own, at that time, all of the issued shares of that class;
 - (b) if an employer is a partnership or a trust,
 - (i) the employer is deemed to be a corporation having issued a capital stock of a single class of voting shares divided into 100 issued shares, and
 - (ii) each member of the partnership or each beneficiary under the trust is deemed to own, at that time, the number of issued shares of that class that is equal to the proportion of 100 that
 - (A) 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
 - (B) the total income or loss of the partnership or trust for that fiscal period.
- (2) For the purposes of subsection (1) (b) (ii), if the income or loss of the partnership or trust for a period is zero, the proportion under that subsection is to be determined as if the partnership or trust had income for the period in the amount of \$100.
- (3) The following rules apply for the purposes of this Division:
- (a) subject to paragraph (b), if
 - (i) 2 employers would not, but for this paragraph, be associated with each other at a particular time, and
 - (ii) each of the 2 employers is associated with the same employer at the particular time,the 2 employers are deemed to be associated with each other at that particular time;
 - (b) subject to paragraph (c), if an employer would, but for this paragraph, be associated at a particular time with a charitable or non-profit employer, the 2 employers are deemed not to be associated with each other at the particular time;
 - (c) if 2 or more employers who are not charitable or non-profit employers would be deemed to be associated with each other under paragraph (a) at a particular time because each of the employers are, but for paragraph (b), associated with the same charitable or non-profit employer, those employers are deemed to be associated with each other at the particular time;
 - (d) if it may reasonably be considered that
 - (i) the separate existence of 2 or more employers at the end of a calendar year, or
 - (ii) the transfer of a business or part of a business from one employer to another employer in a calendar yearwas undertaken or arranged primarily for the purpose of reducing the amount of tax payable under this Act by any one of the employers for the calendar year, those

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employers are deemed to be associated with each other at the end of the calendar year.

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SECTION 17

Exemption – associated employers

17 No tax is payable under this Part by an employer for a calendar year if the total BC remuneration paid during the calendar year by all of the associated employers is not greater than

(a) \$500 000, or

(b) if each of the associated employers has a permanent establishment in British Columbia for only part of the calendar year, the amount determined by the following formula in respect of the associated employers:

$$\text{amount} = \$500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which at least one of the associated employers has one or more permanent establishments in British Columbia.

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SECTION 18

Allocation agreement

18 (1) In this section:

“**allocation agreement**” means a written agreement in the form and containing the information required by the commissioner;

“**exemption amount**”, in relation to an employer for a calendar year, means the lesser of the following:

- (a) the amount assigned to the employer for the calendar year under the allocation agreement referred to in subsection (2) (b);
- (b) the amount determined by the following formula:

$$\text{amount} = \$500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

(2) This section applies to an employer for a calendar year if the following requirements are met:

- (a) the total BC remuneration paid during the calendar year by all of the associated employers is
 - (i) greater than \$500 000 and not greater than \$1 500 000, or
 - (ii) if each of the associated employers has a permanent establishment in British Columbia for only part of the calendar year,
 - (A) greater than the amount determined by the formula in section 17 (b), and
 - (B) not greater than the amount determined by the following formula in respect of the associated employers:

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which at least one of the associated employers has one or more permanent establishments in British Columbia;

- (b) the associated employers file with the commissioner an allocation agreement that assigns, for the purposes of this Division, an amount not less than zero to each of the associated employers for the calendar year;
 - (c) the total of the amounts assigned by the allocation agreement referred to in paragraph (b) does not exceed \$500 000 or the amount referred to in paragraph (a) (ii) (A), as the case may be.
- (3) If the BC remuneration paid during a calendar year by an employer to whom this section applies is not greater than the employer’s exemption amount for the calendar year, no tax is payable under this Part by the employer for that calendar year.

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- (4) If the BC remuneration paid during a calendar year by an employer to whom this section applies is greater than the employer's exemption amount for the calendar year, the tax payable under this Part by the employer for that calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds the employer's exemption amount.

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SECTION 19

Division 4 – Charitable or Non-Profit Employers

Application of Division

- 19** (1) Subject to subsection (2), this Division applies to an employer for a calendar year if the employer is a charitable or non-profit employer
- (a) on the last day of the calendar year, or
 - (b) in the case of an employer that has a permanent establishment in British Columbia for only part of the calendar year, on the last day in the calendar year that the employer has a permanent establishment in British Columbia.
- (2) This Division does not apply to an employer for a calendar year if Division 5 of this Part applies to the employer for the calendar year.

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SECTION 20

Exemption – BC remuneration not greater than \$1 500 000

- 20** Subject to section 22, if the BC remuneration paid during a calendar year by a charitable or non-profit employer is not greater than \$1 500 000, no tax is payable under this Part by the charitable or non-profit employer for the calendar year.

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SECTION 21

Notch rate – BC remuneration not greater than \$4 500 000

- 21** Subject to section 22, if the BC remuneration paid during a calendar year by a charitable or non-profit employer is greater than \$1 500 000 but not greater than \$4 500 000, the tax payable under this Part by the charitable or non-profit employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds \$1 500 000.

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SECTION 22

Proration for part-year permanent establishment

- 22 (1) This section applies to a charitable or non-profit employer for a calendar year if the charitable or non-profit employer has a permanent establishment in British Columbia for only part of the calendar year.
- (2) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies is not greater than the amount determined by the following formula, no tax is payable under this Part by the charitable or non-profit employer for the calendar year:

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

- (3) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies is greater than the amount determined by the formula in subsection (2) but not greater than the amount determined by the following formula, the tax payable under this Part by the charitable or non-profit employer for the calendar year is equal to 2.925% of the amount by which the BC remuneration paid exceeds the amount determined by the formula in subsection (2):

$$\text{amount} = \$4\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

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SECTION 23

Division 5 – Charitable or Non-Profit Employers with 2 or More Qualifying Locations

Definition of “qualifying location”

- 23** (1) In this Division, “**qualifying location**” means a qualifying location within the meaning of subsection (2).
- (2) For the purposes of this Division, a qualifying location, in relation to an employer, consists of all of the following:
- (a) land or premises that
 - (i) is, or is part of, a permanent establishment of the employer in British Columbia, and
 - (ii) meets the following requirements:
 - (A) the employer has the exclusive right to occupy the land or premises;
 - (B) the land or premises is used and occupied solely by the employer;
 - (b) any land or premises contiguous to the land or premises referred to in paragraph (a) that is, or is part of, a permanent establishment of the employer.

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SECTION 24

Application of Division

- 24** This Division applies to an employer for a calendar year if the following requirements are met:
- (a) the employer is a charitable or non-profit employer
 - (i) on the last day in the calendar year, or
 - (ii) in the case of an employer that has a permanent establishment in British Columbia for only part of the calendar year, on the last day in the calendar year that the employer has a permanent establishment in British Columbia;
 - (b) the employer has 2 or more qualifying locations at any time during the calendar year.

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SECTION 25

BC remuneration

- 25 For the purposes of this Division and subject to section 3 [*BC remuneration*], the following rules apply:
- (a) subject to paragraph (b) of this section, if an employee reports for work at a qualifying location of a charitable or non-profit employer in a calendar year, the BC remuneration paid by the charitable or non-profit employer to or on behalf of the employee in respect of the qualifying location is deemed to include all remuneration paid to or on behalf of the employee during the calendar year;
 - (b) if an employee reports for work at 2 or more qualifying locations of a charitable or non-profit employer in a calendar year, the BC remuneration paid by the charitable or non-profit employer to or on behalf of the employee in respect of the qualifying location at which that employee primarily reports for work is deemed to include all remuneration paid to or on behalf of the employee during the calendar year;
 - (c) if an employee does not report for work at a qualifying location of a charitable or non-profit employer in a calendar year, the BC remuneration paid by the charitable or non-profit employer to or on behalf of the employee is to be attributed to a qualifying location of the charitable or non-profit employer that is reasonable having regard to all of the circumstances;
 - (d) without limiting paragraphs (a) to (c), all of the BC remuneration paid by a charitable or non-profit employer during a calendar year is to be attributed to one or more qualifying locations of the charitable or non-profit employer for the calendar year.

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SECTION 26

Total tax payable

- 26** If this Division applies to a charitable or non-profit employer for a calendar year, the tax payable by the charitable or non-profit employer under this Part is equal to the total of the tax payable by the charitable or non-profit employer for the calendar year in respect of each qualifying location of the charitable or non-profit employer.

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SECTION 27

Exemption for qualifying location – BC remuneration not greater than \$1 500 000

- 27** Subject to section 30, if the BC remuneration paid during a calendar year by a charitable or non-profit employer in respect of a qualifying location is not greater than \$1 500 000, no tax is payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location.

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SECTION 28

Notch rate for qualifying location – BC remuneration not greater than \$4 500 000

- 28** Subject to section 30, if the BC remuneration paid during a calendar year by a charitable or non-profit employer in respect of a qualifying location is greater than \$1 500 000 but not greater than \$4 500 000, the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 2.925% of the amount by which the BC remuneration paid exceeds \$1 500 000.

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SECTION 29

Tax payable for qualifying location – BC remuneration greater than \$4 500 000

- 29** Subject to section 30, if the BC remuneration paid during a calendar year by a charitable or non-profit employer in respect of a qualifying location is greater than \$4 500 000, the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 1.95% of the BC remuneration paid.

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SECTION 30

Proration for part-year permanent establishment

- 30** (1) This section applies to a charitable or non-profit employer for a calendar year if the charitable or non-profit employer has a permanent establishment in British Columbia for only part of the calendar year.
- (2) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies in respect of a qualifying location is not greater than the amount determined by the following formula, no tax is payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location:

$$\text{amount} = \$1\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

- (3) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies in respect of a qualifying location is greater than the amount determined by the formula set out in subsection (2) but not greater than the amount determined by the following formula, the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 2.925% of the amount by which the BC remuneration paid exceeds the amount determined by the formula set out in subsection (2):

$$\text{amount} = \$4\,500\,000 \times \frac{\text{BC permanent establishment}}{365}$$

where

BC permanent establishment = the number of days in the calendar year in which the employer has one or more permanent establishments in British Columbia.

- (4) If the BC remuneration paid during a calendar year by a charitable or non-profit employer to whom this section applies in respect of a qualifying location is greater than the amount determined by the formula set out in subsection (3), the tax payable under this Part by the charitable or non-profit employer for the calendar year in respect of the qualifying location is equal to 1.95% of the BC remuneration paid.

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SECTION 31

PART 3 – ADMINISTRATION AND ENFORCEMENT

Division 1 – Registration

Registration

- 31** (1) An employer must apply to the commissioner to be registered for the purposes of this Act on or before December 31 of the first calendar year in respect of which
- (a) the employer is liable to pay tax under this Act, or
 - (b) in the case of an employer to whom Division 5 of Part 2 applies for a calendar year, the BC remuneration paid by the employer during the calendar year is greater than
 - (i) \$1 500 000, or
 - (ii) if the employer has a permanent establishment in British Columbia for only part of the calendar year, the amount determined by the formula in section 30 (2) [*proration for part-year permanent establishment*].
- (2) An application under subsection (1) must be in the form and contain the information required by the commissioner.
- (3) An employer required to file an application under subsection (1) must
- (a) file the application electronically in the manner required by the commissioner, and
 - (b) file, with the application, any other information or records required by the commissioner.
- (4) On receiving an application and any other information or records to be filed with the application, the commissioner may register the employer for the purposes of this Act and issue the employer a registration number.

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SECTION 32

Division 2 – Returns, Instalments, Payment of Tax and Excess Refund

Annual return

- 32** (1) Subject to subsection (2), an employer must file with the commissioner a tax return for each calendar year.
- (2) Subsection (1) does not apply to an employer for a calendar year if,
- (a) in the case of an employer to whom Division 5 of Part 2 applies for the calendar year, the BC remuneration paid by the employer during the calendar year is not greater than
 - (i) \$1 500 000, or
 - (ii) if the employer has a permanent establishment in British Columbia for only part of the calendar year, the amount determined by the formula in section 30 (2) [*proration for part-year permanent establishment*], or
 - (b) in any other case, the employer is not liable to pay tax under this Act for the calendar year.
- (3) The employer must, without notice or demand, file the tax return under subsection (1) for a calendar year on or before March 31 in the year following the calendar year.

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SECTION 33

Tax return – bankrupt employer

- 33** (1) Despite section 32, if that section applies to an employer for a calendar year in which the employer becomes bankrupt, the employer must file with the commissioner a tax return for the portion of the calendar year before the date the employer becomes bankrupt.
- (2) The employer must file the tax return under subsection (1) within 90 days after the date the employer becomes bankrupt.

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SECTION 34

Tax return for part-year permanent establishment

- 34** Despite section 32, if that section applies to an employer for a calendar year in which the employer ceases to have a permanent establishment in British Columbia, the employer must file with the commissioner the tax return required to be filed under that section within 90 days after the date on which the employer ceases to have a permanent establishment in British Columbia.

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SECTION 35

**Tax return – person dealing with property
or business of employer**

- 35** A trustee in bankruptcy, assignee, liquidator, receiver, administrator or any other person administering, managing, winding up, controlling or otherwise dealing with the property or business of an employer who has not filed a tax return required under section 32, 33 or 34 must file the tax return with the commissioner within 90 days after the date on which the person began dealing with the property or business of the employer.

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SECTION 36

Extension of time

- 36** The commissioner may at any time extend the time established by section 32, 33, 34 or 35 for filing a tax return under the applicable section.

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SECTION 37

Tax return on demand

- 37** (1) On written demand given to a person by the commissioner, the person must file with the commissioner, on or before the date specified in the demand, a tax return for a calendar year.
- (2) Subsection (1) applies whether or not a tax return has been or is required to be filed under section 32, 33, 34 or 35.

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SECTION 38

Form and contents of tax return

- 38** (1) A tax return must be in the form and contain the information required by the commissioner.
- (2) A person required to file a tax return must
- (a) file the tax return electronically in the manner required by the commissioner, and
 - (b) file, with the tax return, any other information or records required by the commissioner.

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SECTION 39

Duty to obtain certificate before distribution

- 39** A trustee in bankruptcy, assignee, liquidator, receiver, administrator or any other person administering, managing, winding up, controlling or otherwise dealing with the property or business of an employer must not distribute assets of the employer unless a certificate has been obtained from the commissioner certifying that no amount is owing to the government under this Act by the employer.

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SECTION 40

Trustee in bankruptcy – notice to commissioner

- 40** If a trustee in bankruptcy is appointed to administer, manage, wind up, control or otherwise deal with the property or business of an employer, the trustee in bankruptcy must, within 10 days after the appointment, give written notice of the appointment to the commissioner.

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SECTION 41

Instalments

- 41** If an employer's tax payable for the preceding calendar year exceeds the prescribed amount, the employer must pay to the government, on account of the employer's tax payable under this Act for the current calendar year, on or before June 15, September 15 and December 15 in the current calendar year, an amount that is not less than 25% of the lesser of
- (a) the employer's tax payable for the preceding calendar year, and
 - (b) the employer's estimated tax payable for the current calendar year.

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SECTION 42

Payment with filed tax return

- 42** On or before the date an employer is required to file a tax return for a calendar year, the employer must pay to the government the amount remaining unpaid of the employer's tax payable under this Act for the calendar year.

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SECTION 43

Excess refund

- 43** (1) If it appears from an inspection, audit, examination or investigation or from other information available to the commissioner that an amount has been refunded to an employer in excess of the amount to which the employer was entitled as a refund under this Act, the excess is deemed to be an amount that became payable to the government by the employer on the day on which the amount was refunded.
- (2) If an amount applied under section 69 (2) [*refund of overpayment*] to an amount owing by an employer is in excess of the amount to which the employer is entitled as a refund under this Act, this section applies in respect of the amount applied as if that amount had been refunded to the employer on the day the amount was applied to the amount owing.

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SECTION 44

Division 3 – Assessments

Definitions

44 In this Division:

“assessable amount”, in relation to a person, means

- (a) any tax payable under this Act by the person,
- (b) any penalties payable under this Act by the person,
- (c) an amount payable under section 43 [*excess refund*] by the person, and
- (d) any interest payable under this Act by the person;

“normal reassessment period” means the period referred to in section 46 (1) (b) [*assessments – general rules*] for a person for a calendar year.

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SECTION 45

Examination of tax return and resulting assessment

- 45** After the commissioner receives an employer's tax return for a calendar year and any other information or records required to be filed with the tax return, the commissioner must
- (a) examine the tax return, and
 - (b) assess the employer for any assessable amounts for the calendar year.

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SECTION 46

Assessments – general rules

- 46** (1) The commissioner may assess a person for an assessable amount for a calendar year
- (a) at any time, if
 - (i) the person has failed to file a tax return for the calendar year,
 - (ii) the person or a person filing the person's tax return for the calendar year has made any misrepresentation or committed any fraud
 - (A) in filing the tax return, or
 - (B) in supplying, at any time, other information or records under this Act for the calendar year, or
 - (iii) a waiver filed under subsection (2) by the person for the calendar year is in effect at that time, or
 - (b) within 6 years after the date of the original notice of assessment for the calendar year, in any other case.
- (2) A person may, before the expiration of the normal reassessment period for a calendar year, file with the commissioner a waiver for the calendar year.
- (3) A waiver filed under subsection (2) continues in effect until 6 months after the person files with the commissioner a notice revoking the waiver.
- (4) A waiver filed under subsection (2) and a notice filed under subsection (3) must be filed in the form and manner, and containing the information, required by the commissioner.
- (5) Despite subsection (1), an assessment to which subsection (1) (a) (ii) or (iii) applies in respect of a person for a calendar year may be made after the person's normal reassessment period for the calendar year, but only to the extent that the assessment can reasonably be considered as relating to,
- (a) if subsection (1) (a) (ii) applies to the assessment, any misrepresentation made by the person or another person who filed the person's tax return for the calendar year or any fraud committed by the person or that other person in filing the tax return or in supplying any other information or records under this Act, or
 - (b) if subsection (1) (a) (iii) applies to the assessment, a matter specified in the waiver filed with the commissioner for the calendar year.
- (6) The authority of the commissioner to assess a person for an assessable amount under sections 47 to 50
- (a) is in addition to the authority to make an assessment under section 45 or this section,
 - (b) is not limited by the authority to make an assessment under section 45 or this section, and
 - (c) does not limit the authority to make an assessment under section 45 or this section.

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SECTION 47

Consequential assessments – income taxes

- 47 (1) Subsection (2) applies in relation to an employer for a calendar year if
- (a) the employer is issued a notice of assessment, reassessment or additional assessment under the *Income Tax Act* (Canada), and
 - (b) an amount relevant in calculating an assessable amount under this Act for the employer for the calendar year would be changed if an assessment were made under this Act.
- (2) If this subsection applies in relation to an employer for a calendar year,
- (a) the employer must, within 90 days of receiving the notice referred to in subsection (1) (a), file with the commissioner
 - (i) a notice, in the form and manner, and containing the information, required by the commissioner, and
 - (ii) any other information or records required by the commissioner to be filed with the notice, and
 - (b) the commissioner may, subject to subsection (3), assess the employer for an assessable amount for the calendar year, but only to the extent that the assessment can reasonably be considered as relating to the assessment, reassessment or additional assessment under the *Income Tax Act* (Canada).
- (3) The commissioner may make an assessment under subsection (2) only before the later of
- (a) the last day of the normal reassessment period for the calendar year, and
 - (b) the end of the day that is one year after the day that is the earlier of
 - (i) the day that the commissioner is notified under subsection (2) (a), and
 - (ii) the day that the commissioner is otherwise notified of the assessment, reassessment or additional assessment under the *Income Tax Act* (Canada).

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SECTION 48

Consequential reassessments after appeal

- 48** (1) This section applies in relation to a person if
- (a) a court has, on the disposition of an appeal by the person in respect of an assessment,
 - (i) allowed the appeal,
 - (ii) varied the decision from which the appeal was made, or
 - (iii) referred the decision back to the commissioner for reconsideration, and
 - (b) any further appeal is disposed of or the time for filing any further appeal has expired.
- (2) If this section applies in relation to a person, the commissioner must reassess the person for an assessable amount in accordance with the decision of the court.

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SECTION 49

Assessments of other amounts payable

- 49** The commissioner may at any time assess a person for any amount payable under section 43 *[excess refund]*.

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SECTION 50

Assessments of penalties and interest

- 50** (1) The commissioner may assess a person for a penalty to which the person is liable under this Act, and any interest payable in relation to the penalty, but the assessment may not be made after the latest of the applicable dates by which the commissioner may assess, under the following provisions, a person in respect of whose liability the penalty is assessed:
- (a) section 46 [*assessments – general rules*];
 - (b) section 47 [*consequential assessments – income taxes*];
 - (c) section 48 [*consequential reassessments after appeal*].
- (2) The commissioner may at any time reassess a person
- (a) as is necessary to give effect to a cancellation under section 61 [*waiver or cancellation of penalty*] of all or part of a penalty otherwise payable under this Act by the person, or
 - (b) as is necessary to give effect to a cancellation under section 68 [*waiver or cancellation of interest*] of all or part of any interest otherwise payable under this Act by the person.

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SECTION 51

Rules relating to assessments

- 51**
- (1) Despite a prior assessment, or if no assessment has been made, a person continues to be liable for an amount owing to the government under this Act.
 - (2) In making an assessment, the commissioner
 - (a) is not bound by a tax return filed under this Act or any other information or records supplied under this Act, and
 - (b) may assess an assessable amount despite the filing of a tax return or the supply of any other information or records under this Act or if no tax return has been filed.
 - (3) Subject to being amended or varied on appeal or by a reassessment, an assessment is valid and binding despite any error, defect or omission in the assessment or in procedure.

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SECTION 52

Notice of assessment

- 52** (1) After making an assessment in respect of a person, the commissioner must give the person a notice of assessment that includes a statement of the assessable amounts.
- (2) If a notice of assessment has been given to a person as required by this Act, the assessment is deemed to have been made on the date of the notice.
- (3) Evidence that a notice of assessment has been given is proof, in the absence of evidence to the contrary, that the amounts assessed under this Act are due and owing, and the onus of proving otherwise is on the person liable to pay the amounts assessed.

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SECTION 53

Anti-avoidance rule

53 (1) In this section:

“avoidance transaction” means a transaction

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, or
- (b) that is part of a series of transactions that, but for this section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain a tax benefit;

“tax benefit” means a reduction or avoidance of an amount of tax payable under this Act;

“tax consequences”, in relation to an employer, means

- (a) the amount of the employer’s BC remuneration, or
- (b) any amount, other than an amount referred to in paragraph (a), that is payable or refundable to the employer under this Act or that is relevant for the purposes of calculating that amount;

“transaction” includes an arrangement or event.

- (2) For the purposes of this section, a series of transactions is deemed to include any related transactions completed in contemplation of the series.
- (3) If a transaction is an avoidance transaction, the commissioner may, by assessment, determine the tax consequences to an employer in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.
- (4) Subsection (3) applies to a transaction only if the transaction may reasonably be considered to be a transaction that
 - (a) would, if this Act were read without reference to this section, result, directly or indirectly, in a misuse of the provisions of this Act or the regulations, or
 - (b) would result, directly or indirectly, in an abuse having regard to those provisions, other than this section, read as a whole.
- (5) Without limiting subsection (3), in determining the tax consequences to an employer in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from an avoidance transaction, the commissioner may do one or more of the following:
 - (a) allow or disallow in whole or in part any amount included or deducted in calculating an amount referred to in paragraph (a) or (b) of the definition of “tax consequences” in subsection (1);
 - (b) recharacterize the nature of any payment or other amount.

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SECTION 54

Division 4 – Administrative Penalties

Penalty for failure to file tax return

54 An employer who fails to file a tax return under section 32 [*annual return*], 33 [*tax return – bankrupt employer*] or 34 [*tax return for part-year permanent establishment*] for a calendar year within the time required under Division 2 is liable to a penalty equal to the total of

- (a) 5% of the amount remaining unpaid of the employer’s tax payable under this Act for the calendar year on the date the tax return was required to be filed, and
- (b) the amount determined by the following formula:

$$\text{amount} = 1\% \times A \times B$$

where

- A = the amount remaining unpaid of the employer’s tax payable under this Act for the calendar year on the date the tax return was required to be filed;
- B = the number of months, not exceeding 12 and rounded down to the nearest whole number, in the period beginning on the date the tax return was required to be filed and ending on the earlier of
 - (i) the date the tax return was filed, and
 - (ii) the date the employer is assessed a penalty under this section.

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SECTION 55

Penalty for repeated failure to file tax return

55 If all of the following apply:

- (a) an employer fails to file a tax return under section 32, 33 or 34 for a calendar year within the time required under Division 2;
- (b) the employer subsequently fails to file a tax return under section 37 [*tax return on demand*] for the calendar year within the time required under that section;
- (c) the employer was assessed a penalty under section 54 in respect of a failure to file a tax return referred to in that section for any of the 3 preceding calendar years,

the employer is liable to a penalty equal to the total of

- (d) 10% of the amount remaining unpaid of the employer's tax payable under this Act for the calendar year on the date the tax return referred to in paragraph (a) was required to be filed, and
- (e) the amount determined by the following formula:

$$\text{amount} = 2\% \times A \times B$$

where

A = the amount remaining unpaid of the employer's tax payable under this Act for the calendar year on the date the tax return referred to in paragraph (a) was required to be filed;

B = the number of months, not exceeding 20 and rounded down to the nearest whole number, in the period beginning on the date the tax return referred to in paragraph (a) was required to be filed and ending on the earlier of

- (i) the date the tax return was filed, and
- (ii) the date the employer is assessed a penalty under this section.

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SECTION 56

Penalty for failure to provide required information

- 56** If a person who is required to file a tax return fails to include in the return any required information or fails to file with the return any other required information or records, the person is liable to a penalty of \$100 for each failure.

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SECTION 57

Penalties respecting information and records

- 57** (1) A person who fails to comply with a provision specified in subsection (2) is liable, in respect of each failure, to a penalty equal to the greater of
- (a) \$100, and
 - (b) \$25 for each day during which the failure continues, to a maximum of \$2 500.
- (2) For the purposes of subsection (1), the following provisions are specified:
- (a) section 70 (3) (a), (b) or (c) [*production of records and answering questions at specified location*];
 - (b) section 71 [*requirement to provide records*];
 - (c) section 72 (3) [*demand for information*].

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SECTION 58

Penalty for interfering with inspection or audit

- 58** A person who contravenes section 70 (8) (a) or (b) [*interfering with inspection or audit*] is liable to a penalty of \$100 for each contravention.

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SECTION 59

Gross negligence

- 59** (1) In this section, “**additional tax**” means the amount by which the tax payable under this Act for the calendar year calculated on the basis of accurate and complete information exceeds the tax payable for the calendar year calculated on the basis of the false statement or omission described in subsection (2).
- (2) If an employer knowingly, or under circumstances amounting to gross negligence, makes, or participates in, assents to or acquiesces in the making of a false statement or an omission in a tax return, notice, application or other record filed or supplied or in information supplied under this Act for a calendar year, the employer is liable to a penalty equal to the greater of
- (a) \$100, and
 - (b) 50% of the additional tax.

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SECTION 60

Misrepresentation by third party

- 60** (1) Section 163.2 of the *Income Tax Act* (Canada) applies for the purposes of this Act with the changes the circumstances require for the purposes of this Act.
- (2) Without limiting subsection (1), in applying section 163.2 of the *Income Tax Act* (Canada) for the purposes of this Act, the following rules apply:
- (a) a reference in that section to the *Income Tax Act* (Canada) is to be read as a reference to this Act;
 - (b) a reference in that section to an assessment is to be read as a reference to an assessment under this Act;
 - (c) that section is to be read without reference to the definition of “excluded activity” in subsection (1) of that section and without reference to subsections (7) and (8) (b) (i) and (ii) of that section;
 - (d) subsection (5) of that section is to be read as if
 - (i) the reference to “subsection 163 (2)” were a reference to section 59 (2) of this Act, and
 - (ii) the reference to “return filed for the purposes of this Act” were a reference to “tax return, notice, application or other record filed or supplied or in information supplied under this Act”;
 - (e) subsection (10) of that section must be read as if the reference to “section 163 (3)” were a reference to subsection (3) of this section;
 - (f) subsection (15) of that section must be read as if the reference to “or an employee engaged in an excluded activity” were excluded.
- (3) In an appeal to the Supreme Court under section 76 [*appeal to court*], the onus is on the minister to establish the facts justifying the assessment of a penalty to which a person is liable under this section.

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SECTION 61

Waiver or cancellation of penalty

- 61** The commissioner may at any time waive or cancel all or part of any penalty otherwise payable by a person under this Act.

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SECTION 62

Division 5 – Interest

Interest on unpaid instalments

- 62**
- (1) If an employer fails to pay an instalment on or before an instalment due date as required under section 41 [*instalments*], the employer must pay to the government interest on the amount that is equal to 25% of the lesser of
 - (a) the employer's tax payable for the preceding calendar year, and
 - (b) the employer's tax payable for the current calendar year.
 - (2) An employer who is required to pay an instalment under section 41 for a calendar year must pay interest under subsection (3) of this section if the employer pays an instalment on or before an instalment due date that is less than the amount that is equal to 25% of the lesser of
 - (a) the employer's tax payable for the preceding calendar year, and
 - (b) the employer's tax payable for the current calendar year.
 - (3) An employer who must pay interest under this subsection must pay to the government interest on the amount by which the amount referred to in subsection (2) exceeds the instalment paid by the employer.
 - (4) Interest payable under subsection (1) or (3) is payable from the instalment due date until the earlier of
 - (a) the date of payment, and
 - (b) the date the employer is required to file a tax return for the calendar year.
 - (5) If an employer who must pay interest under this section does not pay the interest on or before the date referred to in subsection (4) (b), the employer must pay to the government interest on the amount of interest unpaid from the day after the date referred to in subsection (4) (b) until the date of payment.

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SECTION 63

Interest on unpaid taxes

- 63** If an employer fails to pay tax as required under section 42 [*payment with filed tax return*], the employer must pay to the government interest on the amount unpaid from the date the tax was payable under that section until the date of payment.

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SECTION 64

Interest on excess refund

- 64** If an amount is deemed under section 43 (1) [*excess refund*] to be an amount payable by an employer, the employer is liable to pay interest on the amount from the date the amount became payable under that section until the date of payment.

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SECTION 65

Interest on penalties

- 65** A person must pay to the government interest on a penalty assessed under this Act as follows:
- (a) in the case of a penalty under section 54 [*penalty for failure to file tax return*], from the date on which the tax return was required to be filed until the date of payment;
 - (b) in the case of a penalty under section 55 [*penalty for repeated failure to file tax return*], from the date on which the tax return referred to in paragraph (a) of that section was required to be filed until the date of payment;
 - (c) in the case of a penalty under section 56 [*penalty for failure to provide required information*], from the date on which the tax return was filed until the date of payment;
 - (d) in the case of a penalty under section 59 (2) [*gross negligence*], from the date on which the tax return, notice, application or other record was filed or supplied, or the date on which the information was supplied, until the date of payment;
 - (e) in the case of any other penalty, from the date of the notice of assessment that specifies the amount of the penalty assessed until the date of payment.

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SECTION 66

Calculation of interest

- 66** Interest payable to the government under this Act must be calculated at the prescribed rate and in the prescribed manner.

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SECTION 67

No interest if full payment within 30 days

67 Despite any other provision of this Division, if

(a) a notice of assessment or statement of account given to a person by the commissioner specifies an amount that is owing to the government under this Act by the person, and

(b) the person, within 30 days after the date of the notice of assessment or statement of account, pays the amount owing in full,

interest is not payable on the amount owing from the date of the notice of assessment or statement of account until the date of payment.

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SECTION 68

Waiver or cancellation of interest

- 68** The commissioner may at any time waive or cancel all or part of any interest otherwise payable under this Act by a person.

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SECTION 69

Division 6 – Refunds

Refund of overpayment

- 69**
- (1) If the commissioner believes, based on the results from an inspection, audit, examination or investigation or other information available to the commissioner, that an overpayment has been made by an employer, the minister, on the certificate of the commissioner as to facts, must refund the amount overpaid to the employer from the consolidated revenue fund.
 - (2) Despite subsection (1), if there is an amount owing to the government under this Act by the employer, the amount overpaid must first be applied in satisfaction of the amount owing, and notice must be given to the employer, accompanied by the refund of the amount overpaid and remaining unapplied.
 - (3) Despite subsections (1) and (2), if the amount to be refunded under subsection (1) or (2) is less than \$10, the amount overpaid, and, in the case of subsection (2), remaining unapplied, is deemed to be zero.

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SECTION 70

Division 7 – Inspections and Audits

Inspection and audit powers

- 70** (1) In this section:
- “**electronic**” has the same meaning as in the *Electronic Transactions Act*;
- “**specified location**” means any place
- (a) used by a person in relation to business carried on by the person, or
 - (b) where the records of a person are kept.
- (2) Subject to subsection (4), the commissioner may, at any reasonable time and for any purpose related to the administration and enforcement of this Act and the regulations,
- (a) enter a specified location,
 - (b) inspect, audit and examine records at the specified location,
 - (c) make copies of records, and
 - (d) subject to subsection (7), remove records from the specified location for the purpose of making copies.
- (3) A person occupying a specified location must do all of the following, as applicable:
- (a) produce or provide electronic access to all records as may be required by the commissioner;
 - (b) in the case of records in electronic form, produce or provide electronic access to the records in the form and manner required by the commissioner;
 - (c) answer all questions of the commissioner relating to the matters referred to in subsection (2).
- (4) The power to enter a specified location under subsection (2) must not be used to enter a specified location that is occupied as a residence without the consent of the occupier except under the authority of a warrant issued under subsection (5).
- (5) On being satisfied by evidence on oath that entry on or into any place is necessary for any purpose relevant to the administration and enforcement of this Act and the regulations, a justice may issue a warrant authorizing an individual named in the warrant to enter the place in accordance with the warrant in order to exercise the powers referred to in subsection (2) (a) to (d).
- (6) The commissioner may make an application for a warrant under subsection (5) without notice to any other person.
- (7) If the commissioner removes records from a specified location for the purpose of making copies, the commissioner must return the records within a reasonable time.
- (8) A person must not
- (a) interfere with, hinder or molest a person doing anything that the person is authorized to do under this section, or
 - (b) prevent or attempt to prevent a person from doing anything that the person is authorized to do under this section.

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SECTION 71

Requirement to provide records

- 71** When required by the commissioner, a person must provide to the commissioner all records that the commissioner considers necessary to determine whether this Act and the regulations are being or have been complied with.

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SECTION 72

Demand for information

- 72** (1) For any purpose related to the administration or enforcement of this Act or the regulations, the commissioner may, by giving a person a demand notice, require from the person
- (a) any information or additional information,
 - (b) the production of any records, or
 - (c) a written statement.
- (2) A demand notice under subsection (1)
- (a) must be given by leaving the demand notice with the person or by sending the demand notice to the person by registered mail,
 - (b) must specify a reasonable time by which the person must comply with the demand notice, and
 - (c) in relation to a requirement under subsection (1) (c), may require the written statement to be made by way of affidavit or statutory declaration.
- (3) A person to whom a demand notice is given under this section must comply with the notice within the time specified in the notice.
- (4) The commissioner may issue a document certifying one or both of the following, and the document is proof of the facts certified in it:
- (a) a demand notice was given to a person in accordance with subsection (2);
 - (b) a person has failed to comply with subsection (3) in respect of a demand notice given to the person under this section.

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SECTION 73

Records required to be kept

- 73** (1) An employer must keep adequate records for the purposes of this Act.
- (2) If the records kept by an employer are, in the opinion of the commissioner, not adequate for the purposes of this Act, the commissioner may specify one or more of the following in respect of the records to be kept by the employer:
- (a) the information to be contained in the records;
 - (b) the form or manner in which the records are to be kept.
- (3) An employer who is required to keep records under this section must retain the records for a period of 6 years after the end of the calendar year to which the records relate.

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SECTION 74

Evidence – copies of records

- 74** A record certified by the commissioner to be a copy of a record obtained by the commissioner under this Act is evidence of the nature and content of the original.

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SECTION 75

PART 4 – APPEALS

Appeal to minister

- 75 (1) Subject to this section, an appeal to the minister lies from**
- (a) an assessment, and
 - (b) a determination under section 84 (13) [*lien – associated corporations*].
- (2) Written notice of the appeal must be given to the minister within 90 days after the date of the notice of assessment or the determination, as the case may be.
- (3) The appellant must set out in the notice of appeal a statement of all material facts and the reasons in support of the appeal.
- (4) On receiving the notice of appeal, the minister must
- (a) consider the matter,
 - (b) affirm, amend or change the assessment or determination, as the case may be, and
 - (c) promptly give the appellant written notice of the result of the appeal.
- (5) An appeal may not be made under this section in relation to an assessment made under any of the following provisions:
- (a) section 49 [*assessments of other amounts payable*];
 - (b) section 50 (2) [*assessments of penalties and interest*].

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SECTION 76

Appeal to court

- 76**
- (1) A decision of the minister under section 75 may be appealed to the Supreme Court by way of a petition proceeding.
 - (2) The Supreme Court Civil Rules relating to petition proceedings, other than Rule 18-3, apply to appeals under this section.
 - (3) A petition must be filed in the court registry within 90 days after the date of the minister's decision.
 - (4) In a petition filed under this section, the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".
 - (5) Within 14 days after the filing of a petition under this section, the petition must be served on the government in accordance with section 8 of the *Crown Proceeding Act*.
 - (6) An appeal under this section is a new hearing that is not limited to the evidence and issues that were before the minister.
 - (7) The court may
 - (a) dismiss the appeal,
 - (b) allow the appeal,
 - (c) vary the decision from which the appeal is made, or
 - (d) refer the decision back to the commissioner for reconsideration.
 - (8) An appeal lies from a decision of the court to the Court of Appeal with leave of a justice of the Court of Appeal.

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SECTION 77

Irregularities

- 77** An assessment made under this Act must not be varied or disallowed by a court because of an irregularity, informality, omission or error on the part of a person in the observation of any directory provision up to the date of the notice of assessment.

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SECTION 78

Tax collection not affected by pending appeal

- 78** Neither the giving of a notice of appeal by a person nor a delay in the hearing of an appeal
- (a) affects the date an amount that is owing to the government under this Act and that is the subject matter of the appeal is payable under this Act,
 - (b) affects the amount of interest payable on an amount that is owing to the government under this Act and that is the subject matter of the appeal, or
 - (c) delays the collection of an amount that is owing to the government under this Act and that is the subject matter of the appeal, or any interest payable under this Act on that amount.

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SECTION 79

If decision set aside or amount reduced on appeal

- 79** If the commissioner's or minister's decision is set aside, or the amount of an assessment or an amount owing to the government under this Act is reduced on appeal, the minister must refund the amount or excess amount paid to the appellant from the consolidated revenue fund.

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SECTION 80

PART 5 – RECOVERY OF AMOUNTS OWING

Court proceedings to recover amount owing

- 80** The government may commence a proceeding in a court of competent jurisdiction to recover an amount owing to the government under this Act as a debt due to the government.

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SECTION 81

Summary proceedings

- 81**
- (1) If a person fails to pay an amount owing to the government under this Act, the commissioner may issue a certificate specifying the amount owed and the name of the person who owes it.
 - (2) The commissioner may file with the Supreme Court a certificate issued under subsection (1).
 - (3) A certificate filed under subsection (2) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the government for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.
 - (4) If the amount specified in a certificate is different from the actual amount owing to the government under this Act, the commissioner may correct the amount by issuing a new certificate specifying the revised amount owed and the name of the person who owes it.
 - (5) The commissioner may file with the Supreme Court a certificate issued under subsection (4).
 - (6) A certificate filed under subsection (5)
 - (a) revises the certificate filed under subsection (2) that names the same person,
 - (b) is deemed to be filed at the same time as the certificate it revises, and
 - (c) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the government for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

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SECTION 82

Alternative remedies

- 82** (1) Remedies available to the government for the recovery of an amount owing to the government under this Act may be exercised separately, concurrently or cumulatively.
- (2) The liability of a person for the payment of an amount owing to the government under this Act is not affected by a fine or penalty imposed on or paid by the person for contravention of this Act.

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SECTION 83

Attachment of funds

- 83** (1) In this section, “**debtor**” means any person who is liable to pay an amount under this Act.
- (2) If the commissioner knows or suspects that a person is or is about to become indebted or liable to make a payment to a debtor, the commissioner may demand that that person pay to the government, on account of the debtor’s liability under this Act, all or part of the money otherwise payable to the debtor.
- (3) Without limiting subsection (2), if the commissioner knows or suspects that a person is about to advance money to or make a payment on behalf of a debtor, or make a payment in respect of a negotiable instrument issued by a debtor, the commissioner may demand that that person pay to the government, on account of the debtor’s liability under this Act, the money that would otherwise be advanced or paid.
- (4) A demand under this section must be given by leaving the demand with the person or by sending the demand to the person by registered mail, electronic mail or fax.
- (5) If under this section the commissioner demands that a person pay to the government, on account of a debtor’s liability under this Act, money otherwise payable by that person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) is applicable to all of those payments to be made by the person to the debtor until the liability under this Act is satisfied, and
 - (b) operates to require payments to the government out of each payment of the amount stipulated by the commissioner in the demand.
- (6) Money or a beneficial interest in money in a savings institution
- (a) on deposit to the credit of a debtor at the time a demand is given, or
 - (b) deposited to the credit of a debtor after a demand is given
- is money for which the savings institution is indebted to the debtor within the meaning of this section, but money on deposit or deposited to the credit of a debtor as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a debtor in the debtor’s capacity as a trustee.
- (7) A demand under this section continues in effect until the earliest of the following:
- (a) subject to paragraphs (b) and (c), the demand is satisfied;
 - (b) subject to paragraph (c), 90 days after the demand is given;
 - (c) 3 years after the demand is given, if the demand is made in respect of an outstanding legal claim or insurance claim that, if resolved in the debtor’s favour, will result in money becoming available to the debtor.
- (8) Despite subsection (7), if a demand is made in respect of a periodic payment referred to in subsection (5), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is given, in which case the demand ceases to have effect at the end of that period.

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- (9) Money demanded from a person by the commissioner under this section becomes payable
 - (a) as soon as the person is given the demand, if that person is indebted or liable to make a payment to the debtor at the time the demand is given, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the debtor, in any other case.
- (10) A person who fails to comply with a demand under subsection (2) or (5) is liable to pay to the government an amount equal to the amount that the person was required to pay under subsection (2) or (5).
- (11) A person who fails to comply with a demand under subsection (3) is liable to pay to the government an amount equal to the lesser of
 - (a) the total of the money advanced or paid, and
 - (b) the amount that the person was required to pay under subsection (3).
- (12) Money paid by any person to the government in compliance with a demand under this section
 - (a) satisfies the original liability to the extent of the payment, and
 - (b) is deemed to have been paid by that person to the debtor.

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SECTION 84

- (1) In this section:
- “**amount owing**” means an amount owing to the government under this Act and any interest on that amount;
- “**associated corporation**” includes a corporation that is determined under subsection (13) to be associated with another corporation for the purposes of this section;
- “**collateral**” has the same meaning as in the *Personal Property Security Act*;
- “**financing statement**” has the same meaning as in the *Personal Property Security Act*;
- “**inventory**” has the same meaning as in the *Personal Property Security Act*;
- “**personal property registry**” means the registry under the *Personal Property Security Act*;
- “**proceeds**” has the same meaning as in the *Personal Property Security Act*;
- “**property**”, when referring to the property of an associated corporation or a related individual, means property that is used in, or in conjunction with, the business in respect of which the amount referred to in subsection (2) is required to be levied and remitted;
- “**purchase money security interest**” has the same meaning as in the *Personal Property Security Act*;
- “**related individual**” has the same meaning as in the *Property Transfer Tax Act*;
- “**security interest**” has the same meaning as in the *Personal Property Security Act*.
- (2) If a person is required to pay an amount to the government under this Act and does not pay the amount, the commissioner may register a lien
- (a) against the real property of
 - (i) the person,
 - (ii) an associated corporation of the person, or
 - (iii) a related individual of the person
 by registering a certificate of lien in the prescribed form in the appropriate land title office in the same manner that a charge is registered under the *Land Title Act*, and
 - (b) against the personal property of
 - (i) the person,
 - (ii) an associated corporation of the person, or
 - (iii) a related individual of the person
 by registering a financing statement in the personal property registry.
- (3) On registration of a certificate of lien against the real property of a person under subsection (2) (a), a lien is created on the real property against which the lien is registered for the amount owing.
- (4) On registration of a lien against the personal property of a person under subsection (2) (b), a lien is created on the present and after acquired personal property in which the person has a legal or equitable interest for the amount owing.

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- (5) A lien registered under subsection (2) (b) against personal property does not have priority over
 - (a) a security interest that secures unpaid wages under section 87 (3) [*lien for unpaid wages*] of the *Employment Standards Act*, regardless of when that security interest arises, or
 - (b) a purchase money security interest in collateral other than collateral that at the time the purchase money security interest attaches is inventory or its proceeds.
- (6) In relation to a certificate of lien registered under subsection (2) (a) against the real property of a person, the commissioner may register a certificate of lien in the form prescribed for the purposes of subsection (2) (a) in the appropriate land title office in the same manner that a charge is registered under the *Land Title Act* if
 - (a) the certificate of lien registered under subsection (2) (a) against the real property of the person contains a statement of the amount owing, and
 - (b) the commissioner is satisfied that the amount referred to in paragraph (a) of this subsection that is stated in that certificate of lien is incorrect.
- (7) In relation to a financing statement registered under subsection (2) (b) against the personal property of a person, the commissioner may register a financing change statement, as defined in the *Personal Property Security Act*, in the personal property registry if
 - (a) the financing statement registered under subsection (2) (b) against the personal property of the person contains a statement of the amount owing, and
 - (b) the commissioner is satisfied that the amount referred to in paragraph (a) of this subsection that is stated in that financing statement is incorrect.
- (8) A certificate of lien registered under subsection (6) and a financing change statement registered under subsection (7) must contain a revised statement of the amount owing.
- (9) On registration of a certificate of lien against the real property of a person under subsection (6), the certificate of lien registered under subsection (2) (a) against the real property of the person is, at the same time it was originally registered, deemed to be revised to set out the amount owing as stated in the certificate of lien registered under subsection (6).
- (10) On registration of a financing change statement against the personal property of a person under subsection (7), the financing statement registered under subsection (2) (b) against the personal property of the person is, at the same time it was originally registered, deemed to be revised to set out the amount owing as stated in the financing change statement registered under subsection (7).
- (11) Despite section 90 [*communication of information*], the commissioner must,
 - (a) on the oral or written request of a person, disclose in writing the amount of the lien under this section registered against the personal or real property of the person, or
 - (b) on the written request of a person accompanied by the written consent of a named person, disclose in writing the amount of the lien under this section registered against the personal or real property of the named person.
- (12) If the commissioner believes that one corporation is associated with another corporation within the meaning of section 256 of the *Income Tax Act* (Canada), the commissioner may request one or both of the corporations to provide to the commissioner the records and information required by the commissioner to confirm or rebut that belief.

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- (13) The commissioner may determine that corporations are associated corporations for the purposes of this section if
- (a) a corporation that has been requested to provide records or information to the commissioner under subsection (12) fails or refuses to comply with that request within a period of time considered by the commissioner to be reasonable in the circumstances, or
 - (b) the records or information provided to the commissioner under this section confirm the commissioner's belief that the corporations are associated.
- (14) Immediately after a corporation is determined under this section to be associated with a person referred to in subsection (2) (a) (i) and (b) (i), the commissioner
- (a) must notify the corporation of this in writing, and
 - (b) may register a lien under this section against the real and personal property of the corporation.
- (15) The commissioner may seize personal property against which a lien is registered under subsection (14) (b) at any time after the registration of the lien, but must not take any action to realize on those assets until the later of
- (a) the date that is 90 days after the date on which the notice required under subsection (14) (a) was given to the corporation, and
 - (b) if a notice of appeal is given to the minister in respect of the determination within the time provided by section 75 (2) [*appeal to minister*], the date on which the minister upholds the determination under that appeal.
- (16) If, at any time, the commissioner becomes convinced that the corporations were not associated within the meaning of section 256 of the *Income Tax Act* (Canada) at the time that the lien was registered under subsection (14) (b) of this section or if the minister or a court of competent jurisdiction upholds the corporation's appeal against the commissioner's determination on the basis that the corporations were not associated at the time that the lien was registered, the commissioner must,
- (a) if the commissioner has not realized on any of the assets against which the lien was registered, promptly release the lien, and
 - (b) if the commissioner has realized on some or all of the assets against which the lien was registered, promptly release the lien against the remaining assets and pay the proceeds realized from the sale of the realized assets minus any costs or expenses incurred in the sale
 - (i) to the corporation, or
 - (ii) if the commissioner considers it appropriate to do so, into the Supreme Court under Rule 10-3 of the Supreme Court Civil Rules.
- (17) The release of the lien under subsection (16) (a) or the release of the lien and payment of the applicable net sale proceeds under subsection (16) (b) is deemed to be full satisfaction of all claims any person, including the corporation, might have arising out of or in any way connected with the determination made under subsection (13), the registration of the lien or the seizure or sale of any or all of the assets against which the lien was registered.

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SECTION 85

Responsibility of person having control of property

- 85** (1) In this section, “**secured party**” has the same meaning as in the *Personal Property Security Act*.
- (2) This section applies to a person who, as assignee, liquidator, administrator, receiver, receiver manager, trustee, secured party or similar person, other than a trustee appointed under the *Bankruptcy and Insolvency Act* (Canada), takes control or possession of the property of a person who has an amount owing to the government under this Act.
- (3) Before distributing the proceeds from the realization of the property referred to in subsection (2), a person to whom this section applies must obtain from the commissioner a certificate that the amount that constituted a lien under section 84 has been paid.
- (4) If a person to whom this section applies distributes the proceeds from the realization of the property referred to in subsection (2) without having obtained the certificate required by subsection (3), the person is personally liable to the government for an amount equal to the amount required to be paid to obtain the certificate.
- (5) An amount payable under subsection (4) in respect of a distribution of the proceeds from the realization of property must be paid on or before the last day of the month after the month in which the disposition occurred.

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SECTION 86

Notice of enforcement proceedings

- 86** (1) Before taking proceedings for the recovery of an amount owing to the government under this Act, the commissioner must give to the person who owes the amount notice of the commissioner's intention to enforce payment.
- (2) Failure to give notice under subsection (1) does not affect the validity of proceedings taken for the recovery of an amount owing to the government under this Act.

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SECTION 87

Limitation period

- 87** (1) In this section, “**collection proceeding**” means
- (a) a proceeding for the recovery of an amount owing to the government under section 80,
 - (b) the filing of a certificate under section 81,
 - (c) the making of a demand under section 83, and
 - (d) the registration or enforcement of a lien under section 84.
- (2) A collection proceeding may be commenced at any time within 7 years after the date of the notice of assessment for the amount claimed in the collection proceeding.
- (3) Despite subsection (2), a collection proceeding that relates to a contravention of this Act or the regulations and that involves wilful default or fraud may be commenced at any time.
- (4) If, before the expiry of the limitation period that applies under subsection (2) to an amount claimed, a person acknowledges liability in respect of the amount claimed, the date of the notice of assessment is deemed to be the day on which the acknowledgement is made.
- (5) Subsection (4) does not apply to an acknowledgement, other than an acknowledgement referred to in subsection (6), unless the acknowledgement is
- (a) in writing,
 - (b) signed, by hand or by electronic signature within the meaning of the *Electronic Transactions Act*,
 - (c) made by the person making the acknowledgement or the person’s agent, and
 - (d) made to the government or an agent of the government.
- (6) In the case of an amount claimed to which the limitation period under subsection (2) applies, for the purposes of subsection (4), part payment of the amount by the person against whom the claim is or may be made or by the person’s agent is an acknowledgement by the person against whom the claim is or may be made of liability in respect of the claim.
- (7) Section 24 (2), (4) and (10) of the *Limitation Act* applies for the purposes of this section.
- (8) The liability of a person for the payment of an amount owing to the government under this Act is not affected by the expiry of the limitation period that applies under subsection (2) to the amount claimed.

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SECTION 87

PART 6 – GENERAL

Designation of commissioner

- 88** The minister may designate a person who is appointed under the *Public Service Act* as commissioner to administer this Act.

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SECTION 89

Delegation

- 89** (1) The commissioner may, in writing, delegate any of the commissioner's powers or duties under this Act.
- (2) A delegation under subsection (1) may be to a named person or to a class of persons.

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SECTION 90

Communication of information

90 (1) In this section:

“**authorized person**” means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of the government of British Columbia to assist in carrying out the provisions of this Act;

“**finance minister**” means the member of the Executive Council charged with the administration of the *Financial Administration Act*;

“**official**” means any person

- (a) who is employed in the service of, who occupies a position of responsibility in the service of or who is engaged by or on behalf of the government of British Columbia, another province or Canada, or
- (b) who was formerly so employed or formerly occupied such a position or was formerly so engaged;

“**police officer**” means a police officer as defined in section 462.48 (17) of the *Criminal Code*;

“**taxpayer**” means an employer that is subject to tax under this Act, whether or not the employer is liable to pay tax;

“**taxpayer information**” means information of any kind and in any form relating to one or more taxpayers

- (a) that is obtained for the purposes of this Act by or on behalf of the minister, or
- (b) that is prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates.

(2) Except as authorized by this section, an official must not

- (a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information,
- (b) knowingly allow any person to have access to any taxpayer information, or
- (c) knowingly use any taxpayer information otherwise than in the course of the administration and enforcement of this Act or for a purpose for which the information was provided under this section.

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- (3) Despite any other enactment or law, an official must not be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.
- (4) Subsections (2) and (3) do not apply in respect of legal proceedings referred to in section 241 (3) of the *Income Tax Act* (Canada).
- (5) Subject to subsection (6), an official may do one or more of the following:
 - (a) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of the administration or enforcement of this Act, solely for those purposes;
 - (b) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of determining
 - (i) any tax, interest, penalty or other amount that is or may become payable by the person under this Act,
 - (ii) any refund to which the person is or may become entitled under this Act, or
 - (iii) any other amount that is relevant for the purposes of a determination under subparagraph (i) or (ii);
 - (c) provide taxpayer information as follows:
 - (i) to an official of the Department of Finance of the Government of Canada solely for the purposes of the formulation or evaluation of fiscal policy;
 - (ii) to an official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty;
 - (iii) to an official solely for the purposes of the administration or enforcement of an enactment of British Columbia or another province that provides for the imposition or collection of a tax or duty;
 - (iv) to an official solely for the purposes of the administration or enforcement of the *Workers Compensation Act*;
 - (v) to an official of the ministry of the finance minister solely for the purposes of the formulation or evaluation of fiscal policy;
 - (vi) to an official solely for the purposes of setting off against any sum of money that may be due or payable by the government of British Columbia a debt due to that government or to the government of another province or of Canada;
 - (d) provide taxpayer information, or allow the inspection of or access to taxpayer information, as the case may be, under, and solely for the purposes of,
 - (i) sections 44 (1) [*powers of commissioner in conducting investigations, audits or inquiries*] and 61 (1) [*powers, duties and protections of adjudicator*] of the *Freedom of Information and Protection of Privacy Act*, or
 - (ii) sections 15 [*staff in government or government organizations*], 16 [*access to information, documents or things*] and 17 [*summons and requests*] of the *Auditor General Act*;
 - (e) provide taxpayer information solely for the purposes of sections 17 to 19 [*write off of assets and uncollectable debts, extinguishment of debts and remissions*] of the *Financial Administration Act*;

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- (f) use taxpayer information to compile information in a form that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates;
 - (g) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by the government in respect of a period during which the authorized person was employed by, or engaged by or on behalf of, the government to assist in the administration or enforcement of this Act, to the extent that the information is relevant for the purpose;
 - (h) use taxpayer information relating to a taxpayer to provide information to the taxpayer;
 - (i) provide taxpayer information to a police officer solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, if
 - (i) the taxpayer information can reasonably be considered necessary for the purpose of ascertaining (A) the circumstances in which an offence under the *Criminal Code* may have been committed, or (B) the identity of the person who may have committed an offence, with respect to an official, or with respect to any person related to that official,
 - (ii) the official was or is engaged in the administration or enforcement of this Act, and
 - (iii) the offence can reasonably be considered to be related to that administration or enforcement;
 - (j) provide taxpayer information to, or allow inspection of or access to taxpayer information by, any person otherwise legally entitled to the information under an enactment of British Columbia solely for the purposes for which that person is entitled to that information.
- (6) Except in accordance with an agreement entered into under section 91, an official must not, under subsection (5) (a) to (c) or (e) to (j) of this section, provide taxpayer information to, or allow inspection of or access to taxpayer information by, an official of
- (a) a public body, as defined in the *Freedom of Information and Protection of Privacy Act*, other than the ministry of the minister or, under subsection (5) (c) (v), the ministry of the finance minister,
 - (b) the government of Canada, or
 - (c) the government of another province.
- (7) Section 241 (3.1), (4.1) and (5) of the *Income Tax Act* (Canada) applies for the purposes of this Act.
- (8) In applying section 241 of the *Income Tax Act* (Canada),
- (a) the reference to “the Minister” in subsection (3.1) of that section is to be read as a reference to the minister responsible for this Act,
 - (b) the reference to “authorized person” in subsection (4.1) of that section is to be read as a reference to “authorized person” within the meaning of this section, and
 - (c) the reference to “official” in subsection (5) of that section is to be read as a reference to official within the meaning of this section.

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- (9) To the extent of any inconsistency or conflict with sections 32 [*use of personal information*], 33 [*disclosure of personal information*], 33.1 [*disclosure inside or outside Canada*] and 33.2 [*disclosure inside Canada only*] of the *Freedom of Information and Protection of Privacy Act*, this section applies despite that Act.

SECTION 91

Information-sharing agreements

91 (1) In this section:

“**information-sharing agreement**” means an agreement or arrangement to exchange, by electronic data transmission, electronic data matching or any other means, information for a purpose described in section 90 (5);

“**taxpayer information**” has the same meaning as in section 90.

- (2) The minister may enter into an information-sharing agreement with
- (a) the government of Canada or an agency of that government,
 - (b) the government of a province or other jurisdiction in Canada or an agency of that government, or
 - (c) a public body as defined in the *Freedom of Information and Protection of Privacy Act*.
- (3) Subject to subsection (4), taxpayer information obtained by the minister under an information-sharing agreement may only be used or disclosed for the purpose for which it was obtained under the applicable agreement.
- (4) Subsection (3) does not prevent
- (a) any taxpayer information obtained by the minister under an information-sharing agreement with the government of Canada or an agency of that government from being used or disclosed for the purpose of administering and enforcing an enactment administered by the minister that provides for the imposition and collection of a tax, or
 - (b) any taxpayer information obtained by the minister under an information-sharing agreement from being used or disclosed for the purpose of administering and enforcing an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty.
- (5) The Lieutenant Governor in Council may prescribe terms and conditions that are to be included in the information-sharing agreements entered into by the minister.

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SECTION 92

How and when documents are given by commissioner

- 92** (1) Subject to this Act, if, under this Act, a document must or may be given by the commissioner to a person, the document may be given in accordance with subsection (2).
- (2) The commissioner may give a document to a person as follows:
- (a) if the person is an individual, by leaving the document with the individual;
 - (b) if the person is a corporation, by leaving the document with a board member or senior officer of the corporation;
 - (c) if the person is an extraprovincial corporation, by leaving the document with
 - (i) a person referred to in paragraph (b), or
 - (ii) an attorney for the extraprovincial corporation;
 - (d) if the person is a partnership, by leaving the document with an individual who is a member of the partnership;
 - (e) by leaving the document with a person apparently employed at the place of business of the person;
 - (f) by sending the document by ordinary mail or registered mail to the last known address of the person according to the records of the commissioner;
 - (g) by sending the document by electronic mail to the last known electronic mail address of the person according to the records of the commissioner;
 - (h) by sending the document by fax to the last known fax number of the person according to the records of the commissioner;
 - (i) by sending the document by another communication method agreed to by the person and the commissioner.
- (3) If a person carries on business under a name or style other than the person's own name or style, a document to be given in accordance with this section may be addressed to the name or style under which the person carries on business.
- (4) A document sent by ordinary mail, registered mail, electronic mail, fax or a communication method referred to in subsection (2) (i) is conclusively deemed to have been given on the date the document was sent.
- (5) Despite subsection (4), if a notice of assessment is sent by ordinary mail, registered mail or electronic mail, the notice, for the purposes of this Act, is deemed to have been given on the date of that notice.
- (6) For the purposes of this Act, the date of a notice given by the commissioner is the date stated on the notice.

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SECTION 93

Proof of compliance

- 93** In a prosecution or any proceeding for any matter arising under this Act, the facts necessary to establish compliance on the part of the commissioner with section 92 may be sufficiently proved in any court by the production of an affidavit of the commissioner setting out the facts.

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SECTION 94

Proof of receipt

- 94** (1) Proof of the receipt by a person of a document to which section 92 applies may be established in any court by showing that the document was given in accordance with that section.
- (2) A person seeking to establish that a document referred to in subsection (1) was not received by the person bears the burden of establishing that fact.

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SECTION 95

How and when documents are given by minister

- 95** If, under this Act, a document must or may be given by the minister to a person,
- (a) the document may be given in accordance with section 92 (2), and
 - (b) if the document is given in accordance with that section, the document is conclusively deemed to have been given on the date of that document.

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SECTION 96

Electronic payment

- 96** A person required to pay an amount to the government under this Act must pay the amount electronically in the manner required by the commissioner.

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SECTION 97

When payment is received

- 97** If, under this Act, an amount must or may be paid to the government, the amount is conclusively deemed to be paid on the date it is received by the government.

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SECTION 98

When documents are filed with or given to commissioner or minister

- 98** (1) If, under this Act, a document must or may be filed with or given to the commissioner or minister, the document is conclusively deemed to be filed or given on the date it is received by the commissioner or minister, as the case may be.
- (2) If, under this Act, a document must or may be given to the minister, the document is conclusively deemed to have been given if delivered to the office of the deputy minister.

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SECTION 99

PART 7 – OFFENCES

General offences

- 99** A person who does any of the following commits an offence:
- (a) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a tax return, notice, application or other record required to be filed or given under this Act;
 - (b) destroys, alters, mutilates, hides or otherwise disposes of a record to evade payment of an amount to be paid to the government under this Act;
 - (c) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive entry in a record related to an amount to be paid to the government under this Act;
 - (d) omits, or participates in, assents to or acquiesces in the omission of, a material particular in a record required to be kept under this Act;
 - (e) makes or uses, or participates in, assents to or acquiesces in the making or use of, a record in a false or deceptive manner in order to obtain a tax benefit;
 - (f) wilfully, in any manner, evades or attempts to evade payment of tax payable under this Act;
 - (g) conspires with any person to do anything described in paragraphs (a) to (f).

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SECTION 100

Penalties

- 100** (1) An individual who commits an offence under section 99 is liable to
- (a) a fine of not less than 50% and not more than 200% of the amount of tax that was sought to be evaded,
 - (b) imprisonment for not more than 2 years, or
 - (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.
- (2) A corporation that commits an offence under section 99 is liable to a fine of not less than 50% and not more than 200% of the amount of tax that was sought to be evaded.

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SECTION 101

**Offences for failure to provide records or information
required by commissioner or for interference**

- 101** (1) A person commits an offence if the person contravenes any of the following provisions:
- (a) section 70 (3) (a), (b) or (c) [*production of records and answering questions at specified location*];
 - (b) section 70 (8) (a) or (b) [*interfering with inspection or audit*];
 - (c) section 71 [*requirement to provide records*];
 - (d) section 72 (3) [*demand for information*].
- (2) An individual who commits an offence under subsection (1) is liable to
- (a) a fine of not more than \$100 000,
 - (b) imprisonment for not more than 12 months, or
 - (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.
- (3) A corporation that commits an offence under subsection (1) is liable to a fine of not more than \$100 000.

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SECTION 102

Offences in relation to confidential information

- 102** (1) A person commits an offence if
- (a) the person contravenes section 90 (2) [*communication of information*], or
 - (b) the person knowingly contravenes an order made under section 241 (4.1) of the *Income Tax Act* (Canada) as that section applies for the purposes of this Act.
- (2) A person
- (a) to whom taxpayer information has been provided for a particular purpose under section 90 (5) (b), (d), (g) or (j), or
 - (b) who is an official to whom taxpayer information has been provided for a particular purpose under section 90 (5) (a), (c) or (e)
- and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of or allows access to that information commits an offence.
- (3) An individual who commits an offence under subsection (1) or (2) is liable to
- (a) a fine of not more than \$5 000,
 - (b) imprisonment for not more than 12 months, or
 - (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.
- (4) A corporation that commits an offence under subsection (1) or (2) is liable to a fine of not more than \$5 000.

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SECTION 103

Offence by corporation

- 103**
- (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits that offence, whether or not the corporation is prosecuted for the offence.
 - (2) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, officer, director or agent of the defendant, whether or not the employee, officer, director or agent is identified or has been prosecuted for the offence.
 - (3) Subsection (2) does not apply if the defendant establishes that the defendant exercised due diligence to prevent the commission of the offence.

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SECTION 104

Limitation period for prosecution

- 104** The time limit for laying an information for an offence under this Act is 6 years after the date when the act or omission that is alleged to constitute the offence occurred.

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SECTION 105

Section 5 of Offence Act

105 Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

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SECTION 106

PART 8 – REGULATIONS

General regulation-making authority

- 106** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.
- (3) The authority to make regulations under another provision of this Act does not limit subsection (1) or (2).
- (4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:
- (a) delegate a matter to a person;
 - (b) confer a discretion on a person;
 - (c) make different regulations for different persons, places, things, circumstances or transactions, or for different classes of persons, places, things, circumstances or transactions;
 - (d) establish or define classes of persons, places, things, circumstances or transactions.

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SECTION 107

Other regulations

107 The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing classes of organizations for the purposes of paragraph (d) of the definition of “charitable or non-profit employer” in section 1 [*definitions*];
- (b) prescribing an amount for the purposes of section 41 [*instalments*];
- (c) prescribing interest rates and the manner of calculating interest for the purposes of this Act.

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SECTION 108

PART 9 – TRANSITIONAL PROVISIONS AND AMENDMENTS TO THIS ACT

Division 1 – Transitional Provisions

Instalments and interest – 2019 calendar year

- 108** Despite sections 41 [*instalments*] and 62 [*interest on unpaid instalments*], for the purposes of applying those sections to an employer in the 2019 calendar year, the employer's tax payable for the 2018 calendar year is deemed to be equal to the amount of tax that would have been payable by that employer for that calendar year if this Act and the regulations had come into force on January 1, 2018.

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SECTION 109

Registration – 2019 calendar year

- 109** Despite section 31 [*registration*] but subject to section 108, if an employer is required to pay an amount under section 41 [*instalments*] on or before June 15, 2019, the employer must apply to be registered under section 31 (1) on or before May 15, 2019.

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SECTION 110

Regulations to deal with transitional matters and difficulties

- 110** (1) Despite this or any other Act, the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting any matter that the Lieutenant Governor in Council considers is not provided for, or is not sufficiently provided for, in this Act;
 - (b) making provisions that the Lieutenant Governor in Council considers appropriate for the purpose of more effectively bringing this Act into operation;
 - (c) making provisions that the Lieutenant Governor in Council considers appropriate for the purpose of preventing, minimizing or otherwise addressing any difficulties encountered in bringing this Act into effect, including, without limitation, provisions making an exception to or a modification of a provision in this Act or another enactment or providing for the application of an enactment;
 - (d) resolving any errors, inconsistencies or ambiguities arising in this Act.
- (2) A regulation under subsection (1) may be made retroactive to a specified date that is not earlier than the date this section comes into force and, if made retroactive, is deemed to have come into force on the specified date.
- (3) To the extent of any conflict between a regulation under subsection (1) and this Act or another enactment, the regulation prevails.
- (4) This section and any regulations made under it are repealed 3 years after the date this section comes into force.

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SECTION 111

Division 2 – Amendments to This Act

111 The title to this Act is repealed and the following substituted:

EMPLOYER HEALTH TAX ACT .

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SECTION 112

112 *The following section is added:*

Interest on unpaid fee for attending location outside British Columbia

- 65.1** If an employer fails to pay a fee imposed under section 74.1 [*fee for attending at location outside British Columbia*], the employer must pay to the government interest on the amount unpaid from the date of the first notice of assessment for that fee until the date of payment.

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SECTION 113

113 *The following section is added to Division 7 of Part 3:*

Fee for attending at location outside British Columbia

- 74.1**
- (1) If the commissioner is satisfied that it is necessary to attend at a location outside British Columbia for the purpose of determining whether a person is complying with or has complied with this Act and the regulations, the commissioner may impose on the person a fee payable to the government in an amount not exceeding the amount calculated under subsection (2) in respect of attending at that location.
 - (2) Subject to the regulations, the commissioner may calculate the amount for the purposes of subsection (1) based on
 - (a) fees set by the commissioner, or
 - (b) a manner of calculating fees that is set by the commissioner.
 - (3) For the purposes of subsection (2), the fees and manner set by the commissioner may be different for different circumstances defined by the commissioner or for attending at different locations.
 - (4) In imposing a fee under subsection (1), the commissioner may not impose a fee in respect of attending at a location more than 4 years before the date of the first notice of assessment for that fee.

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SECTION 114

Provision as Amended

Definitions

44 In this Division:

“assessable amount”, in relation to a person, means

- (a) any tax payable under this Act by the person,
- (b) any penalties payable under this Act by the person,
- (c) an amount payable under section 43 [*excess refund*] or 74.1 [*fee for attending at location outside British Columbia*] by the person, and
- (d) any interest payable under this Act by the person;

“normal reassessment period” means the period referred to in section 46 (1) (b) [*assessments – general rules*] for a person for a calendar year.

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SECTION 115

Provision as Amended

Assessments of other amounts payable

- 49** (1) The commissioner may at any time assess a person for any amount payable under section 43 *[excess refund]*.
- (2) If the commissioner imposes a fee under section 74.1 (1) *[fee for attending at location outside British Columbia]* on a person, the commissioner must assess the person for the amount of the fee payable under that section.

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SECTION 116

Provision as Amended

Appeal to minister

- 75** (1) **Subject to this section, an appeal to the minister lies from**
- (a) an assessment, and
 - (b) a determination under section 84 (13) [*lien – associated corporations*].
- (2) Written notice of the appeal must be given to the minister within 90 days after the date of the notice of assessment or the determination, as the case may be.
- (3) The appellant must set out in the notice of appeal a statement of all material facts and the reasons in support of the appeal.
- (4) On receiving the notice of appeal, the minister must
- (a) consider the matter,
 - (b) affirm, amend or change the assessment or determination, as the case may be, and
 - (c) promptly give the appellant written notice of the result of the appeal.
- (5) An appeal may not be made under this section in relation to an assessment made under any of the following provisions:
- (a) section 49 (1) or (2) [*assessments of other amounts payable*];
 - (b) section 50 (2) [*assessments of penalties and interest*].

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SECTION 117

Provision as Amended

Other regulations

107 The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing classes of organizations for the purposes of paragraph (d) of the definition of “charitable or non-profit employer” in section 1 [*definitions*];
- (b) prescribing an amount for the purposes of section 41 [*instalments*];
- (c) prescribing interest rates and the manner of calculating interest for the purposes of this Act.
- (d) for the purposes of section 74.1 (2) [*fee for attending at location outside British Columbia*], respecting the calculation of an amount for the purposes of section 74.1 (1), including, without limitation, respecting a maximum amount that may be calculated.

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SECTION 118

Commencement

118 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 110	January 1, 2019
3	Sections 112 to 117	By regulation of the Lieutenant Governor in Council

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**COMMITTEE AND THIRD READING SPEAKING NOTES
(END OF COMMITTEE)**

Bill 44 – 2018

Budget Measures Implementation (Employer Health Tax) Act, 2018

COMMITTEE SPEAKING NOTES

When the title has passed:

[The Speaker calls upon the Minister]

The Minister rises and states:

I move that the Committee rise and report the Bill complete without amendment.

OR

I move that the Committee rise and report the Bill complete with amendment.

[The Chair puts the motion]

[The Chair sends for the Speaker and when the Speaker has taken the Chair:]

[The Chair: "The Committee on Bill No. 44 reports the Bill complete without amendment".]

or

[The Chair: "The Committee on Bill No. 44 reports the Bill complete with amendment".]

THIRD READING SPEAKING NOTES

[The Bill has been reported complete.]

OPTION 1 - WITHOUT AMENDMENT

[The Speaker: “When shall the Bill be read a third time?”]

The Minister stands and states:

Now, Mr. Speaker.

[**OR**, on rare occasions, “**At the next sitting of the House after today**”.]

[The Speaker: “The question is Third Reading of Bill No. 44, *Budget Measures Implementation (Employer Health Tax) Act, 2018*”.]

[The Speaker: “It is an Act, *Budget Measures Implementation (Employer Health Tax) Act, 2018*”.]

OR

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British Columbia News

Government moves forward on MSP premium elimination, tax cut for people

<https://news.gov.bc.ca/18278>

Tuesday, October 16, 2018 10:14 AM

Victoria - The Government of British Columbia is moving forward with its plan to eliminate Medical Service Plan (MSP) premiums and introduce the employer health tax (EHT).

Together, these measures will reduce taxes on people and businesses by approximately \$800 million each year.

“The last government chose to double MSP fees, costing families hundreds of dollars a year. People deserve a break, which is why we’re eliminating regressive MSP premiums,” said Carole James, Minister of Finance. “The EHT is a fairer approach, similar to other provinces, and that means lower taxes for British Columbians.”

The government tabled the Employer Health Tax Act in the legislature on Oct. 16, 2018. Less than 5% of B.C. businesses will pay the full EHT rate of 1.95%, and the majority of small businesses are protected with a \$500,000 exemption amount that phases-out gradually. The legislation also establishes a \$1.5-million exemption amount for charities and non-profits, and is similarly phased out.

The B.C. government will eliminate MSP premiums by Jan. 1, 2020, saving individuals up to \$900 each year, and families as much as \$1,800. As a result, millions of people will have more money in their pockets and more to invest in B.C. businesses. In addition, the administration of MSP premiums is costly and inefficient. Transitioning to the EHT will save more than \$50-million annually.

B.C.'s EHT rate is tied with Ontario for the lowest payroll tax rate in the country. B.C. will continue to have one of the most competitive tax systems in the country with this \$800-million annual reduction in taxes.

Learn More:

Employers can find more information about the tax at:

www.gov.bc.ca/EmployerHealthTax

ITBTaxQuestions@gov.bc.ca

1 877 387-3332

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