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Corporations Tax Act

R.S.O. 1990, CHAPTER C.40

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Caution: Many provisions of this Act have special application rules. The reader should consult the Statutes of Ontario, 1992, chapter 3, the Statutes of Ontario, 1994, chapter 14, the Statutes of Ontario, 1996, chapter 1, Schedule B, the Statutes of Ontario, 1996, chapter 29, the Statutes of Ontario, 1997, chapter 43, Schedule A, the Statutes of Ontario, 1998, chapter 5, subsection 12 (2), the Statutes of Ontario, 1998, chapter 34, Part III, the Statutes of Ontario, 1999, chapter 9, Part VI and the Statutes of Ontario, 2004, chapter 31, Schedule 9, subsection 7 (2).

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PART I  
GENERAL

Interpretation

Interpretation

**1** (1)  In this Act and in the application of the provisions of the Income Tax Act (Canada) that are by this Act made applicable for the purposes of this Act,

(a) each of the provisions contained in Part XVII of the Income Tax Act (Canada) applies for the purposes of this Act unless otherwise provided in this Act;

(b) Repealed: 1996, c. 29, s. 36 (1).

(c) subsection 248 (7) of the Income Tax Act (Canada) does not apply for the purposes of this Act;

(d) the interpretations contained in the said Part XVII of the expressions “farming”, “foreign resource property”, “Minister”, “paid-up capital”, “regulation”, “taxable income”, “taxable income earned in Canada” and “tax payable” do not apply and in lieu thereof the following interpretations are applicable:

“farming” includes tillage of the soil, livestock raising or exhibiting, maintaining of horses for racing, raising of poultry, fur farming, dairy farming, fruit growing, and the keeping of bees, but does not include an office or employment under a person engaged in the business of farming and, for the purposes of subsection 71 (1) only, does not include the maintaining of horses for racing, (“agriculture”)

“foreign resource property” has the meaning given to that expression by section 14, (“avoir minier étranger”)

“Minister” means, unless otherwise provided in this Act, the Minister of Finance, but the reference to “Minister” in subsection 249.1 (7) of the Income Tax Act (Canada) means the Minister of National Revenue for the purposes of this Act, (“ministre”)

“paid-up capital” has the meaning given to that expression by subsection 89 (1) of the Income Tax Act (Canada), but such meaning does not apply for the purposes of Part III of this Act, (“capital versé”)

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

“tax payable”, by a corporation or other person under any Part of this Act by or under which provision is made for the assessment of tax, means the tax payable by the corporation or other person as fixed by assessment or reassessment, subject to variation on objection or appeal, if any, in accordance with sections 84 to 92, (“impôt payable”)

“taxable income” has the meaning given to that expression by section 7, (“revenu imposable”)

“taxable income earned in Canada” has the meaning given to that expression by section 8. (“revenu imposable gagné au Canada”) R.S.O. 1990, c. C.40, s. 1 (1); 1994, c. 14, s. 1 (1); 1996, c. 1, Sched. B, s. 1 (1); 1996, c. 29, s. 36 (1, 2); 1997, c. 43, Sched. A, s. 1 (1, 2); 1999, c. 9, s. 72; 2001, c. 23, s. 20; 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 1.

Definitions

(2)  In this Act and in the application of the provisions of the Income Tax Act (Canada) that are by this Act made applicable for the purposes of this Act,

“bank” means a bank to which the Bank Act (Canada) applies; (“banque”)

“family farm corporation” means a corporation that is throughout the taxation year a corporation,

(a) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by,

(i) an individual ordinarily resident in Canada or by that individual and a member or members of that individual’s family ordinarily resident in Canada or by another family farm corporation, or

(ii) another corporation, all shares of the capital stock of which that confer on the holder thereof the right to vote were owned directly or indirectly by a person or persons referred to in subclause (i),

(b) 75 per cent of the assets of which were farming assets, and

(c) which carried on the business of farming in Ontario through the employment of a shareholder or a member of his or her family actually engaged in the operation of the farm or, where subclause (a) (ii) applies, through the employment of the person or persons referred to in subclause (a) (i); (“société agricole familiale”)

“family fishing corporation” means a corporation that is throughout the taxation year a corporation,

(a) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by,

(i) an individual ordinarily resident in Canada or by that individual and a member or members of that individual’s family ordinarily resident in Canada or by another family fishing corporation, or

(ii) another corporation, all shares of the capital stock of which that confer on the holder thereof the right to vote were owned directly or indirectly by a person or persons referred to in subclause (i),

(b) 75 per cent of the assets of which were fishing assets, and

(c) which carried on the business of fishing in Ontario through the employment of a shareholder or a member of his or her family actually engaged in the operation of the business or, where subclause (a) (ii) applies, through the employment of the person or persons referred to in subclause (a) (i); (“société de pêche familiale”)

“farming assets” of a family farm corporation means,

(a) cash, trade accounts receivable, supplies and inventory of commodities or things produced, raised or grown through farming,

(b) land, buildings, equipment, machinery, and livestock that are used chiefly in the operation of the farm by the corporation,

(c) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,

(d) the building in which a shareholder or member or members of his or her family reside who are engaged in the operation of the farm if that building is on land that is used or is contiguous to land used by that shareholder or member or members of his or her family in the operation of the farm,

(e) shares in another family farm corporation,

(f) a mortgage taken by the family farm corporation as security for the balance of the sale price on its sale of farming assets referred to in clause (b), provided that the amount of the aggregate of its remaining farming assets referred to in clauses (a) to (e) exceeds 50 per cent of its assets; (“actif agricole”)

“federal assessment action” means any of the following actions taken by the Minister of National Revenue under the Income Tax Act (Canada),

(a) an assessment, reassessment or additional assessment of tax, interest or penalties,

(b) a determination or redetermination of a loss or an amount or a written notice of a change in a loss or an amount,

(c) a written notice that no tax is payable, or

(d) a confirmation of an assessment, reassessment or additional assessment of tax, interest or penalties or of a determination or redetermination of a loss or an amount; (“mesure fiscale fédérale”)

“fishing assets” of a family fishing corporation means,

(a) cash, trade accounts receivable, supplies and inventory used in the fishing business,

(b) land, buildings, boats, ships, equipment, machinery and nets that are used chiefly in the operation of the fishing business by the corporation,

(c) any right or licence granted or issued under any Act of the Legislature that permits or regulates the catching or sale of fish, and

(d) shares in another family fishing corporation; (“actif de pêche”)

“jurisdiction” means a province or territory of Canada or a state outside Canada having sovereign power; (“autorité législative”)

“member of his or her family” means, with respect to an individual referred to in the definition of “family farm corporation” or “family fishing corporation” or in subclause 61 (5) (c) (i),

(a) his or her spouse or common-law partner,

(b) his or her child,

(c) his or her father, mother, grandfather or grandmother,

(d) his or her brother or sister or any lawful descendant of his or her brother or sister,

(e) the brother or sister of his or her father or mother or any lawful descendant of that uncle or aunt,

(f) the father or mother of his or her spouse or common-law partner,

(g) a brother or sister of his or her spouse or common-law partner or any lawful descendant of that brother or sister,

(h) the spouse or common-law partner of his or her child**,** or

(i) a person adopted by him or her under the Child, Youth and Family Services Act, 2017 or a predecessor of that Act or the spouse, common-law partner or any lawful descendant of that person; (“membre de sa famille”)

“permanent establishment” has the meaning given to that expression by section 4; (“établissement stable”)

“province” means a province as defined in subsection 35 (1) of the Interpretation Act (Canada); (“province”)

“return” means a tax return of a corporation or other person for a taxation year that meets the requirements of section 75 respecting the form and medium, the contents, the accompanying documents and the manner of delivery; (“déclaration”)

“taxation year”, of a person, means,

(a) a calendar year, if the person is an administrator of a benefit plan under section 74.2 and is not a corporation,

(b) a taxation year of the person for the purposes of the Income Tax Act (Canada), if the person is an insurance broker within the meaning of section 74.3 and is not a corporation, and

(c) a fiscal period for which the person’s statement of the condition of affairs is prepared for the purposes of reporting to the Superintendent of Financial Services, if the person is an insurance exchange within the meaning of section 74.4; (“année d’imposition”)

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) of the definition of “taxation year” in subsection 1 (2) of the Act is amended by striking out “Superintendent of Financial Services” and substituting “Chief Executive Officer of the Financial Services Regulatory Authority of Ontario”. (See: 2018, c. 8, Sched. 6, s. 1 (2))

“timber royalty” includes any consideration for a right under or pursuant to which a right to cut or take timber from a timber limit in Canada is obtained or derived, to the extent that such consideration is dependent upon, and computed by reference to, the amount of timber cut or taken. (“redevance forestière”) R.S.O. 1990, c. C.40, s. 1 (2); 1994, c. 14, s. 1 (2, 3); 1997, c. 43, Sched. A, s. 1 (3-5); 2000, c. 42, s. 10; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 1; 2017, c. 14, Sched. 4, s. 9; 2018, c. 8, Sched. 6, s. 1 (1).

Interpretation

(3)  In the application of the sections of the Income Tax Act (Canada) that by this Act are made applicable for the purposes of this Act,

(a) “capital cost” means the cost of property as determined for the purposes of this Act;

(b) “undepreciated capital cost” means the undepreciated capital cost of depreciable property as determined for the purposes of this Act;

(c) the references therein to,

(i) returns required to be filed under section 150 of that Act shall be deemed to be references to the returns required to be filed under section 75 of this Act, and

(ii) assessments to be made under section 152 of that Act shall be deemed to be references to assessments to be made under section 80 of this Act;

(d) Repealed: 2005, c. 28, Sched. D, s. 1 (2).

R.S.O. 1990, c. C.40, s. 1 (3); 1996, c. 29, s. 36 (3); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 1 (1, 2).

Application of federal provisions referred to in federal provisions

(3.1)  The following rules apply if a provision of the *Income Tax Act* (Canada) is made applicable for the purposes of this Act and the provision refers to another provision of the *Income Tax Act* (Canada) (in this subsection called the “other provision”):

1. Subject to paragraph 3, if the other provision does not otherwise apply for the purposes of this Act, it shall apply for the purposes of the application of the following provisions of the *Income Tax Act* (Canada) for the purposes of this Act:

i. Section 12.

ii. Section 12.2.

iii. Subsection 13 (7), paragraph 13 (7.1) (e) and the definition of “I” in the definition of “undepreciated capital cost” in subsection 13 (21).

iv. Subsection 14 (3).

v. Section 20.

vi. Paragraphs 37 (1) (d) and (e).

vii. Clauses 53 (1) (e) (i) (B) and 53 (2) (c) (i) (B) and subparagraphs 53 (2) (c) (vi), (vii) and (viii) and 53 (2) (h) (ii), (iii) and (iv).

viii. Section 56.

ix. Section 60.

x. The definition of “L” in the definition of “cumulative Canadian exploration expense” in subsection 66.1 (6).

xi. Section 66.8.

xii. Paragraph 67.1 (2) (d).

xiii. Paragraph 84 (1) (c.3).

xiv. Section 88.

xv. The definition of “relevant tax factor” in subsection 95 (1).

xvi. Subsection 96 (2.1).

xvii. Paragraph 110 (1) (k).

xviii. Paragraph 111 (1) (e).

xix. Paragraph 127.2 (6) (a) and subsection 127.2 (8).

xx. Subsection 127.3 (6).

xxi. Subsection 128.1 (2).

xxii. The definition of “Canadian property” in subsection 133 (8).

xxiii. Subsection 137 (4.3).

xxiv. Section 138.

xxv. Paragraph 138.1 (1) (k).

xxvi. Section 248.

xxvii. Subsection 258 (5).

2. If the other provision is subsection 192 (4.1) or 194 (4.1), it shall apply for the purposes of the application of subparagraph (b) (iii) of the definition of “paid-up capital” in section 89 of the *Income Tax Act* (Canada) for the purposes of this Act.

3. If the other provision does not apply for the purposes of this Act because a provision of this Act is enacted to apply instead, the reference to the other provision in the provision of the *Income Tax Act* (Canada) that applies for the purposes of this Act shall be deemed to be a reference to the provision of this Act that applies instead.

4. If the application of the other provision for the purposes of this Act differs from the application of the other provision for the purposes of the Income Tax Act (Canada), the reference to the other provision in the provision of that Act shall be deemed to be a reference to the other provision as it applies for the purposes of this Act.

5. Despite paragraph 3, if the other provision is referred to in clause 53 (1) (e) (i) (B) or 53 (2) (c) (i) (B) of the Income Tax Act (Canada) or in the definition of “gross revenue” in subsection 248 (1) of that Act, the other provision shall apply for the purposes of the application of that clause or definition for the purposes of this Act.

6. Except as otherwise provided in paragraphs 1 to 5, if the other provision does not apply for the purposes of this Act, it shall not apply for the purposes of the application of any provision of the Income Tax Act (Canada) for the purposes of this Act. 2005, c. 28, Sched. D, s. 1 (3).

Application of regulations under *Income Tax Act* (Canada)

(4)  Despite subsections (1) and (2), any regulation made pursuant to any provision of the Income Tax Act (Canada) that is by this Act made applicable for the purposes of this Act shall apply with necessary modifications for the purposes of this Act unless otherwise provided by this Act or by the regulations. R.S.O. 1990, c. C.40, s. 1 (4); 2004, c. 16, s. 2 (2).

Elections

(5)  Any election or designation by a corporation which has been properly made for the purposes of the Income Tax Act (Canada), pursuant to any provision of that Act that is by this Act made applicable for the purposes of this Act, shall be deemed to have been properly made for the purposes of this Act, provided that,

(a) except as otherwise required by section 29.1 or 31.1 or subsection 34 (10), where an amount elected or designated would be different from the amount determined in accordance with this Act, the amount determined in accordance with this Act applies; and

(b) the provisions in that Act imposing penalties for late filing of such elections are not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 1 (5); 1997, c. 43, Sched. A, s. 1 (6); 2004, c. 16, s. 2 (2).

Late and amended elections

(5.1)  Where, under subsection 220 (3.2) of the Income Tax Act (Canada), the Minister of National Revenue has extended the time for making an election under that Act or has granted permission to amend an election made under that Act, the election or amended election, as the case may be, shall be deemed to have been properly made for the purposes of this Act and shall apply as described in subsection (5) of this section and in paragraph 220 (3.3) (a) of the Income Tax Act (Canada). 1994, c. 14, s. 1 (4); 2004, c. 16, s. 2 (2).

Revoked elections

(5.2)  Where, under subsection 220 (3.2) of the Income Tax Act (Canada), the Minister of National Revenue has granted permission to revoke an election made under that Act, the election shall be deemed never to have been made for the purposes of this Act. 1994, c. 14, s. 1 (4); 2004, c. 16, s. 2 (2).

Registered pension funds

(6)  Any registered pension fund or plan that has been accepted for registration by the Minister of National Revenue for Canada shall be deemed to have been accepted for registration by the Minister of Finance. R.S.O. 1990, c. C.40, s. 1 (6); O.C. 355/93; 1997, c. 19, s. 4 (1); 2004, c. 16, s. 2 (2).

*Income Tax Act* (Canada) applies as amended from time to time

(7)  The provisions of the Income Tax Act (Canada) by this Act made applicable for the purposes of this Act shall, unless otherwise provided in this Act, be deemed to be applicable as amended or re-enacted from time to time, and such amendments or re-enactments shall apply for the purposes of this Act in the same manner as they apply for the purposes of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 1 (7); 2004, c. 16, s. 2 (2).

*Income Tax Regulations* (Canada)

(7.1)  The reference in subsection (7) to the provisions of the Income Tax Act (Canada) includes a reference to the provisions of the Income Tax Regulations (Canada) as made, amended and remade from time to time. 1998, c. 34, s. 26; 2004, c. 16, s. 2 (2).

Tax Treaty

(8)  Where,

(a) a corporation is subject to tax under this Act and under the Income Tax Act (Canada); and

(b) the corporation’s liability for tax under the Income Tax Act (Canada) is subject to and modified by the application of the provisions of a Tax Treaty, Agreement or Convention between Canada and another country,

the provisions of this Act may be modified and applied in the manner prescribed by the regulations for the purpose of giving effect to a provision of such a Treaty, Agreement or Convention for the purposes of this Act, and regulations related to this subsection may have retroactive application if they so state. R.S.O. 1990, c. C.40, s. 1 (8); 2004, c. 16, s. 2 (2).

Deemed delivery by registered mail

(9)  Where a receipt is obtained from the addressee on the delivery of anything required or permitted by this Act to be delivered by registered mail, the delivery shall be deemed to have been made by registered mail for the purposes of this Act, and a “registered letter” includes any letter deemed by this subsection to have been delivered by registered mail. R.S.O. 1990, c. C.40, s. 1 (9); 2004, c. 16, s. 2 (2).

Deemed deduction of investment tax credit

(10)  Any amount deemed to have been deducted under subsection 127 (5) of the Income Tax Act (Canada) by operation of subsection 127.1 (3) or 192 (10) of that Act shall be deemed to have been deducted under subsection 127 (5) of that Act for the purposes of this Act. 1992, c. 3, s. 1; 2004, c. 16, s. 2 (2).

Interpretation, corporation

(11)  For the purposes of Parts V and VI, a reference to “corporation” shall be deemed to include a reference to an administrator of a benefit plan within the meaning of section 74.2, an insurance broker within the meaning of section 74.3 and an insurance exchange within the meaning of section 74.4. 1996, c. 1, Sched. B, s. 1 (2); 1997, c. 43, Sched. A, s. 1 (8); 2004, c. 16, s. 2 (2).

(12)  Repealed: 2005, c. 28, Sched. D, s. 1 (4).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 1 - 25/06/1992; 1994, c. 14, s. 1 (1, 3, 5) - 23/06/1994; 1994, c. 14, s. 1 (2) - 28/02/1992; 1994, c. 14, s. 1 (4) - 17/12/1991; 1996, c. 1, Sched. B, s. 1 (1, 2) - 01/07/1993; 1996, c. 29, s. 36 (1, 2) - 01/03/1994; 1996, c. 29, s. 36 (3) - 01/01/1993; 1997, c. 19, s. 4 (1) - 10/10/1997; 1997, c. 43, Sched. A, s. 1 (1, 2, 4, 5, 8) - 01/01/1998; 1997, c. 43, Sched. A, s. 1 (3) - 20/12/1996; 1997, c. 43, Sched. A, s. 1 (6, 7) - 06/05/1997; 1998, c. 34, s. 26 - 18/12/1998; 1999, c. 9, s. 72 - 01/01/1995

[2000, c. 42, s. 10](http://www.ontario.ca/laws/statute/S00042" \l "s10) - 01/01/2001

[2001, c. 23, s. 20](http://www.ontario.ca/laws/statute/S01023" \l "s20) - 05/05/1999

[2004, c. 16, s. 2 (1, 2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s1) - 01/01/2004; [2004, c. 31, Sched. 9, s. 1](http://www.ontario.ca/laws/statute/S04031" \l "sched9s1) - 16/12/2004

[2005, c. 28, Sched. D, s. 1 (1)](http://www.ontario.ca/laws/statute/S05028" \l "schedds1s1) - 01/12/1991; [2005, c. 28, Sched. D, s. 1 (2, 3)](http://www.ontario.ca/laws/statute/S05028" \l "schedds1s2) - 01/01/2003; [2005, c. 28, Sched. D, s. 1 (4)](http://www.ontario.ca/laws/statute/S05028" \l "schedds1s4) - 16/12/2004; [2005, c. 31, Sched. 5, s. 1](http://www.ontario.ca/laws/statute/S05031" \l "sched5s1) - 15/12/2005

[2008, c. 7, Sched. E, s. 1](http://www.ontario.ca/laws/statute/S08007" \l "schedes1) - 01/31/1991

[2017, c. 14, Sched. 4, s. 9](http://www.ontario.ca/laws/statute/S17014" \l "sched4s9) - 30/04/2018

[2018, c. 8, Sched. 6, s. 1 (1)](http://www.ontario.ca/laws/statute/S18008" \l "sched6s1s1) - 08/05/2018; [2018, c. 8, Sched. 6, s. 1 (2)](http://www.ontario.ca/laws/statute/S18008" \l "sched6s1s2) - not in force

Liability for Taxes

Taxes payable

Taxes payable, resident corporation

**2** (1)  Subject to subsection (5), every corporation resident in Canada that has a permanent establishment in Ontario at any time in a taxation year shall pay to Her Majesty in right of Ontario the taxes for the taxation year imposed by this Act at the time and in the manner required by this Act. 2005, c. 28, Sched. D, s. 2 (1); 2007, c. 11, Sched. B, s. 2 (1).

Taxes payable, non-resident corporation

(2)  Subject to subsection (5), every non-resident corporation shall pay to Her Majesty in right of Ontario the taxes for a taxation year imposed by this Act at the time and in the manner required by this Act if, at any time in the taxation year or in a previous taxation year,

(a) the corporation had a permanent establishment in Ontario within the meaning of section 4;

(b) the corporation owned real property, timber resource property or a timber limit in Ontario and the corporation’s income from the property or timber limit,

(i) arose from the sale or rental of the property or timber limit, or

(ii) is a royalty or timber royalty; or

(c) the corporation disposed of property,

(i) that would be taxable Canadian property as defined in subsection 248 (1) of the Income Tax Act (Canada) if the reference in that definition to section 2 of that Act were read as a reference to this section, and

(ii) that is deemed under the regulations to be situated in Ontario. 2005, c. 28, Sched. D, s. 2 (1); 2007, c. 11, Sched. B, s. 2 (2).

Tax in respect of a benefit plan

(2.1)  Every person who is a member or planholder of a benefit plan within the meaning of section 74.2 is liable to a tax in the amount determined under section 74.2, payable at the time and in the manner provided in that section to Her Majesty in right of Ontario. 1996, c. 1, Sched. B, s. 2; 2004, c. 16, s. 2 (2).

Tax in respect of insurance contract with unlicensed insurer

(2.2)  Every insured person within the meaning of section 74.3 who enters into an insurance contract, as defined in that section, with an insurer that is not licensed under the Insurance Act is liable to a tax in the amount determined under that section, payable at the time and in the manner provided in that section to Her Majesty in right of Ontario. 1997, c. 43, Sched. A, s. 2; 2004, c. 16, s. 2 (2).

Tax on insurance exchange

(2.3)  Every insurance exchange within the meaning of section 74.4 is liable to a tax in the amount determined under that section, payable at the time and in the manner provided in that section to Her Majesty in right of Ontario. 1997, c. 43, Sched. A, s. 2; 2004, c. 16, s. 2 (2).

Interpretation

(3)  For the purposes of subsection (2), a corporation “owned real property, timber resource property or a timber limit” if it had a legal, equitable or beneficial interest in the real property, timber resource property or timber limit. R.S.O. 1990, c. C.40, s. 2 (3); 2004, c. 16, s. 2 (2).

Application of subss. (1) and (2)

(4)  Subsections (1) and (2) apply to corporations for taxation years ending after May 11, 2005 and subsections (1) and (2) as they read before that day continue to apply to corporations for taxation years ending on or before that day. 2005, c. 28, Sched. D, s. 2 (2).

Taxation years ending after 2008

(5)  No corporation is liable for taxes under this Act for a taxation year ending after December 31, 2008 other than the taxes imposed by section 74 and subsections (2.1), (2.2) and (2.3). 2007, c. 11, Sched. B, s. 2 (3).

**Section Amendments with date in force (d/m/y)**

1996, c. 1, Sched. B, s. 2 - 01/07/1993; 1997, c. 43, Sched. A, s. 2 - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 2 (1, 2)](http://www.ontario.ca/laws/statute/S05028" \l "schedds2s1) - 11/05/2005

[2007, c. 11, Sched. B, s. 2 (1-3)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s1) - 04/06/2007

How tax to be determined

**3** (1)  Unless otherwise provided in this Act, any tax imposed by this Act shall be determined on the amount of the paid-up capital or other subject in respect of which the amount of the tax is to be ascertained as such paid-up capital or other subject stood at the close of the taxation year of the corporation for which the tax is imposed. R.S.O. 1990, c. C.40, s. 3 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Any tax imposed by this Act that is to be calculated in respect of,

(a) the taxable income of a corporation; or

(b) the gross premiums that become payable to insurance corporations,

shall be calculated with reference to the taxable income earned or the gross premiums that become payable, as the case may be, during the taxation year of the corporation for which the respective tax is imposed. R.S.O. 1990, c. C.40, s. 3 (2); 2004, c. 16, s. 2 (2).

Same

(3)  The tax imposed by subsection 2 (2.1) shall be calculated by reference to administration fees paid in respect of the plan and,

(a) to contributions made to the benefit plan if the plan is a funded benefit plan under section 74.2; or

(b) to benefits paid under the plan if the plan is an unfunded benefit plan under that section. 1996, c. 1, Sched. B, s. 3 (1); 2004, c. 16, s. 2 (2).

Same

(4)  The tax imposed by subsection 2 (2.2) shall be calculated by reference to the amount of premiums paid on insurance contracts, as defined in section 74.3, with insurers who do not hold licences under the Insurance Act. 1997, c. 43, Sched. A, s. 3; 2004, c. 16, s. 2 (2).

Same

(5)  The tax imposed by subsection 2 (2.3) shall be calculated by reference to premiums and deposits collected by an insurance exchange, as defined in section 74.4. 1997, c. 43, Sched. A, s. 3; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 1, Sched. B, s. 3 (1, 2) - 01/07/1993; 1997, c. 43, Sched. A, s. 3 - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Permanent establishment

**4** (1)  In this Act,

“permanent establishment” includes branches, mines, oil wells, farms, timberlands, factories, workshops, warehouses, offices, agencies and other fixed places of business. R.S.O. 1990, c. C.40, s. 4 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Where a corporation carries on business through an employee or agent who has general authority to contract for the corporation or who has a stock of merchandise owned by the corporation from which the employee or agent regularly fills orders which the employee or agent receives, such employee or agent shall be deemed to operate a permanent establishment of the corporation. R.S.O. 1990, c. C.40, s. 4 (2); 2004, c. 16, s. 2 (2).

Idem

(3)  The fact that a corporation has business dealings through a commission agent, broker or other independent agent shall not of itself be deemed to mean that the corporation has a permanent establishment. R.S.O. 1990, c. C.40, s. 4 (3); 2004, c. 16, s. 2 (2).

Idem

(4)  The fact that a corporation has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in a trade or business in a place shall not of itself be deemed to mean that the first-mentioned corporation is operating a permanent establishment in that place. R.S.O. 1990, c. C.40, s. 4 (4); 2004, c. 16, s. 2 (2).

Idem

(5)  An insurance corporation is deemed to have a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business. R.S.O. 1990, c. C.40, s. 4 (5); 2004, c. 16, s. 2 (2).

Idem

(6)  The fact that a corporation maintains an office solely for the purchase of merchandise shall not of itself be deemed to mean that the corporation has a permanent establishment in that office. R.S.O. 1990, c. C.40, s. 4 (6); 2004, c. 16, s. 2 (2).

Idem

(7)  Where a corporation, otherwise having a permanent establishment in Canada, owns land in a province or territory of Canada, such land is a permanent establishment. R.S.O. 1990, c. C.40, s. 4 (7); 2004, c. 16, s. 2 (2).

Idem

(8)  The fact that a non-resident corporation in a taxation year produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed in whole or in part anything in Canada, whether or not the corporation exported that thing without selling it prior to exportation, shall of itself, for the purposes of this Act, be deemed to mean that the corporation maintained a permanent establishment at any place where the corporation did any of those things in the taxation year. R.S.O. 1990, c. C.40, s. 4 (8); 2004, c. 16, s. 2 (2).

Idem

(9)  The use of substantial machinery or equipment in a particular place at any time in a taxation year of a corporation constitutes a permanent establishment of such corporation in that place for the taxation year. R.S.O. 1990, c. C.40, s. 4 (9); 2004, c. 16, s. 2 (2).

Idem

(10)  Where a corporation has no fixed place of business, it has a permanent establishment in the principal place in which the corporation’s business is conducted. R.S.O. 1990, c. C.40, s. 4 (10); 2004, c. 16, s. 2 (2).

Idem

(11)  Where a corporation does not otherwise have a permanent establishment in Canada, it has a permanent establishment in the place designated in its charter or by-laws as being its head office or registered office. R.S.O. 1990, c. C.40, s. 4 (11); 2004, c. 16, s. 2 (2).

Same, where tax liability affected by a tax treaty, etc.

(12)  If the liability of a corporation for tax under the Income Tax Act (Canada) is determined with reference to a tax treaty, convention or agreement with another country, the corporation does not have a permanent establishment in Ontario for the purposes of this Act if it does not have such an establishment for the purposes of the tax treaty, convention or agreement. 2002, c. 22, s. 37; 2004, c. 16, s. 2 (2).

Same

(13)  Subsection (12) applies with respect to taxation years ending after June 17, 2002. 2002, c. 22, s. 37; 2004, c. 16, s. 2 (2).

Exception — application of subs. (12), insurance corporations

(14)  Despite subsection (13), subsection (12) does not apply for the purposes of the tax imposed under section 74. 2021, c. 40, Sched. 4, s. 1.

**Section Amendments with date in force (d/m/y)**

[2002, c. 22, s. 37](http://www.ontario.ca/laws/statute/S02022" \l "s37) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2021, c. 40, Sched. 4, s. 1](http://www.ontario.ca/laws/statute/S21040" \l "sched4s1) - 01/01/2020

Avoidance transactions

Definitions

**5** (1)  In this section and in subsection 80 (3),

“avoidance transaction” means any transaction,

(a) that, but for this section, would result directly or indirectly in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged in good faith primarily for purposes other than to obtain the tax benefit, or

(b) that is part of a series of transactions which would result directly or indirectly in a tax benefit but for this section, unless the transaction may reasonably be considered to have been undertaken or arranged in good faith primarily for purposes other than to obtain the tax benefit; (“opération d’évitement”)

“tax benefit” means a reduction, avoidance or deferral of tax or other amount payable by a corporation under this Act or under the Income Tax Act (Canada) or an increase in a refund of tax or other amount under this Act or under the Income Tax Act (Canada) and includes,

(a) a reduction, avoidance or deferral of tax or other amount that would be payable under the Act or the Income Tax Act (Canada) but for a Tax Treaty, Agreement or Convention between Canada and another country, and

(b) an increase in a refund of tax or other amount under the Act or the Income Tax Act (Canada) as a result of a Tax Treaty, Agreement or Convention between Canada and another country; (“avantage fiscal”)

“tax consequences”, to a corporation, means the amount of,

(a) the corporation’s income, taxable income, taxable income earned in a jurisdiction other than Ontario, taxable income earned in Canada or taxable income earned in Canada in a jurisdiction other than Ontario,

(a.1) the corporation’s net income, net loss, adjusted net income, adjusted net loss, pre-1994 loss or eligible losses for a taxation year, for the purposes of Part II.1,

(b) the corporation’s paid-up capital, taxable paid-up capital, taxable paid-up capital that is deemed to be used by the corporation in a jurisdiction outside Ontario, paid-up capital employed in Canada, taxable paid-up capital employed in Canada or taxable paid-up capital employed in Canada that is deemed to be used by the corporation in a jurisdiction outside Ontario,

(c) any gross premium referred to in Part IV that is payable to the corporation or its agent or agents,

(c.1) any contribution made to a funded benefit plan within the meaning of section 74.2, any benefit paid to or for the benefit of a member of an unfunded benefit plan within the meaning of section 74.2 and any administration fee paid by a person in respect of a benefit plan,

(d) any amount, other than an amount referred to in clause (a), (a.1), (b), (c) or (c.1), payable by or refundable to the corporation under this Act or that is relevant for the purposes of determining any other amount referred to in this subsection; (“attribut fiscal”)

“transaction” includes an arrangement or event. (“opération”) R.S.O. 1990, c. C.40, s. 5 (1); 1994, c. 14, s. 2 (1); 1996, c. 1, Sched. B, s. 4 (1); 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 2 (1).

Application

(1.1)  This section applies to,

(a) transactions entered into after September 12, 1988 in respect of which the tax consequences to a person have been determined through a notice of assessment, reassessment, additional assessment or determination under subsection 152 (1.11) of the Income Tax Act (Canada) that involves the application of section 245 of that Act; and

(b) transactions entered into on or after December 20, 1990. 2005, c. 31, Sched. 5, s. 2 (2).

Determination of tax consequences

(2)  If a transaction is an avoidance transaction, the tax consequences to a corporation shall be determined in a manner that is reasonable in the circumstances in order to deny the tax benefit under this Act that would otherwise result directly or indirectly from the transaction, or from a series of transactions that includes the transaction. R.S.O. 1990, c. C.40, s. 5 (2); 2004, c. 16, s. 2 (2).

Application of subs. (2)

(3)  Subsection (2) applies to a transaction if it is reasonable to consider that,

(a) the transaction would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of one or more of,

(i) this Act,

(ii) the regulations made under this Act,

(iii) a Tax Treaty, Agreement or Convention between Canada and another country, or

(iv) any Act or regulation of any jurisdiction that is relevant in computing tax or any amount payable by or refundable to a corporation under this Act or in determining any amount relevant for the purposes of that computation; or

(b) the transaction would result directly or indirectly in an abuse having regard to the provisions described in clause (a), other than this section, read as a whole. 2005, c. 31, Sched. 5, s. 2 (3).

Nature of determination

(4)  Without restricting the generality of subsection (2) and despite any other Act or regulation of any jurisdiction, in any determination under subsection (2) of the tax consequences to a corporation of a transaction,

(a) any deduction, exemption or exclusion in computing an amount referred to in clause (a), (a.1), (b), (c), (c.1) or (d) of the definition of “tax consequences” in subsection (1) may be allowed or disallowed in whole or in part;

(b) any deduction, exemption or exclusion referred to in clause (a) and any income, loss or other amount used in the determination of any amount payable or refundable under this Act may be allocated to any person;

(c) the nature of any payment or other amount may be recharacterized; and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored. R.S.O. 1990, c. C.40, s. 5 (4); 1994, c. 14, s. 2 (2); 1996, c. 1, Sched. B, s. 4 (2); 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 2 (4-6).

Application of subs. (4)

(4.1)  Subsection (4) applies to any benefit provided under a Tax Treaty, Agreement or Convention between Canada and another country that applies for the purposes of this Act despite the following:

1. A provision of the Tax Treaty, Agreement or Convention.

2. A provision of any Act of Canada that gives the force of law to the Tax Treaty, Agreement or Convention and relates to the application of the Tax Treaty, Agreement or Convention. 2005, c. 31, Sched. 5, s. 2 (7).

Consequential adjustments

(5)  If a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to a transaction has been sent to a corporation, or a notice of determination under subsection 80 (3) has been sent to the corporation, any other corporation is entitled, within 180 days after the day of mailing of the notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection (2), or make a determination under subsection 80 (3), with respect to the transaction. R.S.O. 1990, c. C.40, s. 5 (5); 2004, c. 16, s. 2 (2).

Duty of the Minister

(6)  On receipt of a request by a corporation under subsection (5), the Minister shall consider the request and make an assessment or a determination under subsection 80 (3) with respect to the corporation, despite the expiry of any time limit under subsection 80 (11), except that an assessment or determination may be made under this subsection only to the extent that it may be reasonably regarded as relating to a transaction referred to in subsection (5). R.S.O. 1990, c. C.40, s. 5 (6); 2004, c. 16, s. 2 (2).

Notice of assessment, etc.

(7)  The tax consequences to any corporation after the application of this section shall be determined only through a notice of assessment, reassessment or additional assessment, or through a notice of determination under subsection 80 (3), involving the application of this section. R.S.O. 1990, c. C.40, s. 5 (7); 2004, c. 16, s. 2 (2).

Interpretation, corporation

(8)  In the application of this section,

(a) a reference to “corporation” in this section shall be deemed to include a reference to a person subject to tax under subsection 2 (2.1) and to an administrator of a benefit plan referred to in section 74.2; and

(b) the amount of tax payable under this Act by an administrator of a benefit plan referred to in section 74.2 shall be deemed to include the amount of tax required to be collected and paid over to the Minister by the administrator under section 74.2. 1996, c. 1, Sched. B, s. 4 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 2 (1-3) - 01/01/1994; 1996, c. 1, Sched. B, s. 4 (1-3) - 01/07/1993

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 2 (1-4, 7)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s2s1) - 31/12/1991; [2005, c. 31, Sched. 5, s. 2 (5)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s2s5) - 31/07/1993; [2005, c. 31, Sched. 5, s. 2 (6)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s2s6) - 01/01/1994

Inter-provincial tax avoidance

Definitions

**5.1** (1)  In this section,

“taxpayer” means a corporation or a partnership whose members include one or more corporations; (“contribuable”)

“transferee” means, in respect of a taxation year,

(a) a corporation that has a permanent establishment in one or more provinces other than Ontario, or

(b) a partnership, one or more of whose members is a corporation described in clause (a); (“bénéficiaire du transfert”)

“transferor” means, in respect of a taxation year,

(a) a corporation that has a permanent establishment in one or more provinces other than Ontario,

(b) an individual who is ordinarily resident in a province other than Ontario on the last day of the taxation year, including a trust that is deemed under subsection 104 (2) of the Income Tax Act (Canada) to be an individual in respect of the trust property, or

(c) a partnership, one or more of whose members is a corporation described in clause (a) or an individual described in clause (b). (“auteur du transfert”) 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Inter-provincial anti-avoidance, disposition of property

(2)  Despite any other provision of this Act except subsections (4) and (8), if a taxpayer disposes of property to a transferee, and clauses (3) (a) to (d) apply in respect of the disposition, the amount of the taxpayer’s deemed proceeds of disposition of the property for the purposes of this Act is the total of,

(a) the amount that is deemed to be the taxpayer’s proceeds of disposition of the property as determined under this Act without reference to this section; and

(b) the total of all amounts, each of which is in respect of a province in which the transferee has a permanent establishment, determined by multiplying,

(i) the amount by which the cost amount of the property to the transferee under the laws of a province other than Ontario exceeds the amount referred to in clause (a),

by,

(ii) the percentage of the transferee’s taxable income, for the taxation year in which the transferee disposed of the property,

(A) if the transferee is a corporation, that is deemed to be earned in that other province under regulations made under the Income Tax Act (Canada), or that would be deemed to be earned in that other province if the transferee had had taxable income for that year, or

(B) if the transferee is a partnership, that the partnership would be deemed to have earned in that other province under regulations made under the Income Tax Act (Canada) if the partnership were a corporation, its taxation year were its fiscal period, it had had income for the fiscal period and its taxable income for the year were its income for that fiscal period. 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Application of subs. (2)

(3)  Subsection (2) applies in respect of a disposition of property if,

(a) the transferee does not deal at arm’s length with the taxpayer at or immediately after the time of the disposition;

(b) the amount of the taxpayer’s proceeds of disposition of the property, as determined under this Act without reference to this section, would be deemed to be an amount that is less than the transferee’s cost amount of the property immediately after the disposition, as determined under the laws of a province other than Ontario in which the transferee or, if the transferee is a partnership, one or more of its members, has a permanent establishment;

(c) the property, or other property the fair market value of which is derived primarily from the property or other property acquired by any person other than the taxpayer in substitution for the property, is subsequently disposed of to another person or partnership; and

(d) it is reasonable to believe that a purpose of the disposition of the property to the transferee prior to the subsequent disposition of the property by the transferee to another person was to reduce the total amount of income tax payable to one or more provinces in respect of the two dispositions to an amount that would be less than the amount of provincial income tax that would have been payable if the taxpayer’s proceeds of disposition of the property had equalled the transferee’s proceeds of disposition of the property on the subsequent disposition. 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Exceptions

(4)  Subsection (2) does not apply in respect of a disposition if,

(a) the cost amount of the property to the transferee is greater than the taxpayer’s proceeds of disposition of the property, as otherwise determined, by reason only of the operation of paragraph 88 (1) (c) or 98 (3) (b) of the Income Tax Act (Canada) or a comparable provision of the laws of another province in which the transferee, or if the transferee is a partnership, one or more of its members, has a permanent establishment;

(b) in the case where the taxpayer is a corporation, the percentage of the taxpayer’s taxable income, for the taxation year in which the taxpayer disposes of the property, that is not deemed, or would not be deemed if the taxpayer had had taxable income for that year, to be earned outside Ontario for the purposes of section 39, is less than or equal to,

(i) if the transferee is a corporation, the percentage of the transferee’s taxable income for the taxation year in which the transferee disposed of the property, that is not deemed, or would not be deemed if the transferee had had taxable income for that year, to be earned outside Ontario for the purposes of section 39, or

(ii) if the transferee is a partnership, the percentage of the transferee’s income, for the fiscal period in which the transferee disposed of the property, that would not be deemed to be earned outside Ontario for the purposes of section 39, if the partnership were a corporation, the fiscal period were its taxation year and it had had income for the fiscal period; or

(c) in the case where the taxpayer is a partnership, the percentage of the taxpayer’s income, for the fiscal period in which the taxpayer disposed of the property, that would not be deemed to be earned outside Ontario for the purposes of section 39, if the partnership were a corporation, the fiscal period were its taxation year and it had had income for the fiscal period, is less than or equal to the percentage of the transferee’s taxable income, for the taxation year in which the transferee disposed of the property, that is not deemed, or would not be deemed if the transferee had had taxable income for that year, to be earned outside Ontario for the purposes of section 39. 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Inter-provincial anti-avoidance, acquisition of property

(5)  Despite any other provision of this Act except subsections (7) and (8), if a taxpayer acquires property from a transferor and clauses (6) (a) to (d) apply, the taxpayer’s cost amount of the property for the purposes of this Act shall be the amount by which,

(a) the taxpayer’s cost amount of the property as otherwise determined under this Act without reference to this section,

exceeds,

(b) the total of all amounts, each of which is in respect of a province in which the transferor has a permanent establishment, determined by multiplying,

(i) the amount by which the amount determined under clause (a) exceeds the proceeds of disposition of the property to the transferor as determined under the laws of a province other than Ontario,

by,

(ii) the percentage of the transferor’s taxable income for the taxation year in which the disposition occurred that is deemed to be earned in that other province under regulations made under the Income Tax Act (Canada), or that would be deemed to be earned in that other province if the transferor had had taxable income for that year. 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Application of subs. (5)

(6)  Subsection (5) applies in respect of an acquisition of property if,

(a) the transferor does not deal at arm’s length with the taxpayer at or immediately after the time of the acquisition;

(b) the cost amount of the property to the taxpayer, as otherwise determined under this Act, is greater than the amount of the transferor’s deemed proceeds of disposition of the property as determined under the laws of a province other than Ontario in which the transferor or, if the transferor is a partnership, one or more of its members, has a permanent establishment;

(c) the property, or other property the fair market value of which is derived primarily from the property or other property acquired by any person other than the taxpayer in substitution for the property, is subsequently disposed of to another person or partnership; and

(d) it is reasonable to believe that a purpose of the disposition of the property to the taxpayer prior to the disposition of the property by the taxpayer to another person was to reduce the total amount of income tax payable to one or more provinces in respect of the two dispositions to an amount that would be less than the amount of provincial income tax that would have been payable if the taxpayer’s cost amount of the property for the purposes of this Act had equalled the greater of,

(i) the transferor’s cost amount of the property under the Income Tax Act (Canada) immediately before the disposition to the taxpayer, and

(ii) the transferor’s cost amount of the property under the laws of another province immediately before the disposition to the taxpayer. 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Exceptions

(7)  Subsection (5) does not apply in respect of an acquisition of a property if,

(a) the cost amount of the property to the taxpayer is greater than the transferor’s proceeds of disposition of the property, as otherwise determined, by reason only of the operation of paragraph 88 (1) (c) or 98 (3) (b) of the Income Tax Act (Canada), as applicable for the purposes of this Act;

(b) in the case where the taxpayer is a corporation, the percentage of the taxpayer’s taxable income, for the taxation year in which the taxpayer acquires the property, that is not deemed, or would not be deemed if the taxpayer had had taxable income for that year, to be earned outside Ontario for the purposes of section 39, is less than or equal to,

(i) if the transferor is a corporation, the percentage of the transferor’s taxable income, for the taxation year in which the transferor disposed of the property, that is not deemed, or would not be deemed if the transferor had had income for that year, to be earned outside Ontario for the purposes of section 39, or

(ii) if the transferor is a partnership, the percentage of the transferor’s income, for the fiscal period in which the transferor disposed of the property, that would not be deemed to be earned outside Ontario under the rules prescribed for the purposes of section 39, if the partnership were a corporation, the fiscal period were its taxation year and it had had income for the fiscal period; or

(c) in the case where the taxpayer is a partnership, the percentage of the taxpayer’s income, for the fiscal period in which the taxpayer acquired the property, that would not be deemed to be earned outside Ontario under the rules prescribed for the purposes of section 39 if the partnership were a corporation, the fiscal period were its taxation year and it had had income for the fiscal period, is less than or equal to the percentage of the transferor’s taxable income, for the taxation year in which the transferor disposed of the property, that is not deemed, or would not be deemed if the transferor had had taxable income for that year, to be earned outside Ontario for the purposes of section 39 or, if the transferor is an individual, is deemed, or would be deemed if the transferor had had taxable income for that year, to be earned in Ontario under rules prescribed in the regulations made under the Income Tax Act (Canada). 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

Section not applicable

(8)  This section does not apply to a disposition or an acquisition of property if,

(a) the property is,

(i) depreciable property that was included in Class 3 of Schedule II to the regulations made under the Income Tax Act (Canada) and was acquired after November 12, 1981 and before October 25, 1985 by the transferor,

(ii) depreciable property referred to in subclause (i) that was acquired from a related corporation, and the difference between the cost amount of the property for the purposes of this Act and the cost amount of the property for the purposes of the Income Tax Act (Canada) can be primarily attributed to the fact that subsection 1100 (2) of the regulations made under that Act that applied for the purposes of that Act after November 12, 1981 did not apply for the purposes of this Act before October 25, 1985, or

(iii) a foreign resource property;

(b) the rules or conditions prescribed by the regulations have been satisfied; or

(c) an election is made under subsection 29.1 (4) or 31.1 (4) in respect of the disposition, or could have been made if those subsections had been enacted and in force. 1997, c. 43, Sched. A, s. 4 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 4 (1, 2) - 20/12/1996

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Anti-avoidance of provincial tax

**5.2** (1)  Except as otherwise provided in this section, if a corporation deducts or claims an amount under a provision of this Act, or of the Income Tax Act (Canada) as it applies for the purposes of this Act, that is less than the maximum amount the corporation may deduct or claim in determining its income or taxable income for the taxation year, or fails to deduct or claim any amount under the provision for the taxation year, the corporation shall be deemed to deduct or claim an amount under the provision in determining its income or taxable income, as the case may be, for the taxation year, in addition to the amount, if any, that it has deducted or claimed under the provision, equal to the amount, if any, by which the lesser of “A” and “B” exceeds “C”,

where,

“A” is the greatest amount that may be deducted or claimed by the corporation under the provision in determining its income or taxable income under this Act for the taxation year,

“B” is the greatest of the amounts deducted or claimed by the corporation under the corresponding provisions of the laws of other provinces in computing its income or taxable income for the taxation year under the laws of the other provinces, and

“C” is the amount, if any, that the corporation deducted or claimed under the provision for the taxation year before the application of this subsection. 1998, c. 34, s. 27 (1); 1999, c. 9, s. 73 (1); 2004, c. 16, s. 2 (2).

Exception

(1.1)  Subsection (1) does not apply if the corporation deducted or claimed the amount, or failed to deduct or claim the amount, primarily for purposes other than a reduction in the total amount of income tax payable to one or more provinces over the course of one or more taxation years. 1999, c. 9, s. 73 (2); 2004, c. 16, s. 2 (2).

Same

(2)  Subsection (1) does not apply to a corporation for a taxation year unless the following conditions are satisfied:

1. The corporation’s Ontario allocation factor for a subsequent taxation year, within the meaning of subsection 12 (1), is at least 20 per cent greater than the corporation’s Ontario allocation factor for the taxation year.

2. The amount that would be the corporation’s income or taxable income for the taxation year, determined under this Act before the deduction of any amount deemed by subsection (1) to be deducted or claimed under the provision referred to in that subsection, is greater than the corporation’s income or taxable income, as the case may be, for the taxation year determined under the law of a province other than Ontario because the corporation deducted or claimed a greater amount in determining its income or taxable income under the corresponding provision of the law of the other province.

3. The total amount of all income tax that would be payable by the corporation to one or more provinces for all taxation years commencing with the taxation year and ending with the subsequent taxation year, determined before the deduction of any amount deemed to be claimed or deducted under subsection (1) for the taxation year, is less than the total amount of provincial income tax that would be payable by the corporation for those taxation years, determined after the deduction of the amount deemed to be claimed or deducted under subsection (1) and after all consequential adjustments are made to the corporation’s income and taxable income for those taxation years that would be required by reason of the increase required by subsection (1) in the total amount deducted or claimed under the provision for the taxation year. 1998, c. 34, s. 27 (1); 2004, c. 16, s. 2 (2).

Limitation

(3)  The maximum amount that a corporation is deemed to deduct or claim for a taxation year by virtue of subsection (1) under the provisions of this Act, or of the Income Tax Act (Canada) as they apply for the purposes of this Act, shall not exceed the amount that would be the corporation’s taxable income for the taxation year under this Act before any amount is deemed to be deducted or claimed under this section for the taxation year. 1998, c. 34, s. 27 (1); 2004, c. 16, s. 2 (2).

Partnerships

(4)  If a corporation is a member of a partnership during a taxation year, subsections (1), (2) and (3) apply with necessary modifications in determining the corporation’s share of the income or loss of the partnership for a fiscal period ending in the taxation year. 1998, c. 34, s. 27 (1); 2004, c. 16, s. 2 (2).

Amalgamation and winding-up

(5)  For the purposes of this section,

(a) a corporation that is formed as a result of an amalgamation or merger of two or more corporations shall be deemed to be the same corporation as, and a continuation of, each of the corporations that amalgamated or merged; and

(b) a corporation that is a parent for the purposes of subsection 88 (1) of the Income Tax Act (Canada), or would be a parent if it were a taxable Canadian corporation, shall be deemed to be the same corporation as, and a continuation of, each corporation that, if it were a taxable Canadian corporation, would be described as a subsidiary in that subsection, after the winding-up of the subsidiary. 1999, c. 9, s. 73 (3); 2004, c. 16, s. 2 (2).

Same

(6)  Subsection (5) applies in respect of amalgamations, mergers and windings-up of corporations during a taxation year that begins on or after the day that subsection comes into force. 1999, c. 9, s. 73 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 34, s. 27 (1, 2) - 18/12/1998; 1999, c. 9, s. 73 (1, 2) - 18/12/1998; 1999, c. 9, s. 73 (3) - 14/12/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Tax avoidance, special reserves

Definition

**5.3** (1)  In this section,

“specified reserve” means, in relation to a corporation, an amount claimed as a deduction in determining income under Part II under any of the following provisions of the Income Tax Act (Canada) as they apply for the purposes of Part II, or under the comparable provisions of the laws of a province that impose a tax calculated by reference to the corporation’s income:

1. Paragraphs 20 (1) (l), (l.1), (m), (m.1), (n) and (o).

2. Subsection 26 (2).

3. Subsection 32 (1).

4. Clauses 40 (1) (a) (iii) (C) and (D).

5. Subparagraphs 138 (3) (a) (i), (ii) and (iv).

6. Such other provisions as may be prescribed by regulation. 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

Anti-avoidance, provincial tax

(2)  The amount of a specified reserve claimed by a corporation in determining its income under Part II for a taxation year shall be deemed to be the amount determined under subsection (4) if the conditions set out in subsection (3) are satisfied. 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

When applicable

(3)  Subsection (2) applies to a corporation for a taxation year if the following conditions are satisfied:

1. The amount of the specified reserve claimed by the corporation is greater than the amount of the specified reserve that it claims for the purposes of determining its income under the laws of another province that impose a similar tax calculated by reference to the corporation’s income or for the purposes of determining the amount of its income under the Income Tax Act (Canada), or the corporation does not claim any amount in respect of the specified reserve in determining its income for the purposes of the income tax laws of another province or under the Income Tax Act (Canada).

2. The corporation’s Ontario allocation factor, as defined in subsection 12 (1), for a subsequent taxation year is at least 20 per cent less than its Ontario allocation factor for the taxation year, or would be at least 20 per cent less if the corporation had tax payable under Part II for the taxation year and subsequent taxation years.

3. It is reasonable to consider that the primary reason that the corporation is claiming different amounts of the specified reserve is to reduce the amount of income taxes payable to one or more provinces over the course of one or more taxation years.

4. The total amount of income tax payable by the corporation under this Act and under the income tax laws of other provinces for the period that includes the taxation year and subsequent taxation years would be less if subsection (2) did not apply. 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

Amount deemed to be claimed

(4)  If subsection (2) applies to a corporation for a taxation year in respect of a specified reserve claimed by the corporation, the amount the corporation is deemed to have claimed for the taxation year is the lesser of,

(a) the least of the amounts claimed by the corporation as the specified reserve for the same taxation year in determining the amount of its income for the purposes of the income tax laws of another province or under the Income Tax Act (Canada); or

(b) nil, if no specified reserve is claimed by the corporation for the taxation year in determining the amount of its income for the purposes of the income tax laws of another province or under the Income Tax Act (Canada). 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

Partnerships

(5)  If a corporation is a member of a partnership during a taxation year, subsections (1), (2), (3) and (4) apply with necessary modifications in determining the corporation’s share of the income or loss of the partnership for a fiscal period ending in the taxation year. 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

Amalgamation and winding-up

(6)  For the purposes of this section,

(a) a corporation that is formed as a result of an amalgamation or merger of two or more corporations shall be deemed to be the same corporation as, and a continuation of, each of the corporations that amalgamated or merged; and

(b) a corporation that is a parent for the purposes of subsection 88 (1) of the Income Tax Act (Canada), or would be a parent if it were a taxable Canadian corporation, shall be deemed to be the same corporation as, and a continuation of, each corporation that, if it were a taxable Canadian corporation, would be described as a subsidiary in that subsection, after the winding-up of the subsidiary. 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

Application

(7)  This section applies with respect to a corporation’s taxation years that end on or after the day this section comes into force. 1999, c. 9, s. 74; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1999, c. 9, s. 74 - 14/12/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Transfer pricing

**5.4** The provisions of Part XVI.1 of the Income Tax Act (Canada) apply in determining an amount that would be determined for the purposes of this Act, but for this section and section 5, in respect of a corporation for a taxation year commencing after December 31, 1997, with the following exceptions:

1. The reference to a person’s “filing-due date” for a taxation year in the definition of “documentation-due date” in subsection 247 (1) of the Income Tax Act (Canada) shall be read as a reference to the date on which the person is required to deliver a return under section 75 of this Act for the taxation year.

2. The reference to subsection 245 (1) of the Income Tax Act (Canada) in the definition of “tax benefit” in subsection 247 (1) of that Act shall be read as a reference to subsection 5 (1) of this Act.

3. The reference to section 245 of the Income Tax Act (Canada) in subsection 247 (2) of that Act shall be read as a reference to section 5 of this Act.

4. Subsections 76 (1), (2), (6), (8) and (9), sections 80, 81, 82, 84 and 107 and Division F of Part V of this Act apply instead of sections 152, 158, 159, 162 to 167 and Division J of Part I of the Income Tax Act (Canada).

5. Subsection 247 (3) of the Income Tax Act (Canada) does not apply. 2001, c. 23, s. 21; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 3.

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 21](http://www.ontario.ca/laws/statute/S01023" \l "s21) - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 3](http://www.ontario.ca/laws/statute/S05031" \l "sched5s3) - 01/01/1998

PART II  
INCOME TAX

Division A — Liability for Income Tax

Income tax

**6** (1)  Except as otherwise provided in this Part, every corporation liable to the taxes imposed under this Act by virtue of subsection 2 (1) shall, for every taxation year of the corporation, pay an income tax as hereinafter required upon its taxable income. R.S.O. 1990, c. C.40, s. 6 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Except as otherwise provided in this Part, every corporation liable to the taxes imposed under this Act by virtue of subsection 2 (2) shall, for every taxation year of the corporation, pay an income tax as hereinafter required upon its taxable income earned in Canada. R.S.O. 1990, c. C.40, s. 6 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Taxable income

**7** The taxable income of a corporation for a taxation year is its income for the taxation year plus the additions required by Division C and less the deductions permitted by Division C. R.S.O. 1990, c. C.40, s. 7; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Taxable income earned in Canada

**8** The taxable income earned in Canada of a corporation for a taxation year is its taxable income earned in Canada determined under Division D. R.S.O. 1990, c. C.40, s. 8; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division B — Computation of Income

basic rules

Basic rules, *Income Tax Act* (Canada), s. 3, applicable

**9** (1)  Except as hereinafter provided, section 3 of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as the said section applies to corporations. R.S.O. 1990, c. C.40, s. 9 (1); 2004, c. 16, s. 2 (2).

Interpretation

(2)  In the application of the said section 3 for the purposes of this Act, the reference in paragraph (c) thereof to “subdivision e” shall be deemed to be a reference to Subdivision D of Division B of Part II of this Act, and the reference in the said section to “this Part” shall be deemed to be a reference to Part II of this Act. R.S.O. 1990, c. C.40, s. 9 (2); 2004, c. 16, s. 2 (2).

Losses deemed deducted, deductible or claimed

(3)  Subject to subsection 11 (3), for the purpose of computing the income and taxable income of a corporation for a taxation year, any amount deducted, deductible or claimed by the corporation under a provision of the Income Tax Act (Canada) in computing its income or taxable income, as the case may be, for a previous taxation year in respect of which the corporation was not subject to tax imposed by Part II of this Act shall be deemed, unless otherwise provided in Part II, to have been deducted, deductible or claimed, as the case may be, under the corresponding provision of this Act in computing the income or taxable income of the corporation, as the case may be, for that previous taxation year. 1994, c. 14, s. 3 (1); 2004, c. 16, s. 2 (2).

Same

(4)  Despite subsections 111 (1) and (3) of the Income Tax Act (Canada), as made applicable by section 34 of this Act, in the application of subsection (3), where a corporation has deducted or claimed an amount in respect of a net capital loss, non-capital loss, restricted farm loss or farm loss, determined for a particular taxation year (in this subsection referred to as the “loss year”), in computing its taxable income for another taxation year, the total of such losses determined for the loss year and subsequent taxation years shall be deemed to be amounts deducted or claimed, as the case may be, under the provisions of the Income Tax Act (Canada) in computing the taxable income of the corporation for previous taxation years in respect of which the corporation was not subject to tax under Part II of this Act, to the extent of the total of such losses deducted or claimed in computing taxable income of the corporation for the purposes of the Income Tax Act (Canada) for such previous taxation years; if the total of such losses includes losses determined for more than one loss year, no loss for any year shall be deemed to have been deducted or claimed until all losses determined for previous loss years have been deducted or claimed or deemed to have been deducted or claimed. 1994, c. 14, s. 3 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 3 (1, 2) - 17/12/1991

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Income or loss from a source or from sources in a place

**10** (1)  Except as hereinafter provided, section 4 of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as the said section applies to corporations. R.S.O. 1990, c. C.40, s. 10 (1); 2004, c. 16, s. 2 (2).

Interpretation

(2)  In the application of the said section 4 for the purposes of this Act, the references therein to “this Part” shall be deemed to be references to Part II of this Act. R.S.O. 1990, c. C.40, s. 10 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision A — Income or Loss from a Business or Property

Application of *Income Tax Act* (Canada)

**11** (1)  Except as hereinafter provided, the income or loss of a corporation for a taxation year from a business or property shall for the purposes of this Act be determined in accordance with subdivisions a and b of Division B of Part I of the Income Tax Act (Canada) and the said subdivisions a and b are applicable to this Act in so far as the said subdivisions apply to corporations. R.S.O. 1990, c. C.40, s. 11 (1); 2004, c. 16, s. 2 (2).

Inventory

(2)  In the application of section 10 of the Income Tax Act (Canada) for the purposes of this Act, the amount determined by a corporation for the purposes of that Act as the value of property described in an inventory shall apply for the purposes of this Act, except that if the Minister is of the opinion that the value has been incorrectly determined by the corporation, the Minister may determine the value under section 10 of that Act for the purposes of this Act. R.S.O. 1990, c. C.40, s. 11 (2); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), s. 10 (2.1)

(2.1)  In the application of subsection 10 (2.1) of the Income Tax Act (Canada) for the purposes of this Act, the references to “the Minister” shall be read as references to the Minister of National Revenue. 1994, c. 14, s. 4 (1); 2004, c. 16, s. 2 (2).

Disposition of depreciable property:

(3)  In the application of section 13 of the Income Tax Act (Canada) for the purposes of this Act, the following rules apply,

Undepreciated capital cost

(a) subsection 13 (10) and element H in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) are not applicable in determining the capital cost or the undepreciated capital cost of depreciable property of a prescribed class for the purposes of this Act and the regulations;

Application of *Income Tax Act* (Canada), s. 13 (7.1)

(b) the reference in subsection (7.1) of the said section 13 to “section 65” shall be deemed to be a reference to the said section 65 and to section 17 of this Act. R.S.O. 1990, c. C.40, s. 11 (3); 1996, c. 29, s. 37 (1); 2004, c. 16, s. 2 (2).

Loan to non-resident person

(4)  In the application of section 17 of the Income Tax Act (Canada) for the purposes of this Act, subsection (7) thereof does not apply in determining whether an amount shall be included in the income of a corporation in accordance with subsection (1) thereof. R.S.O. 1990, c. C.40, s. 11 (4); 1999, c. 9, s. 75 (1); 2004, c. 16, s. 2 (2).

Add-back of certain amounts paid to non-residents

(5)  Every corporation shall include in its income from a business or property for a taxation year the amount calculated using the formula,

A × B

in which,

“A” is the designated fraction of the corporation for the taxation year, as determined under subsection (8.1), and

“B” is the total of the amounts described in subsection (5.1) deducted by the corporation in computing its income for the taxation year, each of which is paid or payable to,

(a) a non-resident person who, at any time in the corporation’s taxation year, did not deal at arm’s length with the corporation, or

(b) a non-resident owned investment corporation which, at any time in the corporation’s taxation year, did not deal at arm’s length with the corporation.

2000, c. 10, s. 1 (1); 2004, c. 16, s. 2 (2).

Payments

(5.1)  The following amounts are described in this subsection for the purposes of subsection (5):

1. All management or administration fees and charges, including fees and charges calculated by reference to the sale of goods or services, production or profits, but not including,

i. any amount that is not included in the amount determined under subsection 212 (4) of the Income Tax Act (Canada), or

ii. if the management or administration fee or charge is calculated on the basis of cost plus a mark-up, the portion of that fee or charge equal to the total of specific expenses incurred by the non-resident person in the performance of the service for the benefit of the corporation.

2. All rents, royalties and similar payments other than amounts,

i. that would not be included in the amount determined under paragraph 212 (1) (d) of the Income Tax Act (Canada), or

ii. that are for the use, or for the right to use in Canada, of computer software or a patent or information concerning industrial, commercial or scientific experience, or a design or model, plan, secret formula or process.

3. Amounts in consideration for a right in or for the use of,

i. a motion picture film,

ii. a film or video tape for use in connection with television, other than solely in connection with and as part of a news program produced in Canada, or

iii. any other means of reproduction for use in connection with television, other than solely in connection with and as part of a news program produced in Canada. 1998, c. 34, s. 28 (1); 1999, c. 9, s. 75 (3); 2004, c. 16, s. 2 (2).

Exclusions from amount

(5.2)  Despite subsection (5.1), the following amounts shall not be included in the amounts described in that subsection:

1. An amount that would otherwise be included in an amount described in subsection (5.1) that is paid or payable to a person for the benefit of a third person who is a non-resident person entitled to the payment if,

i. the third person deals at arm’s length with the corporation, and

ii. the amount is subsequently paid or payable to the third person.

2. An amount paid or payable to a non-resident person who is subject to tax under this Part or under Part I of the Income Tax Act (Canada), if the amount is included in computing the non-resident person’s taxable income earned in Canada. 1998, c. 34, s. 28 (1); 2004, c. 16, s. 2 (2).

Interpretation

(5.3)  For the purposes of subsection (5.1), a specific expense of a person is an explicit and identifiable expense that is paid or payable and is incurred directly by the person to provide for either the use of property by the corporation making the payment or to obtain goods or services for the benefit of the corporation making the payment. 1998, c. 34, s. 28 (1); 2004, c. 16, s. 2 (2).

Adjustment for unpaid amounts

(5.4)  In computing its income for a taxation year, a corporation may deduct the amount calculated using the formula,

A × B

in which,

“A” is the designated fraction of the corporation for the taxation year, as determined under subsection (8.1), and

“B” is any amount required to be included in the corporation’s income for the taxation year under section 78 of the Income Tax Act (Canada), if the amount is included in the calculation of an amount included in the corporation’s taxable income under subsection (5) or (6) for the taxation year or a prior taxation year.

2000, c. 10, s. 1 (2); 2004, c. 16, s. 2 (2).

Certain payments to non-resident persons

(6)  Subsection (6.1) applies,

(a) if an amount to which subsection (5) would have applied in a taxation year if it had been paid or payable to a non-resident person is paid or payable by a corporation (the “payer”) to a related person (the “payee”) resident in Canada but not in Ontario; and

(b) if the payee is related to another person not resident in Canada that controls the payer. 2000, c. 10, s. 1 (3); 2004, c. 16, s. 2 (2).

Same

(6.1)  In the circumstances described in subsection (6), the corporation that is the payer shall include in computing its income from a business or property for the taxation year the amount calculated using the formula,

A × B

in which,

“A” is the designated fraction of the corporation that is the payer, as determined under subsection (8.1), and

“B” is the amount referred to in subsection (6) for the taxation year.

2000, c. 10, s. 1 (3); 2004, c. 16, s. 2 (2).

Partnerships

(7)  For the purposes of subsections (5), (5.1), (5.2), (5.4) and (6), if an amount is payable to a partnership, or by a partnership to a non-resident person, a non-resident owned investment corporation or another partnership, the following rules apply:

1. If the amount is paid or payable to a partnership, the amount shall be deemed to be paid or payable to each member of the partnership to the extent of that member’s profit entitlement in the partnership.

2. If the amount is paid or payable by a partnership, the amount shall be deemed to be paid or payable by each member of the partnership to the extent of the member’s profit entitlement in the partnership.

3. A person who is a member of a partnership that is a member of a second partnership is deemed to be a member of the second partnership entitled to a pro rata share of the income or loss of the second partnership that is reasonable in the circumstances.

4. The profit entitlement of a person as a member of a partnership is the person’s proportionate share of the income or loss of the partnership to which the person is entitled under the partnership agreement, under paragraph 3 or at law. 1998, c. 34, s. 28 (2); 2004, c. 16, s. 2 (2).

Application of subs. (5)

(8)  Where it is reasonable for the Minister to believe that one of the principal purposes of the provisions of a contract or arrangement between two or more persons is to avoid the application of subsection (5) to an amount paid or payable to which it would otherwise apply, subsection (5) shall, except where subsection (6) applies, apply to that portion of the amount which the Minister considers reasonable in the circumstances. R.S.O. 1990, c. C.40, s. 11 (8); 2004, c. 16, s. 2 (2).

Designated fraction of a corporation

(8.1)  The designated fraction of a corporation for a taxation year is the total of,

(a) 5/15.5 multiplied by the ratio of the number of days in the taxation year before May 2, 2000 to the total number of days in the taxation year;

(b) 5/14.5 multiplied by the ratio of the number of days in the taxation year after May 1, 2000 and before January 1, 2001 to the total number of days in the taxation year;

(c) 5/14 multiplied by the ratio of the number of days in the taxation year that are after December 31, 2000 and before October 1, 2001 to the total number of days in the taxation year;

(d) 5/12.5 multiplied by the ratio of the number of days in the taxation year that are after September 30, 2001 and before January 1, 2004 to the total number of days in the taxation year;

(e) 5/14 multiplied by the ratio of the number of days in the taxation year that are after December 31, 2003 to the total number of days in the taxation year.

(f) Repealed: 2003, c. 7, s. 1.

(g) Repealed: 2003, c. 7, s. 1.

2000, c. 10, s. 1 (4); 2001, c. 8, s. 19 (1); 2001, c. 23, s. 22 (1-3); 2002, c. 22, s. 38; 2003, c. 7, s. 1; 2004, c. 16, s. 2 (2).

Loans or lending assets

(9)  In the application of paragraph 18 (1) (s) of the Income Tax Act (Canada) for the purposes of this Act, the reference therein to “this Part” shall be read as a reference to Part II of this Act. R.S.O. 1990, c. C.40, s. 11 (9); 2004, c. 16, s. 2 (2).

Deductions allowed

(10)  Paragraphs 20 (1) (a) and (v.1) of the Income Tax Act (Canada) are not applicable in computing the income of a corporation for a taxation year from a business or property for the purposes of this Act, and in lieu thereof there may be deducted such of the following amounts as are applicable:

Capital cost of property

(a) such part of the capital cost to the corporation of property, or such amount in respect of the capital cost to the corporation of property, as is allowed by regulation;

Resource allowance

(b) such amount as is allowed to the corporation by the regulations in respect of oil or gas resources in Canada or mineral resources in Canada. R.S.O. 1990, c. C.40, s. 11 (10); 2004, c. 16, s. 2 (2).

Deduction not allowed

(10.1)  If a corporation is entitled to claim a deduction under section 13.1 for a taxation year, no deduction may be claimed under paragraph 20 (1) (b) of the Income Tax Act (Canada), as it applies for the purposes of this Act, in respect of the same property or expenditure. 1997, c. 43, Sched. A, s. 5 (3); 2004, c. 16, s. 2 (2).

Deductions not allowed

(11)  In the application of paragraph 20 (1) (n) of the Income Tax Act (Canada) for the purposes of this Act,

No deduction in respect of property in certain circumstances

(a) despite subsection 20 (8) of the Income Tax Act (Canada), the said paragraph (n) does not apply to allow a deduction in computing the income of a corporation for a taxation year from a business in respect of a property sold in the course of the business if,

(i) the corporation at the end of the taxation year or at any time in the immediately following taxation year,

(A) was exempt from tax under any provision of this Part, or

(B) ceased to have a permanent establishment in Canada, or

(ii) the sale occurred more than thirty-six months before the end of the taxation year; and

No deduction in respect of sale of property if security disposed of

(b) the said paragraph (n) does not apply to allow a deduction in computing the income of a corporation for a taxation year from a business where the corporation has, in the taxation year, sold, pledged, assigned or in any way disposed of any security received by it as payment in whole or in part for the sale of property in respect of which the corporation has, in that or a previous taxation year, been allowed a deduction under that paragraph for the purposes of this Act. R.S.O. 1990, c. C.40, s. 11 (11); 2004, c. 16, s. 2 (2).

Foreign non-business income tax

(12)  For the purposes of this Act, subsection 20 (12) of the Income Tax Act (Canada) does not apply to allow a deduction in computing the income of a corporation for a taxation year except to the extent that the portion of the foreign non-business income tax paid by the corporation to which the subsection applies was not deducted pursuant to subsection 126 (1) of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 11 (12); 2004, c. 16, s. 2 (2).

Foreign non-business income tax

(12.1)  For the purposes of this Act, subsection 20 (12.1) of the Income Tax Act (Canada) does not apply to allow a deduction in computing the income of a corporation for a taxation year ending after December 31, 1997 except to the extent that the portion of the foreign non-business income tax paid by the corporation to which that subsection applies was not included in computing the corporation’s non-business income tax for any taxation year under subsection 126 (4.1) of that Act. 2004, c. 31, Sched. 9, s. 2.

Banks

(13)  In the application of section 26 of the Income Tax Act (Canada) for the purposes of this Act,

(a) despite paragraph 4 of subsection 1 (3.1), the amounts referred to in subparagraphs 26 (1) (c) (i) and 26 (2) (c) (i) of the Income Tax Act (Canada) shall be the amounts that were deductible under subsection 26 (2) of that Act in computing the income of the bank for the taxation years referred to in those subparagraphs for the purposes of that Act, and not the amounts that were deductible under subsection 26 (2) of that Act as that subsection applied for the purposes of this Act in computing the bank’s income for those years for the purposes of this Act;

(b) no amount shall be deducted under paragraph 26 (2) (a), (b), (c) or (e) of that Act, for the purpose of computing the income of a bank for a taxation year for the purposes of this Act, in excess of the amount deducted by the bank under that paragraph for the purposes of computing its income for the taxation year for the purposes of that Act, unless all amounts deductible by the bank under that paragraph have been deducted in computing its income for a previous taxation year or years for the purposes of that Act; and

(c) the reference to subsections 26 (1) and (2) of that Act in subsection 26 (4) of that Act shall be deemed not to be a reference to those subsections as they applied for the purposes of this Act under the predecessor of this subsection. R.S.O. 1990, c. C.40, s. 11 (13); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 3 (1).

(14)  Repealed: 1996, c. 29, s. 37 (2).

Crown corporations

(15)  Section 27 of the Income Tax Act (Canada) is not applicable for the purposes of this Act and in lieu thereof the following provisions shall apply:

Prescription

1. Where a corporation referred to in paragraphs 149 (1) (d) to (d.6) of the Income Tax Act (Canada) is otherwise exempt under section 57 of this Act and subsection 71 (1) of this Act, such exemptions do not apply if the corporation is prescribed by regulation.

Transfers of land for disposition

2. Where land has been transferred to a corporation prescribed in the regulations for the purpose of disposition, the acquisition of the property by the corporation and any disposition thereof shall be deemed not to have been in the course of the business carried on by the corporation.

Application of par. 1 to controlled corporation

3. Where a corporation is prescribed pursuant to paragraph 1, paragraph 1 shall apply to any corporation controlled by such corporation. R.S.O. 1990, c. C.40, s. 11 (15); 1999, c. 9, s. 75 (5); 2004, c. 16, s. 2 (2).

*Income Tax Act* (Canada), s. 33.1 not applicable

(16)  Section 33.1 of the Income Tax Act (Canada) is not applicable in computing the income of a corporation for a taxation year for the purposes of this Act. R.S.O. 1990, c. C.40, s. 11 (16); 2004, c. 16, s. 2 (2).

Scientific research expenditures

(17)  In the application of paragraph 37 (1) (g) of the Income Tax Act (Canada) for the purposes of this Act,

(a) subsection 1 (3.1) of this Act does not apply; and

(b) the aggregate of the amounts determined under paragraph 37 (1) (g) of the Income Tax Act (Canada) applies for the purposes of the application of that paragraph under this Act. R.S.O. 1990, c. C.40, s. 11 (17); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 3 (2).

Interest repayments

(18)  Paragraph 20 (1) (ll) of the Income Tax Act (Canada) is not applicable for the purposes of this Act and in lieu thereof there may be deducted the amount of interest paid by a corporation to the Receiver General of Canada or to the Treasurer or other government authority of a Province, to the extent that,

(a) the interest was previously received by, or applied to a liability of the corporation, in respect of an overpayment made on account of tax payable, pursuant to the provisions of an Act of the Parliament of Canada or the Legislature of a Province imposing a tax on the income or profits of the corporation;

(b) the interest was included in computing the income of the corporation from a business or property for the purposes of this Act; and

(c) the corporation was required to repay the interest as a result of a subsequent determination that the amount upon which the interest was calculated was not an overpayment of tax. R.S.O. 1990, c. C.40, s. 11 (18); 2004, c. 16, s. 2 (2).

Idem

(19)  Subsections 127.2 (8) and 127.3 (6) of the Income Tax Act (Canada) are applicable for the purposes of this Act in the determination of the cost of property other than capital property, including shares, debt obligations and rights, and in the determination of any amount to be included in the income of the corporation as a result of any adjustments to the cost of the property under this subsection. R.S.O. 1990, c. C.40, s. 11 (19); 2004, c. 16, s. 2 (2).

(20)  Repealed: 1996, c. 29, s. 37 (3).

(21)  Repealed: 1994, c. 14, s. 4 (2).

Interest and property tax transition rule

(22)  In the application of subsection 18 (2) of the Income Tax Act (Canada) for the purposes of this Act, subsection 10 (23) of the Statutes of Canada, 1988, chapter 55, as amended by subsection 132 (1) of the Statutes of Canada, 1994, chapter 21, as it applies for the purposes of the application of subsection 10 (6) of that Act (which repealed and re-enacted subsection 18 (2) of the Income Tax Act (Canada)), applies for the purposes of this Act. R.S.O. 1990, c. C.40, s. 11 (22); 1996, c. 29, s. 37 (4); 2004, c. 16, s. 2 (2).

Idem

(23)  In the application of subsections 18 (2.3) and (2.4) of the Income Tax Act (Canada) for the purposes of this Act, any reference therein to “the Minister” shall be read as a reference to the Minister of National Revenue. R.S.O. 1990, c. C.40, s. 11 (23); 2004, c. 16, s. 2 (2).

*Income Tax Act* (Canada), par. 18 (1) (t) not applicable

(24)  Paragraph 18 (1) (t) of the Income Tax Act (Canada) is not applicable for the purposes of this Act. 1992, c. 3, s. 2; 2004, c. 16, s. 2 (2).

Interpretation

(25)  In the application of subsection 12 (2.2) of the Income Tax Act (Canada) for the purposes of this Act, a reference in that subsection to an assessment or reassessment of tax, interest or penalties under section 152 of that Act shall be read as a reference to an assessment or reassessment under Part V of this Act. 1996, c. 29, s. 37 (5); 2004, c. 16, s. 2 (2).

Fuel tax rebates

(26)  The amount required to be included in the income of a corporation for a taxation year under paragraph 12 (1) (x.1) of the Income Tax Act (Canada) for the purposes of this Act shall be deemed to be the total of all amounts each of which is a fuel tax rebate received in the taxation year by the corporation under section 68.4 of the Excise Tax Act (Canada). 1997, c. 43, Sched. A, s. 5 (4); 2004, c. 16, s. 2 (2).

Life insurance companies, “SAT” not deductible

(27)  No deduction may be claimed by a corporation in computing its income for a taxation year in respect of any tax payable by the corporation under section 74.1. 1998, c. 34, s. 28 (4); 2004, c. 16, s. 2 (2).

(28)  Repealed: 2001, c. 23, s. 22 (4).

(29)  Repealed: 2001, c. 23, s. 22 (5).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 2 - 25/06/1992; 1994, c. 14, s. 4 (1) - 17/12/1991; 1994, c. 14, s. 4 (2) - 01/01/1989; 1996, c. 29, s. 37 (1) - 01/03/1994; 1996, c. 29, s. 37 (2) - 23/02/1994; 1996, c. 29, s. 37 (3) - 25/02/1986; 1996, c. 29, s. 37 (4) - 13/09/1988; 1996, c. 29, s. 37 (5) - 01/02/1990; 1997, c. 43, Sched. A, s. 5 (1, 2) - 01/01/1998; 1997, c. 43, Sched. A, s. 5 (3) - 07/05/1997; 1997, c. 43, Sched. A, s. 5 (4, 5) - 01/01/1997; 1998, c. 34, s. 28 (1-5) - 18/12/1998; 1999, c. 9, s. 75 (1, 2) - 24/02/1998; 1999, c. 9, s. 75 (3, 4) - 05/05/1999; 1999, c. 9, s. 75 (5, 6) - 01/01/1999

[2000, c. 10, s. 1 (1-4)](http://www.ontario.ca/laws/statute/S00010" \l "s1s1) - 02/05/2000

[2001, c. 8, s. 19 (1, 2)](http://www.ontario.ca/laws/statute/S01008" \l "s19s1) - 01/01/2002; [2001, c. 23, s. 22 (1, 4-5)](http://www.ontario.ca/laws/statute/S01023" \l "s22s1) - 01/10/2001; [2001, c. 23, s. 22 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s22s2) - 01/01/2002

[2002, c. 22, s. 38](http://www.ontario.ca/laws/statute/S02022" \l "s38) - 09/12/2002

[2003, c. 7, s. 1](http://www.ontario.ca/laws/statute/S03007" \l "s1) - 01/01/2004

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 2](http://www.ontario.ca/laws/statute/S04031" \l "sched9s2) - 16/12/2004

[2005, c. 28, Sched. D, s. 3 (1, 2)](http://www.ontario.ca/laws/statute/S05028" \l "schedds3s1) - 01/01/2003

Deductions, resource corporations

**11.0.1** (1)  For taxation years ending after December 31, 2002, paragraphs 12 (1) (o), (x.2) and (z.5), 18 (1) (m) and 20 (1) (v) of the Income Tax Act (Canada) do not apply in computing the income of a corporation from a business or property for the purposes of this Act and the provisions of this section apply instead. 2004, c. 31, Sched. 9, s. 3.

Deduction not allowed

(2)  Despite paragraph 18 (1) (a) of the Income Tax Act (Canada), in computing the income of a corporation for taxation years ending after December 31, 2002 from a business or property, no deduction shall be made in respect of any tax on income levied by any province or territory in Canada for the year from mining operations other than a deduction prescribed by the regulations. 2004, c. 31, Sched. 9, s. 3.

Income amounts, royalties, etc.

(3)  There shall be included in computing the income of a corporation for a taxation year ending after December 31, 2002 as income from a business or property any amount, other than an amount prescribed by the regulations and an amount referred to in subsection (5),

(a) that became receivable in the year by,

(i) Her Majesty in right of Canada or of a province,

(ii) an agent of Her Majesty in right of Canada or of a province, or

(iii) a corporation, commission or association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province; and

(b) that can reasonably be considered to be a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus, however described, or to be in respect of the late receipt or non-receipt of any of those amounts, in relation to,

(i) the acquisition, development or ownership of a Canadian resource property of the corporation, or

(ii) the production in Canada,

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada, in respect of which the corporation had an interest,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada, in respect of which the corporation had an interest,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada in respect of which the corporation had an interest,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada in respect of which the corporation had an interest, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from a deposit located in Canada of bituminous sands or oil shales in respect of which the corporation had an interest. 2004, c. 31, Sched. 9, s. 3.

Same

(4)  There shall be included in computing the income of a corporation for a taxation year ending after December 31, 2002 as income from a business or property 25 per cent of the corporation’s prescribed resource loss for the year. 2004, c. 31, Sched. 9, s. 3.

Royalties

(5)  In computing the income of a corporation from a business or property for a taxation year ending after December 31, 2002, no deduction shall be made in respect of any amount, other than an amount prescribed by the regulations,

(a) that is paid or payable in the year to,

(i) Her Majesty in right of Canada or of a province,

(ii) an agent of Her Majesty in right of Canada or of a province, or

(iii) a corporation, a commission or an association that is controlled by Her Majesty in right of Canada or of a province or by an agent of Her Majesty in right of Canada or of a province; and

(b) that can reasonably be considered to be a royalty, tax (other than a tax or portion of a tax that can reasonably be considered to be a municipal or school tax), lease rental or bonus, however described, or to be in respect of the late payment or non-payment of any of those amounts, in relation to,

(i) the acquisition, development or ownership of a Canadian resource property, or

(ii) the production in Canada,

(A) of petroleum, natural gas or related hydrocarbons from a natural accumulation of petroleum or natural gas (other than a mineral resource) located in Canada, or from an oil or gas well located in Canada,

(B) of sulphur from a natural accumulation of petroleum or natural gas located in Canada, from an oil or gas well located in Canada or from a mineral resource located in Canada,

(C) to any stage that is not beyond the prime metal stage or its equivalent, of metal, minerals (other than iron or petroleum or related hydrocarbons) or coal from a mineral resource located in Canada,

(D) to any stage that is not beyond the pellet stage or its equivalent, of iron from a mineral resource located in Canada, or

(E) to any stage that is not beyond the crude oil stage or its equivalent, of petroleum or related hydrocarbons from a deposit located in Canada of bituminous sands or oil shales. 2004, c. 31, Sched. 9, s. 3.

**Section Amendments with date in force (d/m/y)**

[2004, c. 31, Sched. 9, s. 3](http://www.ontario.ca/laws/statute/S04031" \l "sched9s3) - 16/12/2004

Ontario new technology tax incentive gross-up recapture

**11.1** (1)  A corporation shall include in its income for a taxation year the total of all amounts, if any, each of which is the amount determined under subsection (2) of the corporation’s Ontario new technology tax incentive gross-up recapture in respect of a depreciable property of a prescribed class if an amount in respect of the depreciable property is required, under section 13 of the Income Tax Act (Canada), as made applicable by section 11, to be included in computing the corporation’s income for the taxation year or the income of a partnership, of which the corporation is a member at the end of the taxation year, for a fiscal period ending in the taxation year. 1997, c. 43, Sched. A, s. 6; 2004, c. 16, s. 2 (2).

Amount of recapture

(2)  The amount of a corporation’s Ontario new technology tax incentive gross-up recapture in respect of a depreciable property of a prescribed class is the amount determined in accordance with the following formula:

A = B/C – B

where,

“A” is the amount of the corporation’s Ontario new technology tax incentive gross-up recapture in respect of the depreciable property;

“B” is the amount,

(a) included under section 13 of the Income Tax Act (Canada), as made applicable by section 11, in computing the corporation’s income for the taxation year in respect of the depreciable property, or

(b) included under section 13 of the Income Tax Act (Canada), as made applicable by section 11, in the income of the partnership for the fiscal period ending in the corporation’s taxation year, multiplied by the percentage of the partnership’s income or loss for the fiscal period to which the corporation is entitled or would be entitled if the partnership had had an income or loss for the fiscal period; and

“C” is the fraction that is the corporation’s allocation factor for the taxation year that would be determined for the purposes of subsection 13.1 (1).

1997, c. 43, Sched. A, s. 6; 2004, c. 16, s. 2 (2).

(3)  Repealed: 1998, c. 5, s. 6.

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 6 - 07/05/1997; 1998, c. 5, s. 6 - 26/06/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Rules, Federal investment tax credit for scientific research and experimental development

Definitions

**11.2** (1)  In this section,

“Federal Act” means the Income Tax Act (Canada); (“loi fédérale”)

“investment tax credit amount” means, in respect of a corporation for a taxation year, an amount deducted by the corporation for a prior taxation year under subsection 127 (5) or (6) of the Federal Act; (“crédit d’impôt à l’investissement”)

“Ontario allocation factor” has the meaning given to that expression by subsection 12 (1); (“coefficient de répartition de l’Ontario”)

“qualified Ontario SR & ED expenditure” means,

(a) a qualified expenditure within the meaning of subsection 12 (1) that is made or incurred by a corporation in a specified taxation year or in the taxation year immediately preceding the first specified taxation year of the corporation, or

(b) an expenditure made or incurred by a partnership in a fiscal period that ends in a specified taxation year of a corporation if,

(i) the corporation is a member of the partnership at any time in the specified taxation year, and

(ii) the expenditure would be a qualified expenditure within the meaning of subsection 12 (1) if it were made by a corporation; (“dépense admissible de recherche et de développement en Ontario”)

“specified taxation year” means, in respect of a corporation, a taxation year of the corporation that commences after February 29, 2000 and ends before January 1, 2009. (“année d’imposition déterminée”) 2001, c. 23, s. 23; 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (4).

Exception, specified taxation year

(2)  Despite the definition of “specified taxation year” in subsection (1), a corporation’s first specified taxation year for the purposes of this section is its first taxation year commencing after December 31, 2000, if its first taxation year that commences after February 29, 2000 ends before January 1, 2001. 2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Rule, deduction under s. 37 (1) of the Federal Act

(3)  If a corporation includes, under paragraph 37 (1) (e) of the Federal Act, an investment tax credit amount in determining the amount otherwise deductible under this Act for a specified taxation year, the corporation may increase the amount of its deduction for the specified taxation year under subsection 37 (1) of the Federal Act, as it applies for the purposes of this Act, by the amount calculated using the formula,

A/B

in which,

“A” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the corporation, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Rule, capital cost

(4)  If a corporation includes an investment tax credit amount in a specified taxation year under paragraph 13 (7.1) (e) of the Federal Act in determining the capital cost to the corporation of depreciable property for the purposes of this Act, the corporation may add, in determining the capital cost of the property, despite subsection 13 (7.1) of the Federal Act as it applies for the purposes of this Act, the amount calculated using the formula,

C/B

in which,

“C” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the corporation, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Rule, undepreciated capital cost

(5)  If a corporation includes an investment tax credit amount in a specified taxation year in determining the amount of the variable “I” in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) of the Federal Act in calculating the amount of the undepreciated capital cost to the corporation of depreciable property, the corporation may add, in determining the amount of the undepreciated capital cost for the purposes of this Act, the amount calculated using the formula,

D/B

in which,

“D” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the corporation, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Rule, adjusted cost base of partnership interest

(6)  If a corporation includes an investment tax credit amount in a specified taxation year under subparagraph 53 (2) (c) (vi) of the Federal Act in computing the adjusted cost base to the corporation of property that is an interest in a partnership, the corporation may add, in determining the adjusted cost base of the property for the purposes of this Act, the amount calculated using the formula,

E/B

in which,

“E” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the partnership, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Same

(7)  If a corporation includes an investment tax credit amount in a specified taxation year under subparagraph 53 (1) (e) (xiii) of the Federal Act in computing the adjusted cost base to the corporation of property that is an interest in a partnership, the corporation shall deduct, in determining the adjusted cost base of the property for the purposes of this Act, the amount calculated using the formula,

F/B

in which,

“F” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the partnership, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Rule, inclusion in income

(8)  If a corporation includes an investment tax credit amount under paragraph 37 (1) (c.2) of the Federal Act in determining the amount of a deduction under subsection 37 (1) of that Act for a specified taxation year and the amount can reasonably be considered to relate to qualified Ontario SR & ED expenditures to acquire a property that were made or incurred by the corporation and were previously subject to the application of subsection (4) because the expenditures are related to an amount included under paragraph 37 (1) (b) of that Act in a deduction under subsection 37 (1) of that Act for a prior taxation year, the corporation shall include, in computing its income for the purposes of this Act for the specified taxation year, an amount calculated using the formula,

G/B

in which,

“G” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the corporation, and

“B” is the Ontario allocation factor of the corporation for the year in which the property was last acquired by the corporation.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Exception

(9)  If the corporation is not subject to any of the rules set out in subsections (3) to (7) for a specified taxation year and includes an investment tax credit amount in computing its income for the purposes of this Act for the year, the corporation may deduct, in computing its income for the year, the amount calculated using the formula,

G/B

in which,

“G” is the part of that investment tax credit amount that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the corporation, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Partnerships

(10)  If a corporation is a member of a partnership in a specified taxation year and adds an amount under subsection 127 (8) of the Federal Act in computing the amount the corporation may deduct under subsection 127 (5) or (6) of the Federal Act for the year, the corporation may deduct, in computing its income for the year, the amount calculated using the formula,

H/B

in which,

“H” is the portion of the amount, if any, included under subsection 127 (8) of the Federal Act in computing the amount of the deduction under subsection 127 (5) or (6) of the Federal Act that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the partnership, and

“B” is the Ontario allocation factor of the corporation for the year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Same

(11)  If a partnership includes an amount under paragraph 37 (1) (c.3) of the Federal Act in determining the amount of a deduction under subsection 37 (1) of that Act for a fiscal period, and the amount is in respect of qualified Ontario SR & ED expenditures made or incurred by the partnership to acquire a property, a corporation that is a member of the partnership and that previously claimed a deduction under subsection (10) in respect of the expenditures shall include in computing its income for the specified taxation year in which the partnership’s fiscal period ends, an amount calculated using the formula,

J/B

in which,

“J” is the corporation’s proportionate share, based on its share of the income or loss of the partnership, of the amount included under paragraph 37 (1) (c.3) of the Federal Act by the partnership that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the partnership in respect of which the corporation claimed the deduction under subsection (10), and

“B” is the Ontario allocation factor of the corporation for the specified taxation year in which the fiscal period of the partnership ends during which the property was last acquired by the partnership.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Same

(12)  If a partnership includes an amount previously allocated under subsection 127 (8) of the Federal Act in computing its income for the purposes of this Act for a fiscal period and the amount can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the partnership, a corporation that is a member of the partnership shall, if subsection (10) does not apply, deduct an amount in computing its income for the specified taxation year in which the partnership’s fiscal period ends that is calculated using the formula,

K/B

in which,

“K” is the corporation’s proportionate share, based on its share of the income or loss of the partnership, of the amount allocated under subsection 127 (8) of the Federal Act that is included in the partnership’s income for the purposes of this Act that can reasonably be considered to relate to qualified Ontario SR & ED expenditures made or incurred by the partnership, and

“B” is the Ontario allocation factor of the corporation for the specified taxation year.

2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Same

(13)  Subsection 127 (13) of the Federal Act does not apply for the purposes of this section in respect of qualified Ontario SR & ED expenditures made or incurred by a partnership. 2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

Effect of transfer

(13.1)  For the purposes of this section, if a qualified Ontario SR & ED expenditure made or incurred by a corporation in a specified taxation year or in the taxation year preceding the first specified taxation year of a corporation is transferred to another corporation pursuant to subsection 127 (13) of the Federal Act, the amount transferred,

(a) is deemed not to be a qualified Ontario SR & ED expenditure made or incurred by the transferor; and

(b) is deemed to be a qualified Ontario SR & ED expenditure made or incurred by the other corporation in the other corporation’s first taxation year that ends after the specified taxation year or that preceding year, as the case may be. 2007, c. 7, Sched. 6, s. 1.

Application of subs. (13.1)

(13.2)  Subsection (13.1) applies in respect of a qualified Ontario SR & ED expenditure made or incurred by a corporation before or after subsection (13.1) comes into force. 2007, c. 7, Sched. 6, s. 1.

Prescribed rules

(14)  The corporation is subject to such rules as may be prescribed by the regulations instead of or in addition to the rules set out in subsections (3) to (12) for the purposes of determining the amount of its income for a specified taxation year or the amount of the capital cost, undepreciated capital cost or adjusted cost basis of its property. 2001, c. 23, s. 23; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 23](http://www.ontario.ca/laws/statute/S01023" \l "s23) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 7, Sched. 6, s. 1](http://www.ontario.ca/laws/statute/S07007" \l "sched6s1) - 17/05/2007; [2007, c. 11, Sched. B, s. 2 (4)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s4) - 04/06/2007

Research and development super allowance

Definitions

**12** (1)  In this section,

“amalgamated corporation” means a corporation that is a new corporation for the purposes of section 87 of the Income Tax Act (Canada); (“société issue de la fusion”)

“base period”, of a corporation for a particular taxation year, means the three previous taxation years of the corporation or, where the corporation has had fewer than three previous taxation years, the period commencing on the first day of its first taxation year and ending immediately before the particular taxation year, except that,

(a) if the corporation is an amalgamated corporation that, after the amalgamation, has had fewer than three taxation years ending before the particular taxation year, the base period,

(i) shall commence on the earliest day within the thirty-six-month period immediately before the particular taxation year on which a taxation year of a predecessor corporation commenced, and

(ii) shall end immediately before the particular taxation year, or

(b) if the corporation was a parent corporation in a winding-up to which subsection 88 (1) of the Income Tax Act (Canada) applied and has had fewer than three taxation years ending before the particular taxation year, the base period,

(i) shall commence on the earliest day within the thirty-six-month period immediately before the particular taxation year on which a taxation year of the parent corporation or of a subsidiary corporation commenced, and

(ii) shall end immediately before the particular taxation year; (“période de base”)

“contract payment” has the meaning given to that expression by subsection 127 (9) of the Income Tax Act (Canada); (“paiement contractuel”)

“eligible qualified expenditure” means a qualified expenditure made after the 20th day of April, 1988; (“dépense admissible autorisée”)

“eligible research property” means research property acquired after the 20th day of April, 1988; (“bien servant à la recherche admissible”)

“expenditure base”, of a corporation for a particular taxation year, means the ratio of the number of days in the taxation year to the number of days in the corporation’s base period for the particular taxation year, multiplied by the amount if any by which the aggregate of,

(a) the total of,

(i) all qualified expenditures made by the corporation during taxation years commencing before January 1, 1996 that are in the base period, and

(ii) the aggregate of the corporation’s SR & ED qualified expenditure pool at the end of each taxation year commencing after December 31, 1995 that is in the base period, and

(b) all amounts paid by the corporation during the base period that may reasonably be considered to be repayments of amounts referred to in clause (d) received by the corporation before or during the base period,

exceeds the aggregate of,

(c) all amounts each of which was deducted by the corporation under subsection 127 (5) of the Income Tax Act (Canada) in determining the amount of tax payable for a taxation year if,

(i) the amount deducted is reasonably attributable to,

(A) a qualified expenditure made by the corporation during a taxation year commencing before January 1, 1996 that is in or before the base period, or

(B) an amount included in the corporation’s SR & ED qualified expenditure pool at the end of a taxation year commencing after December 31, 1995 that is in or before the base period, and

(ii) the amount deducted was included under paragraph 12 (1) (t) of that Act, as applicable for the purposes of this Act, in computing the corporation’s income for a taxation year ending in the base period or was first required to be included in an amount determined under paragraph 13 (7.1) (e), element I in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) or paragraph 37 (1) (e) of that Act, as applicable for the purposes of this Act, for a taxation year ending in the base period, and

(d) all amounts received or receivable by the corporation in the base period as government assistance, non-government assistance or a contract payment, to the extent that each amount may reasonably be considered to relate to a qualified expenditure made by the corporation; (“base de dépenses”)

“government assistance” and “non-government assistance” have the meanings given to those expressions by subsection 127 (9) of the Income Tax Act (Canada); (“aide gouvernementale”, “aide non gouvernementale”)

“net qualified expenditures”, of a corporation for a taxation year, means the amount, if any, by which,

(a) the total of the corporation’s SR & ED qualified expenditure pool at the end of the taxation year and the amount determined under subsection 43.3 (9) that would be the amount of the corporation’s eligible repayments for the taxation year for the purposes of section 43.3,

exceeds,

(b) the total of,

(i) all amounts deducted by the corporation under subsection 127 (5) of the Income Tax Act (Canada) in computing tax payable under that Act for the previous taxation year, to the extent that the amounts deducted may reasonably be attributable to the corporation’s eligible qualified expenditures for taxation years commencing before January 1, 1996 or to amounts included in the corporation’s SR & ED qualified expenditure pool at the end of a taxation year commencing after December 31, 1995, and

(ii) any amount by which the aggregate determined under this clause in respect of the immediately preceding taxation year exceeds the aggregate determined under clause (a) for the immediately preceding taxation year; (“dépenses admissibles nettes”)

“Ontario allocation factor”, of a corporation for a taxation year, means the fraction equal to “A/B” where,

(a) “A” equals the amount of taxable income of the corporation, or the taxable income of the corporation earned in Canada if the corporation is a corporation to which subsection 2 (2) applies, that would be determined for the taxation year if no amount were deductible under this section or any of sections 13 to 13.5 and that would not be considered for the purposes of section 39 to have been earned in jurisdictions other than Ontario, except that the taxable income or the taxable income earned in Canada shall be deemed to be $1 if there would otherwise be no taxable income or taxable income earned in Canada, and

(b) “B” equals the taxable income of the corporation, or the taxable income of the corporation earned in Canada if the corporation is a corporation to which subsection 2 (2) applies, that would be determined for the taxation year if no amount were deductible under this section or any of sections 13 to 13.5, except that the taxable income or the taxable income earned in Canada shall be deemed to be $1 if there would otherwise be no taxable income or taxable income earned in Canada; (“coefficient de répartition de l’Ontario”)

“parent corporation” means a corporation that is a “parent” under subsection 88 (1) of the Income Tax Act (Canada); (“société mère”)

“predecessor corporation” means a corporation that was a predecessor corporation referred to in section 87 of the Income Tax Act (Canada) and includes any corporation in respect of which a predecessor corporation was an amalgamated corporation; (“société remplacée”)

“qualified expenditure” means an expenditure made by a corporation in respect of scientific research and experimental development carried on in Ontario that is a qualified expenditure for the purposes of section 127 of the Income Tax Act (Canada), or that would have been a qualified expenditure for the purposes of that section but for the corporation previously specifying the expenditure for the purposes of clause 194 (2) (a) (ii) (A) of that Act, but does not include an expenditure of the type described in subparagraph 37 (8) (d) (i), (ii) or (iii) of that Act; (“dépense admissible”)

“research property” means property of a corporation referred to in subparagraph 37 (1) (b) (i) of the Income Tax Act (Canada); (“bien servant à la recherche”)

“specified percentage”, in respect of a particular research property, is the percentage represented by the ratio of all amounts deducted under this section in respect of the research property to the capital cost of the research property; (“pourcentage déterminé”)

“SR & ED qualified expenditure pool”, of a corporation at the end of a taxation year, has the meaning given to that expression in subsection 127 (9) of the Income Tax Act (Canada), except that the expression “qualified expenditure” shall have the meaning given to that expression by this section; (“compte de dépenses admissibles de recherche et de développement”)

“subsidiary corporation” means a corporation that is a “subsidiary” under subsection 88 (1) of the Income Tax Act (Canada). (“filiale”) R.S.O. 1990, c. C.40, s. 12 (1); 1996, c. 29, s. 38; 1997, c. 43, Sched. A, s. 7 (1-3); 1998, c. 5, s. 7; 1998, c. 34, s. 29; 1999, c. 9, s. 76; 2000, c. 42, s. 11; 2004, c. 16, s. 2 (2).

Research and development super allowance

(2)  A corporation may deduct a research and development super allowance in computing its income from a business for a taxation year in an amount calculated according to the following formula:

A = [(B × C) + (D × E)] / F

where:

“A” is the research and development super allowance for the corporation for the taxation year;

“B” is 0.35 if the corporation is a Canadian-controlled private corporation throughout the taxation year, or 0.25 otherwise;

“C” is the lesser of the net qualified expenditures of the corporation for the taxation year or the expenditure base of the corporation for the taxation year;

“D” is 0.525 if the corporation is a Canadian-controlled private corporation throughout the taxation year, or 0.375 otherwise;

“E” is the amount, if any, by which the net qualified expenditures of the corporation for the taxation year exceed the expenditure base of the corporation for the taxation year;

“F” is the corporation’s Ontario allocation factor for the taxation year unless the Ontario allocation factor is 0, in which case “F” is 1.

R.S.O. 1990, c. C.40, s. 12 (2); 1997, c. 43, Sched. A, s. 7 (4); 2004, c. 16, s. 2 (2).

Exception, specified taxation year

(2.1)  Despite subsection (2), no amount is deductible under this section by a corporation for a taxation year that is a specified taxation year of the corporation within the meaning of section 11.2. 2001, c. 23, s. 24; 2004, c. 16, s. 2 (2).

Expenditure base after amalgamation

(3)  In determining the amount of the expenditure base of an amalgamated corporation for a particular taxation year, each amount determined under clauses (a) to (d) in the definition of “expenditure base” in subsection (1) includes all amounts described under those clauses in respect of any predecessor corporation in respect of all of its taxation years commencing in the base period of the amalgamated corporation. R.S.O. 1990, c. C.40, s. 12 (3); 2004, c. 16, s. 2 (2).

Expenditure base after winding-up into parent

(4)  If subsection 88 (1) of the Income Tax Act (Canada) applies with respect to a winding-up of a subsidiary corporation, the amount of the expenditure base of the parent corporation for a particular taxation year includes in each amount determined under clauses (a) to (d) in the definition of “expenditure base” in subsection (1), all amounts described under those clauses in respect of the subsidiary corporation in respect of its taxation years commencing in the base period of the parent corporation. R.S.O. 1990, c. C.40, s. 12 (4); 2004, c. 16, s. 2 (2).

Associated corporations

(5)  The expenditure base for a taxation year of a corporation that is associated with one or more other corporations during the taxation year shall be determined according to the following formula:

B = A × C/D

where:

“B” is the expenditure base for the corporation for the particular taxation year;

“A” is the aggregate of,

(a) the expenditure base of the corporation that would be determined, but for this subsection, for the particular taxation year, and

(b) the expenditure base, as determined without reference to this subsection, of each corporation with which the corporation was associated at any time during the particular taxation year, for each taxation year of each associated corporation ending in the same calendar year as the particular taxation year;

“C” is the net qualified expenditures of the corporation for the particular taxation year; and

“D” is the aggregate of “C” and the net qualified expenditures of each corporation with which the corporation was associated at any time during the particular taxation year for each taxation year of each associated corporation ending in the same calendar year as the particular taxation year.

R.S.O. 1990, c. C.40, s. 12 (5); 1997, c. 43, Sched. A, s. 7 (4); 2004, c. 16, s. 2 (2).

Recapture on disposition of eligible research property

(6)  Except as provided in subsections (7) and (8), if a corporation has disposed of an eligible research property at any time in a particular taxation year, there shall be included in computing the income of the corporation for the particular taxation year an amount equal to the lesser of,

(a) the specified percentage of the lesser of the fair market value of the property at the time of the disposition or the capital cost to the corporation of the property immediately before the disposition; or

(b) the amount, if any, by which the aggregate of,

(i) all amounts deducted under this section by the corporation in computing its income for any taxation year commencing before the disposition and by any corporation associated with the corporation in the particular taxation year in computing its income for any taxation year ending in or before the particular taxation year,

exceeds the aggregate of,

(ii) all amounts included by virtue of this subsection in respect of any other eligible research property in computing the income of the corporation for any taxation year commencing before the disposition, or in computing the income of any corporation associated with the corporation in the particular taxation year, for any taxation year ending in or before the particular taxation year. R.S.O. 1990, c. C.40, s. 12 (6); 2004, c. 16, s. 2 (2).

Idem

(7)  If subsection 85 (1) or 88 (1) of the Income Tax Act (Canada) is applicable with respect to the disposition of eligible research property by a corporation to another corporation that is associated with the corporation in the taxation year in which the disposition occurs,

(a) the property shall be deemed to be eligible research property of the other corporation; and

(b) if the capital cost of the eligible research property to the corporation exceeds the proceeds of disposition, the capital cost of the eligible research property to the other corporation shall be deemed to be the amount that was the capital cost thereof to the corporation. R.S.O. 1990, c. C.40, s. 12 (7); 2004, c. 16, s. 2 (2).

Idem

(8)  If section 87 or subsection 88 (1) of the Income Tax Act (Canada) is applicable with respect to an amalgamation of two or more corporations or to a winding-up of a subsidiary corporation, the amalgamated corporation or the parent corporation, as applicable, shall be deemed,

(a) to have deducted, in computing its income for a taxation year commencing before the amalgamation or winding-up, all amounts deducted under this section by any predecessor corporation or subsidiary corporation, as applicable, in computing its income for a taxation year; and

(b) to have included, in computing its income for any taxation year commencing before the amalgamation or winding-up, all amounts included under this section by any predecessor corporation or subsidiary corporation, as applicable, in computing its income for a taxation year. R.S.O. 1990, c. C.40, s. 12 (8); 2004, c. 16, s. 2 (2).

Capital cost after amalgamation

(9)  If section 87 of the Income Tax Act (Canada) is applicable in respect of an amalgamation of two or more corporations, the capital cost to the amalgamated corporation of any property that was eligible research property of a predecessor corporation and that becomes the property of the amalgamated corporation because of the amalgamation shall be deemed to be the capital cost thereof to the predecessor corporation and the property shall be deemed to be eligible research property of the amalgamated corporation. R.S.O. 1990, c. C.40, s. 12 (9); 2004, c. 16, s. 2 (2).

(10)  Repealed: 1997, c. 43, Sched. A, s. 7 (5).

Where previously associated

(11)  If another corporation was not associated with a particular corporation in a taxation year, but was associated with the particular corporation at any time during the particular corporation’s base period for the taxation year, and all or substantially all of the property of the previously associated corporation that was used by it in carrying on any business during the base period was acquired in any manner by the particular corporation, or by one or more corporations associated with the particular corporation in the taxation year, the following rules apply for the purposes of this section:

1. The previously associated corporation shall be deemed to continue to exist, if it has ceased to exist.

2. The previously associated corporation shall be deemed to be associated with the particular corporation in the taxation year.

3. The previously associated corporation shall be deemed to have had taxation years ending on the same day in each year as the last day of its taxation year in which it was last associated with the particular corporation. R.S.O. 1990, c. C.40, s. 12 (11); 2004, c. 16, s. 2 (2).

Exception

(12)  Subsection (11) does not apply if,

(a) the previously associated corporation was a predecessor corporation of the particular corporation, or of a corporation associated with the particular corporation in the taxation year; or

(b) the previously associated corporation was a subsidiary corporation that was wound up before the taxation year and whose parent corporation was either the particular corporation or a corporation associated with the particular corporation in the taxation year. R.S.O. 1990, c. C.40, s. 12 (12); 2004, c. 16, s. 2 (2).

Corporate partners

(13)  If a corporation is a member of a partnership, the following rules apply for the purposes of this section:

1. If the partnership makes, during a fiscal period of the partnership, an expenditure that, if it were made by a corporation, would be a qualified expenditure or an eligible repayment for the purposes of section 43.3, an amount equal to the proportion of the expenditure that the corporation’s share of the income or loss of the partnership for the fiscal period bears to the total income or loss of the partnership for the fiscal period shall be deemed to be a qualified expenditure or eligible repayment made by the corporation for the purposes of section 43.3 in the taxation year of the corporation in which that fiscal period ends.

2. If the partnership disposes of a property that would be an eligible research property of the partnership if the partnership were a corporation, an amount equal to the proportion of the amount that would be included under this section, as a result of the disposition, in the income of the partnership, if the partnership were a corporation, that the corporation’s share of the income or loss of the partnership for the fiscal period in which the property was disposed of bears to the total income or loss of the partnership in the fiscal period shall be included in computing the income of the corporation for the taxation year in which the fiscal period ends.

3. Subsection 127 (13) of the Income Tax Act (Canada) does not apply to a corporation that is a member of a partnership in respect of expenditures incurred by the partnership or by the corporation on behalf of the partnership. R.S.O. 1990, c. C.40, s. 12 (13); 1997, c. 43, Sched. A, s. 7 (6); 2004, c. 16, s. 2 (2).

Maximum deduction by limited partner

(14)  If a corporation is a limited partner in a limited partnership at any time in a taxation year and is deemed by subsection (13) to have made a qualified expenditure or eligible repayment for the purposes of section 43.3, the following rules apply:

1. The maximum amount deductible under subsection (2) by the corporation in the taxation year in respect of the corporation’s share of the qualified expenditure or eligible repayment shall not exceed the aggregate of,

i. the share of the income, if any, of the limited partnership included in the computation of income of the corporation for the taxation year, and

ii. any amount included in the income of the corporation for the taxation year under paragraph 2 of subsection (13). R.S.O. 1990, c. C.40, s. 12 (14); 1992, c. 3, s. 3; 1997, c. 43, Sched. A, s. 7 (7, 8); 2004, c. 16, s. 2 (2).

Anti-avoidance

(15)  A corporation is not entitled to a deduction under this section during a year with respect to any expenditure made by it if, as a result of a transaction or an event, or a series of transactions or events, it is reasonable for the Minister to believe that one of the principal purposes of the carrying out of such a transaction or event or series of transactions or events is to enable the corporation to claim a deduction under this section that would not otherwise be allowed. R.S.O. 1990, c. C.40, s. 12 (15); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 3 - 25/06/1992; 1996, c. 29, s. 38 (1) - 01/03/1994; 1996, c. 29, s. 38 (2, 3) - 28/02/1995; 1997, c. 43, Sched. A, s. 7 (1-9) - 01/01/1996; 1998, c. 5, s. 7 - 07/05/1997; 1998, c. 34, s. 29 (1) - 06/05/1998; 1998, c. 34, s. 29 (2) - 01/07/1998; 1999, c. 9, s. 76 (1, 2) - 05/05/1999

[2000, c. 42, s. 11 (1, 2)](http://www.ontario.ca/laws/statute/S00042" \l "s11s1) - 03/05/2000

[2001, c. 23, s. 24](http://www.ontario.ca/laws/statute/S01023" \l "s24) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[CTS 6 OC 14 - 2](http://www.ontario.ca/laws/consolidated-statutes-change-notices)

Current cost allowance deduction

Definitions

**13** (1)  In this section,

“amalgamated corporation” means a corporation that is a “new corporation” for the purposes of section 87 of the Income Tax Act (Canada); (“société issue de la fusion”)

“eligible asset”, of a corporation, means prescribed manufacturing and processing machinery or equipment acquired by the corporation after the 31st day of December, 1988 and before the 1st day of January, 1992, or prescribed pollution control equipment acquired by the corporation after the 17th day of May, 1989, that,

(a) has not been used by any person for any purpose before being acquired by the corporation,

(b) is first used by the corporation in Ontario,

(c) is used by the corporation for the purpose of earning income from a business, and

(d) has not been deemed to have been acquired by the corporation by paragraph 16.1 (1) (b) of the Income Tax Act (Canada), as made applicable by subsection 11 (1) of this Act; (“élément d’actif admissible”)

“eligible asset pool”, of a corporation for a taxation year, means the amount, if any, by which the aggregate of,

(a) the eligible cost to the corporation at the end of the taxation year of the eligible assets of the corporation for the taxation year or a prior taxation year,

(b) the eligible cost to the corporation immediately before disposition of the eligible assets of the corporation for the taxation year or a prior taxation year that were acquired and disposed of by the corporation at any time before the end of the taxation year, and

(c) all amounts each of which is an amount in respect of an eligible asset included under element C in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) of the Income Tax Act (Canada) in the determination of the undepreciated capital cost to the corporation at the end of the taxation year of depreciable property of a prescribed class,

exceeds,

(d) the aggregate of,

(i) all amounts each of which is an amount in respect of an eligible asset included under element I or J in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) of the Income Tax Act (Canada) in determining the undepreciated capital cost to the corporation at the end of the taxation year of depreciable property of a prescribed class,

(ii) all amounts each of which is an amount included in the income of the corporation, or of a subsidiary corporation or a predecessor corporation, for the taxation year, or for a prior taxation year, under paragraph 12 (1) (t) of the Income Tax Act (Canada), as made applicable for the purposes of this Act, in respect of an eligible asset, and

(iii) all amounts each of which is the amount of the eligible asset pool of the corporation for a prior taxation year in respect of which the corporation was entitled under this section to deduct an amount in computing its income; (“ensemble d’éléments d’actif admissibles”)

“eligible assets of the corporation for the taxation year” means the eligible assets that were acquired by the corporation in the taxation year or a prior taxation year and in respect of which,

(a) the taxation year is the first taxation year in which the corporation may include an amount under element A in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) of the Income Tax Act (Canada) in respect of those assets in the determination of the undepreciated capital cost of depreciable property of a prescribed class, and

(b) no amount has been included under element A in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) of the Income Tax Act (Canada) by a subsidiary corporation or predecessor corporation in the determination of the undepreciated capital cost of depreciable property of a prescribed class of the corporation for a taxation year; (“éléments d’actif admissibles de la société pour l’année d’imposition”)

“eligible cost”, to a corporation at a particular date of eligible assets of the corporation for a taxation year, means,

(a) in respect of eligible assets that are prescribed manufacturing and processing machinery or equipment, the capital cost to the corporation of the assets at that date, and

(b) in respect of eligible assets that are prescribed pollution control equipment acquired in a particular taxation year by the corporation, or by a subsidiary corporation or predecessor corporation, the lesser of,

(i) the capital cost to the corporation of the assets at that date, or

(ii) the amount by which,

(A) $20,000,000 multiplied by the ratio of the number of days in the particular taxation year to 365, or, if the particular taxation year commenced before the 18th day of May, 1989, by the ratio of the number of days in that taxation year after the 17th day of May, 1989, to 365,

exceeds,

(B) the capital cost to the corporation of the eligible assets acquired in the particular year that have been included in the eligible asset pool of the corporation for a prior taxation year; (“coût admissible”)

“Ontario allocation factor”, of a corporation for a taxation year, has the same meaning as in subsection 12 (1); (“coefficient de répartition de l’Ontario”)

“parent corporation” means a corporation that is a “parent” under subsection 88 (1) of the Income Tax Act (Canada); (“société mère”)

“predecessor corporation” means a corporation that was a predecessor corporation referred to in section 87 of the Income Tax Act (Canada) and includes a corporation in respect of which a predecessor corporation was an amalgamated corporation; (“société remplacée”)

“specified rate”, of a corporation for a taxation year, means the rate calculated according to the following formula:

A = 0.1 × (B/E) + 0.15 × (C/E) + 0.3 × (D/E)

where:

“A” is the specified rate of the corporation for the taxation year,

“B” is the eligible cost to the corporation of all eligible assets of the corporation for the taxation year acquired by the corporation before the 1st day of January, 1990,

“C” is the eligible cost to the corporation of all eligible assets of the corporation for the taxation year acquired by the corporation after the 31st day of December, 1989 and before the 1st day of January, 1991,

“D” is the eligible cost to the corporation of all eligible assets of the corporation for the taxation year acquired by the corporation after the 31st day of December, 1990,

“E” is the aggregate of “B”, “C” and “D”; (“taux déterminé”)

“subsidiary corporation” means a corporation that is a “subsidiary” under subsection 88 (1) of the Income Tax Act (Canada). (“filiale”) R.S.O. 1990, c. C.40, s. 13 (1); 1992, c. 3, s. 4 (1); 1996, c. 29, s. 39 (1); 2004, c. 16, s. 2 (2).

Current cost adjustment deduction

(2)  A corporation may deduct in computing its income from a business for a taxation year a current cost adjustment deduction calculated according to the following formula:

A = (B/C) × D

where:

“A” is the current cost adjustment deduction for the taxation year;

“B” is the corporation’s eligible asset pool for the taxation year;

“C” is the corporation’s Ontario allocation factor for the taxation year unless the Ontario allocation factor is 0, in which case “C” is 1; and

“D” is the corporation’s specified rate for the taxation year.

R.S.O. 1990, c. C.40, s. 13 (2); 2004, c. 16, s. 2 (2).

Date of acquisition

(3)  If the Minister believes, reasonably, that the corporation has delayed the acquisition of an asset primarily for the purposes of either claiming a deduction under this section or claiming a deduction at a higher specified rate, the Minister may, for the purposes of determining a deduction under this section, deem the acquisition to have occurred on another date. R.S.O. 1990, c. C.40, s. 13 (3); 2004, c. 16, s. 2 (2).

Corporate partners

(4)  If a corporation is a member of a partnership that has acquired property in a particular fiscal period that would be an eligible asset under this section if acquired by a corporation on the date of acquisition by the partnership, the following rules apply for the purposes of this section:

1. The property shall be deemed to have been acquired jointly by the partners, not by the partnership, on the date the property was acquired by the partnership.

2. The capital cost to the corporation of its interest in the property for the purposes of this section is that proportion of the capital cost of the property to the partnership at the end of the fiscal period of the partnership during which the property was acquired that the corporation’s share of the income or loss of the partnership for the fiscal period bears to the total income or loss of the partnership for the fiscal period.

3. The property shall be deemed to be an eligible asset of the corporation for the taxation year in which the fiscal period of the partnership ends in which the partnership may first include an amount under subparagraph 13 (21) (f) (i) of the Income Tax Act (Canada) in respect of the property in the determination of the undepreciated capital cost of depreciable property of a prescribed class.

4. The amount of the corporation’s eligible asset pool for a taxation year is increased by an amount equal to the proportion of any repaid assistance, included under subparagraph 13 (21) (f) (ii.1) of the Income Tax Act (Canada) in determining the undepreciated capital cost to the partnership of depreciable property of a prescribed class at the end of the fiscal period of the partnership ending in the taxation year, that is the corporation’s share of the income or loss of the partnership for the fiscal period and reduced by the same proportion of any amount included by the partnership under subparagraph 13 (21) (f) (viii) of that Act for the fiscal period in determining the undepreciated capital cost of the partnership’s depreciable property of a prescribed class. R.S.O. 1990, c. C.40, s. 13 (4); 2004, c. 16, s. 2 (2).

Amalgamations and winding-up

(5)  If a corporation claiming a deduction under this section is an amalgamated corporation or a parent corporation, the following rules apply for the purposes of this section:

1. Each eligible asset acquired on a particular date by a subsidiary corporation or a predecessor corporation shall be deemed to have been acquired by the corporation on the same date.

2. The capital cost of the asset to the corporation shall be deemed to be the capital cost thereof to the predecessor corporation or the subsidiary corporation.

3. An eligible asset pool of a subsidiary corporation or a predecessor corporation for a prior taxation year shall be deemed to be an eligible asset pool of the corporation for a prior taxation year. R.S.O. 1990, c. C.40, s. 13 (5); 2004, c. 16, s. 2 (2).

Anti-avoidance

(6)  A corporation is not entitled to a deduction under this section with respect to an asset if the acquisition or use of the asset was part of or related to a series of transactions or events and it is reasonable for the Minister to believe that one of the principal purposes for the acquisition of the asset was for use by another person or for use outside Ontario. R.S.O. 1990, c. C.40, s. 13 (6); 2004, c. 16, s. 2 (2).

Limitation

(7)  In the application of element A in the formula in the definition of “undepreciated capital cost” in subsection 13 (21) of the Income Tax Act (Canada) for the purposes of this section, no amount shall be included in calculating the undepreciated capital cost to the corporation of depreciable property of a prescribed class before the date the property is considered to have become available for use by the corporation. 1992, c. 3, s. 4 (2); 1996, c. 29, s. 39 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 4 (1, 2) - 25/06/1992; 1996, c. 29, s. 39 (1, 2) - 01/03/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Ontario new technology tax incentive gross-up

**13.1** (1)  A corporation may deduct in computing its income from a business for a taxation year the amount determined in respect of the corporation for the year according to the following formula:

A = B/C – B

where,

“A” is the corporation’s Ontario new technology tax incentive gross-up for the taxation year;

“B” is the total of all amounts for the taxation year, each of which is,

(a) an amount deducted by the corporation under clause 11 (10) (a), in computing its income from a business for the taxation year, as an Ontario new technology tax incentive in respect of a prescribed depreciable property, or

(b) an amount equal to the product of,

(i) the amount deducted under clause 11 (10) (a), as an Ontario new technology tax incentive in respect of a prescribed depreciable property, by a partnership of which the corporation is a member, in computing the partnership’s income from a business for a fiscal period ending in the corporation’s taxation year, and

(ii) the percentage of the partnership’s income or loss for the fiscal period to which the corporation is entitled; and

“C” is the corporation’s Ontario allocation factor for the taxation year.

1997, c. 43, Sched. A, s. 8; 2004, c. 16, s. 2 (2).

Ontario allocation factor

(2)  For the purposes of subsection (1), a corporation’s Ontario allocation factor for a taxation year is the fraction that would be determined under the definition of that term in subsection 12 (1). 1997, c. 43, Sched. A, s. 8; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 8 - 07/05/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Workplace child care tax incentive

**13.2** (1)  A corporation, other than a child care operator that controls or manages a child care facility with an expectation of profit, may deduct in computing its income from a business for a taxation year a workplace child care tax incentive for the taxation year equal to the amount determined using the formula,

(A/B) × 30%

in which,

“A” is the amount of the corporation’s qualifying expenditures for the taxation year, and

“B” is the corporation’s Ontario allocation factor for the taxation year.

1998, c. 34, s. 30; 1999, c. 9, s. 77; 2004, c. 16, s. 2 (2).

Qualifying expenditures

(2)  Subject to subsection (4), the amount of a corporation’s qualifying expenditures for a taxation year is the total of,

(a) all capital costs in respect of expenditures incurred by the corporation after May 5, 1998 and before January 1, 2005,

(i) in the construction or renovation of a licensed child care facility in Ontario that are included by the corporation for that year for the purposes of the Income Tax Act (Canada) in Class 1, 3, 6 or 13 of Schedule II to the regulations made under that Act, and

(ii) on the acquisition of playground equipment for the child care facility that are included by the corporation for that year for the purposes of the Income Tax Act (Canada) in Class 8 of Schedule II to the regulations made under that Act;

(b) all payments of money and the value of qualified contributions that are made by the corporation after May 5, 1998 and before January 1, 2005 to a child care operator who deals at arm’s length with the corporation, to the extent the child care operator has used the money and contributions for the purposes described in clause (a) in the corporation’s taxation year, so long as the operator has provided to the corporation,

(i) confirmation in writing of the amount of money and qualified contributions used for those purposes, and

(ii) the operator’s license number under the Day Nurseries Act; and

(c) repayments of government assistance made by the corporation during the taxation year that do not exceed the amount of the assistance that,

(i) has not been repaid in a prior taxation year, and

(ii) can reasonably be considered to have reduced the amount of a deduction that would otherwise have been allowed to the corporation under this section. 1998, c. 34, s. 30; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 4.

Qualified contribution

(3)  The following contributions are qualified contributions from a corporation for the purposes of clause (2) (b):

1. The fair market value of property the ownership of which is transferred by the corporation to the child care operator, if the property is used by the child care operator in the activities and for the purposes described in clause (2) (a).

2. The fair market value of services provided by the corporation to the child care operator, if the services are used by the child care operator in the activities and for the purposes described in clause (2) (a).

3. The reasonable monetary value of the benefit from a loan or a loan guarantee given by the corporation to the child care operator, to the extent the proceeds of the loan are used by the child care operator in the activities and for the purposes described in clause (2) (a). 1998, c. 34, s. 30; 2004, c. 16, s. 2 (2).

Limitation on qualifying expenditures

(4)  The amount of a corporation’s qualifying expenditures for a taxation year shall be determined after the deduction of,

(a) all government assistance, if any, in respect of the qualifying expenditures that, at the time the corporation’s return is required to be delivered under section 75 for the taxation year for which the deduction is claimed under this section, the corporation has received, is entitled to receive or may reasonably be expected to be entitled to receive; and

(b) the amount, if any, of the expenditures that would not be considered to be reasonable in the circumstances if they had been incurred by persons dealing with each other at arm’s length. 1998, c. 34, s. 30; 2004, c. 16, s. 2 (2).

Corporate partner

(5)  If a corporation is a member of an eligible partnership at the end of a taxation year and the partnership incurs, in a fiscal period of the partnership that ends in the taxation year, an expenditure in respect of a licensed child care facility that would be a qualifying expenditure for the purposes of this section if the expenditure had been made by the corporation, the portion of the expenditure that may reasonably be considered to be the corporation’s share may be included in the corporation’s qualifying expenditures for the taxation year for the purposes of this section. 1998, c. 34, s. 30; 2004, c. 16, s. 2 (2).

Limited partner

(6)  Despite subsection (5), a limited partner’s share of an expenditure that is considered under subsection (5) to be a qualifying expenditure for the purposes of this section shall be deemed to be nil. 1998, c. 34, s. 30; 2004, c. 16, s. 2 (2).

Definitions

(7)  In this section,

“child care facility” means a day nursery as defined in the Day Nurseries Act; (“garderie”)

“child care operator” means a person who has control or management of a child care facility; (“exploitant de garderie”)

“eligible partnership” means a partnership that does not carry on the business of a child care operator; (“société de personnes admissible”)

“licensed child care facility” means a child care facility operated under the authority of a licence issued by the Ministry of Community and Social Services under the Day Nurseries Act; (“garderie agréée”)

“Ontario allocation factor” of a corporation for a taxation year has the meaning assigned by subsection 12 (1); (“coefficient de répartition de l’Ontario”)

“playground equipment” means a structure erected in the playground area of a licensed child care facility for recreational purposes. (“matériel de terrains de jeux”) 1998, c. 34, s. 30; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 34, s. 30 - 06/05/1998; 1999, c. 9, s. 77 - 06/05/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 4 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s4s1) - 16/12/2004

Workplace accessibility tax incentive

**13.3** (1)  Subject to subsection (10), a corporation may deduct a workplace accessibility tax incentive in computing its income from a business for a taxation year. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Amount of tax incentive

(2)  The amount of a corporation’s workplace accessibility tax incentive for a taxation year is an amount equal to the total of the amounts determined under the following paragraphs:

1. The amount determined by dividing the amount of expenditures, if any, incurred by the corporation in the taxation year, but after July 1, 1998 and before January 1, 2005 to provide during a job interview in Ontario the support services of a sign language interpreter, an intervenor, a note-taker, a reader or an attendant, by the corporation’s Ontario allocation factor for the taxation year.

2. The total of all amounts, each of which is determined in respect of a qualifying employee and is equal to the lesser of,

i. the total amount of qualifying expenditures, other than qualifying expenditures included in the amount determined under paragraph 1, that are incurred by the corporation in the taxation year in respect of the qualifying employee, divided by the corporation’s Ontario allocation factor for the taxation year, and

ii. the amount calculated using the formula,

($50,000 – A)/B

in which,

“A” is the total of all amounts, each of which is a qualifying expenditure in respect of the qualifying employee that was included in determining a workplace accessibility tax incentive deducted by the corporation in computing its income for a prior taxation year, and

“B” is the corporation’s Ontario allocation factor for the taxation year.

3. The amount determined by dividing by the corporation’s Ontario allocation factor for the taxation year the amount of repayments of government assistance made by the corporation during the taxation year, if any, that does not exceed the amount of the assistance that,

i. has not been repaid in a prior taxation year, and

ii. can reasonably be considered to have reduced the amount of a deduction that would otherwise have been allowed to the corporation under this section. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 5 (1).

Corporate partner’s workplace accessibility tax incentive

(3)  If a corporation is a member of a partnership at the end of a taxation year and the partnership incurs, in a fiscal period of the partnership that ends in the taxation year, an expenditure in respect of which the partnership would be entitled to claim a deduction under this section if the expenditure had been made by a corporation, the corporation may, subject to subsection (10), deduct in computing its income from a business for the taxation year the amount determined for the taxation year under subsection (4). 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Amount of corporate partner’s deduction

(4)  Subject to subsections (5) and (6), the amount a corporation may deduct under subsection (3) for a taxation year in respect of expenditures incurred by a partnership of which it is a member is the amount determined by multiplying the percentage of the share of the income or loss of the partnership to which the corporation is entitled for the fiscal period ending in the taxation year by the amount that would be determined to be the amount of the partnership’s deduction under this section for that fiscal period using the corporation’s Ontario allocation factor for the taxation year. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Limited partner

(5)  Despite subsections (3) and (4), no amount may be deducted by a corporation in respect of an expenditure incurred by a partnership in which the corporation is a limited partner. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Qualifying expenditure

(6)  Each of the following expenditures incurred after July 1, 1998 and before January 1, 2005 by a corporation or partnership in respect of a qualifying employee is a qualifying expenditure of the corporation or partnership:

1. An expenditure that is incurred not more than three months before and not more than 12 months after the date of commencement of the qualifying employee’s employment with the corporation or partnership and,

i. that is in respect of a building, a device or equipment in Ontario and that is deductible by the corporation or partnership in computing its income under paragraph 20 (1) (qq) or (rr) of the Income Tax Act (Canada),

ii. that is for the installation at a location in Ontario of a passenger elevator, vertical platform lift, inclined platform lift or stairway lift to accommodate the qualifying employee in performing his or her job functions, or

iii. that is for the acquisition of any of the following devices or equipment, if the device or equipment is required by the qualifying employee at a location in Ontario to perform his or her job functions:

A. an environmental control unit to operate a telephone and lights, a door opener or other office equipment modified to accommodate an individual with mobility impairment,

B. an ergonomic work station and seating, a customized filing system or other office furniture adapted to accommodate an individual with mobility impairment,

C. a telephone headset for use by an individual with a mobility impairment,

D. specialized lighting for an individual with a visual impairment or epilepsy,

E. a real time captioning or alphanumeric pager for an individual with hearing impairment,

F. a tool, machinery or information communication system adapted for use by an individual with a physical or mental impairment,

G. computer hardware or a hardware attachment that is required to use disability-specific computer software.

2. An expenditure incurred not more than six months after the date of commencement of the qualifying employee’s employment with the corporation or partnership to provide the support services at a location in Ontario of a job coach, note-taker, sign language interpreter, intervenor, reader or attendant for the employee, if the services are required by the employee by reason of a physical or mental impairment.

3. An expenditure incurred not more than 12 months after the date of commencement of the qualifying employee’s employment with the corporation or partnership to train the employee or his or her coworkers to use equipment described in subparagraph iii of paragraph 1.

4. An expenditure prescribed by the regulations. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 5 (2).

Limitation on qualifying expenditures

(7)  The amount of a corporation’s qualifying expenditures for a taxation year shall be determined after the deduction of,

(a) all government assistance, if any, in respect of the qualifying expenditures that, at the time the corporation’s return is required to be delivered under section 75 for the taxation year for which the deduction is claimed under this section, the corporation, or the partnership of which the corporation is a member, has received, is entitled to receive or may reasonably be expected to be entitled to receive;

(b) the amount, if any, of the expenditures that would not be considered to be reasonable in the circumstances if they had been incurred by persons dealing with each other at arm’s length; and

(c) the amount, if any, of the expenditures that were included in determining the amount of a deduction for a taxation year under this section in respect of another qualifying employee. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Qualifying employee

(8)  A qualifying employee of a corporation, or of a partnership of which the corporation is a member, is an individual who,

(a) deals at arm’s-length with the corporation;

(b) is employed by the corporation or partnership for at least 60 hours per month;

(c) is employed by the corporation or partnership for a period of three months or more;

(d) within 12 months prior to the date of commencing employment with the corporation or partnership, was not employed by the corporation, a partnership of which the corporation is a member or a corporation associated with the corporation; and

(e) is an individual described in subsection (9) or who has obtained a Workplace Accessibility Tax Incentive Certificate in a form approved by the Minister from a qualified medical practitioner certifying,

(i) that the individual has a physical or mental impairment that is continuous or recurrent and expected to last at least one year, and

(ii) that, in the opinion of the practitioner, the impairment constitutes a substantial barrier to competitive employment without accommodations. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Same

(9)  For the purposes of clause (8) (e), an individual is described in this subsection if,

(a) the individual is an individual in respect of whom a tax credit under section 118.3 of the Income Tax Act (Canada) may be claimed;

(b) the individual is eligible for income support or employment supports under the Ontario Disability Support Program Act, 1997, immediately prior to commencing employment with the corporation or partnership;

(c) the individual is in receipt of a Disability Benefits Canada Pension under the Canada Pension Plan Act immediately prior to commencing employment with the corporation or partnership;

(d) the individual is registered with the Canadian National Institute for the Blind;

(e) the individual is eligible to receive assistance from the Assistive Device Program administered by the Ministry of Health and Long-Term Care; or

(f) the individual satisfies the conditions prescribed by the regulations. 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2); 2006, c. 19, Sched. L, s. 11 (3).

Exception

(10)  No deduction may be made by a corporation under this section in respect of an expenditure incurred in respect of a qualifying employee of the corporation or of a partnership of which it is a member, unless the corporation retains, as part of its records that are required to be kept under section 94, a copy of the certificate referred to in subsection (8) or a copy of the documentation upon which the corporation relies in claiming that the employee is an individual described in subsection (9). 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

Definitions

(11)  In this section,

“attendant” means an individual who provides personal support services to a person with a physical disability under the direction of the person on a pre-scheduled visitation basis; (“préposé”)

“intervenor” means an individual who acts as a communication link by providing information, facts and support to a person who is deaf and blind; (“intermédiaire”)

“job coach” means an individual who assists a newly-hired qualifying employee to attain productivity in the workplace that matches other employees by working on-site with the qualifying employee to help him or her to,

(a) become oriented in the workplace,

(b) learn the specific work tasks required by the position,

(c) develop communication skills for interacting with supervisors and co-workers, or

(d) adjust to the work environment; (“agent d’intégration”)

“mental impairment” means a developmental or learning impairment, a psychiatric impairment or an impairment resulting from a head injury; (“déficience mentale”)

“Ontario allocation factor” of a corporation for a taxation year has the meaning assigned by subsection 12 (1); (“coefficient de répartition de l’Ontario”)

“personal support services” include assistance with personal grooming and hygiene, dressing, breathing by operating respiratory equipment, toileting, eating, essential communication by way of bliss boards and augmentive communication, positioning and transferring; (“services de soutien personnels”)

“qualified medical practitioner” means an individual described in section 3 of Ontario Regulation 223/98 made under the Ontario Disability Support Program Act, 1997; (“professionnel de la santé qualifié”)

“sign language interpreter” means an individual who acts as a communication link by using sign language to provide information, facts and support to a deaf person. (“interprète gestuel”) 1998, c. 34, s. 31; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 34, s. 31 - 01/07/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 5 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s5s1) - 16/12/2004

[2006, c. 19, Sched. L, s. 11 (3)](http://www.ontario.ca/laws/statute/S06019" \l "schedls11s3) - 22/06/2006

Ontario school bus safety tax incentive

**13.4** (1)  In computing its income from a business for a taxation year, a corporation may deduct an Ontario school bus safety tax incentive for the taxation year equal to the total of all amounts determined using the formula,

(A/B) × 0.3

in which,

“A” is the capital cost of an eligible school bus acquired by the corporation in the taxation year, and

“B” is the corporation’s Ontario allocation factor for the taxation year.

1999, c. 9, s. 78; 2004, c. 16, s. 2 (2).

Eligible school bus

(2)  A vehicle acquired by a corporation is an eligible school bus if,

(a) it is a school bus as defined under subsection 175 (1) of the Highway Traffic Act that meets the requirements of sections 1 and 3 of Regulation 612 of the Revised Regulations of Ontario, 1990 (School Buses) made under the Highway Traffic Act and that conforms to the Canadian Standards Association Standard D250-1998;

(b) it is acquired by the corporation after May 4, 1999 and before January 1, 2006;

(c) it is used in Ontario to transport children or to transport adults with a developmental disability and has not previously been used; and

(d) the capital cost of the vehicle is included by the corporation for the purposes of the Income Tax Act (Canada) in class 10 of Schedule II to the regulations made under that Act. 1999, c. 9, s. 78; 2001, c. 13, s. 11 (1); 2002, c. 22, s. 39; 2004, c. 16, s. 2 (2).

Corporate partner

(3)  If a corporation is a member of a partnership at the end of a taxation year and the partnership incurs, in a fiscal period of the partnership that ends in the taxation year, a capital cost in respect of the acquisition of an eligible school bus that would qualify for the Ontario school bus safety tax incentive if the expenditure had been made by a corporation, the portion of the capital cost that may reasonably be considered to be the corporation’s share of the capital cost may be included by the corporation in determining the amount of its Ontario school bus safety tax incentive for the taxation year. 1999, c. 9, s. 78; 2004, c. 16, s. 2 (2).

Limited partner

(4)  Despite subsection (3), no amount may be included by a corporation in the amount of its Ontario school bus safety tax incentive for a taxation year in respect of an expenditure incurred by a partnership in which the corporation is a limited partner. 1999, c. 9, s. 78; 2004, c. 16, s. 2 (2).

Recapture

(5)  Subsection (6) applies if, within 36 months after the day a corporation or a partnership in which the corporation is a member acquires a school bus that is an eligible school bus in a taxation year, the corporation or partnership disposes of the bus or begins to primarily use the bus for a purpose other than transporting children in Ontario or transporting adults with a developmental disability in Ontario. 1999, c. 9, s. 78; 2001, c. 13, s. 11 (2); 2004, c. 16, s. 2 (2).

Same, calculation

(6)  When calculating its income for the taxation year, the corporation shall include the amount determined using the formula,

[(A/B) × 0.3] × [(1096 – C)/1096]

in which,

“A” is the capital cost of the eligible school bus, to the extent that the cost was included by the corporation in determining the amount of an Ontario school bus safety tax incentive for a taxation year of the corporation,

“B” is the corporation’s Ontario allocation factor for the taxation year, and

“C” is the number of days that the corporation or a partnership in which the corporation is a member owned the eligible school bus before disposing of it or beginning to use it for a purpose other than transporting children in Ontario or transporting adults with a developmental disability in Ontario.

1999, c. 9, s. 78; 2001, c. 13, s. 11 (3); 2004, c. 16, s. 2 (2).

Exception

(7)  Subsection (6) does not apply in respect of a disposition of an eligible school bus by a corporation or by a partnership in which the corporation is a partner,

(a) if the corporation or partnership disposes of the bus in connection with a disposition by the corporation or partnership of all or substantially all of the business in which the bus was used, and the person acquiring the business continues after the disposition to carry on the business in Ontario;

(b) if the corporation is in bankruptcy or receivership or is insolvent, and the bus is disposed of in the course of a disposition of the assets of the corporation’s business; or

(c) if the corporation disposes of the bus to another corporation (referred to in this clause as the “recipient corporation”) as a result of a winding-up of the corporation into the recipient corporation to which subsection 88 (1) of the Income Tax Act (Canada) applies or as a result of an amalgamation or merger of the corporation with another corporation to form the recipient corporation to which subsection 87 (1) of that Act applies. 1999, c. 9, s. 78; 2004, c. 16, s. 2 (2).

Interpretation

(8)  For the purposes of subsections (5), (6) and (7),

(a) a corporation that is formed as a result of an amalgamation or merger of two or more corporations shall be deemed to be the same corporation as, and a continuation of, each of the corporations that amalgamated or merged; and

(b) a corporation that is a parent for the purposes of subsection 88 (1) of the Income Tax Act (Canada), or would be a parent if it were a taxable Canadian corporation, shall be deemed to be the same corporation as, and a continuation of, each corporation that, if it were a taxable Canadian corporation, would be described as a subsidiary in that subsection, after the winding up of the subsidiary. 1999, c. 9, s. 78; 2004, c. 16, s. 2 (2).

Definition

(9)  In this section,

“Ontario allocation factor”, of a corporation for a taxation year, means Ontario allocation factor as defined in subsection 12 (1). 1999, c. 9, s. 78; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1999, c. 9, s. 78 - 05/05/1999

[2001, c. 13, s. 11 (1-3)](http://www.ontario.ca/laws/statute/S01013" \l "s11s1) - 30/11/2001

[2002, c. 22, s. 39](http://www.ontario.ca/laws/statute/S02022" \l "s39) - 05/05/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Educational technology tax incentive

**13.5** (1)  In this section,

“eligible course” means a course of study offered by an eligible educational institution that provides credit towards a post-secondary degree, diploma, certificate or an apprentice training program approved by the Director of Apprenticeships under the Apprenticeship and Certification Act, 1998 or the Trades Qualification and Apprenticeship Act; (“cours admissible”)

“eligible educational institution” means,

(a) a university or college of applied arts and technology in Ontario, whose enrolment is counted for the purposes of calculating its entitlement to annual operating grants from the Government of Ontario,

(b) the Michener Institute of Applied Health Sciences, or

(c) the Ontario College of Art & Design; (“établissement d’enseignement autorisé”)

“eligible equipment” means the equipment described in subsection (14) and excludes the things described in subsection (15); (“matériel admissible”)

“eligible learning technology” means,

(a) custom or pre-packaged computer programs for use primarily in delivering an eligible course to students or instructors,

(b) custom computer programs for use primarily in providing digital library services to students or instructors, or

(c) instructional aids consisting of collections of images, sounds or animated pictures that are archived and shared through the Internet and can be accessed and used in eligible courses; (“technologie d’apprentissage admissible”)

“notional price” means, in respect of eligible equipment that is donated or sold or eligible learning technology that is donated, sold or licensed in a taxation year to an eligible educational institution,

(a) the lowest amount that the corporation would normally have charged in the year on a sale or licensing of the equipment or technology to a person dealing at arm’s length with the corporation, if the corporation carries on a business of selling eligible equipment or selling or licensing eligible learning technology in the taxation year, or

(b) the cost to the corporation of the equipment or technology, in any other case; (“prix théorique”)

“Ontario allocation factor” of a corporation for a taxation year has the meaning assigned by subsection 12 (1); (“coefficient de répartition de l’Ontario”)

“systems software” means a combination of computer programs and associated procedures, related technical documentation and data that,

(a) performs compilation, assembly, mapping, management or processing of other programs,

(b) facilitates the functioning of a computer system by other programs,

(c) provides service or utility functions such as media conversion, sorting, merging, system accounting, performance measurement, system diagnostics or programming aids,

(d) provides general support functions such as data management, report generation or security control, or

(e) provides general capability to meet widespread categories of problem solving or processing requirements where the specific attributes of the work to be performed are introduced mainly in the form of parameters. (“logiciel de systèmes”) 2000, c. 42, s. 12; 2002, c. 8, Sched. P, s. 2; 2004, c. 16, s. 2 (2).

Incentive

(2)  In computing its income from a business for a taxation year, a corporation may deduct an educational technology tax incentive in respect of eligible equipment that is donated or sold or eligible learning technology that is donated, sold or licensed to an eligible educational institution during the taxation year but after May 2, 2000 and before January 1, 2005. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 6 (1).

Amount of incentive

(3)  The amount of a corporation’s educational technology tax incentive for a taxation year is the total of all amounts each of which is calculated, in respect of eligible equipment that is donated or sold or eligible learning technology that is donated, sold or licensed to an eligible educational institution in the taxation year, using the formula,

[(A – B) ÷ C] × 0.15

in which,

“A” is the corporation’s notional price for the equipment or technology,

“B” is the fair market value of the consideration, if any, paid or payable by the institution for the equipment or technology, and

“C” is the corporation’s Ontario allocation factor for the taxation year.

2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Transitional rule for licences, 2004

(3.1)  In determining, for the purposes of subsection (3), a corporation’s notional price for technology that is licensed to an institution pursuant to a licence granted before January 1, 2005, the following rules apply:

1. If clause (a) of the definition of “notional price” in subsection (1) applies in respect of the corporation and the amount that the corporation normally would have charged for the grant of the licence would require more than one payment by a customer, the corporation’s notional price for the technology for the purposes of this section shall not include any amount that would have been paid or payable by a customer after December 31, 2004.

2. If clause (a) of the definition of “notional price” in subsection (1) applies in respect of the corporation and the amount that the corporation normally would have charged for the grant of the licence would require that a single payment be made by a customer, the corporation’s notional price for the technology for the purposes of this section shall be nil unless the single amount would have been paid or payable by a customer on or before December 31, 2004.

3. If clause (b) of the definition of “notional price” in subsection (1) applies in respect of the corporation, the corporation’s notional price for the technology for the purposes of this section shall not include any amount that would be paid or payable by the corporation after December 31, 2004. 2004, c. 31, Sched. 9, s. 6 (2).

Corporate partner

(4)  A corporation that is a member of a partnership at the end of the corporation’s taxation year may deduct the amount described in paragraph 3 in computing its income from a business for the taxation year in the circumstances described in paragraphs 1 and 2:

1. In a fiscal period of the partnership that ends in the taxation year of the corporation, the partnership donates or sells eligible equipment or donates, sells or licenses eligible learning technology to an eligible educational institution.

2. If the donation or sale had been made or the licence had been given by a corporation, the corporation would be entitled to claim a deduction under this section.

3. The amount deductible by the corporation is the amount that may reasonably be considered to be the corporation’s share of the amount that the partnership would be entitled to deduct in respect of the donation, sale or licence, if the partnership were a corporation and if the partnership used the corporation’s Ontario allocation factor for the taxation year. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Limited partner

(5)  Despite subsection (4), no amount may be deducted under this section by a corporation with respect to a sale or donation of eligible equipment or a sale, donation or licence of eligible learning technology by a partnership in which the corporation is a limited partner. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Certificate

(6)  An eligible educational institution shall issue a certificate to a corporation or partnership that donates or sells eligible equipment or that donates, sells or licenses eligible learning technology to it, stating that the equipment or technology is eligible equipment or eligible learning technology for the purposes of this section. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Same

(7)  The certificate must be issued in a form and be given to the corporation or partnership in a manner approved by the Minister. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Status of certificate

(8)  Unless otherwise directed by the Minister, the certificate forms part of the records and books of account required to be kept under section 94 by the corporation or partnership making the donation or sale or giving the licence. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Same

(9)  A corporation is not entitled to claim a deduction under this section in respect of a donation, sale or licence unless the corporation retains a copy of the certificate in its records. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Minister’s direction and order

(10)  If an eligible educational institution issues one or more incorrect certificates,

(a) the Minister may direct the institution to cease issuing certificates under this section; and

(b) the Minister may order that all or some of the equipment that is donated or sold to the institution or all or some of the technology that is donated, sold or licensed to the institution is not eligible equipment or eligible learning technology for the purposes of this section. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Revocation

(11)  The Minister may revoke a direction or order, or both, made under subsection (10) if the Minister is satisfied that the eligible educational institution will comply with the Minister’s directions with respect to the accuracy, form and content of certificates given under this section. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Conditions

(12)  The Minister may impose such conditions on the revocation of the direction and order under subsection (11) as he or she considers reasonable. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Effect of revocation

(13)  Upon the revocation of a direction and order, the equipment or technology that would have otherwise been eligible equipment or eligible learning technology is, to the extent approved by the Minister, eligible equipment or eligible learning technology for the purposes of this section and may be certified as such by the educational institution. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Eligible equipment

(14)  The following types of equipment are eligible equipment for the purposes of the educational technology tax incentive:

1. Computer, electronic and telecommunications equipment that has never been used before, including any systems software essential to the operation of the equipment, and that is to be used primarily to enhance and expand delivery of an eligible course by enabling better communication between instructors and students or between students, either inside or outside the classroom.

2. Instructional equipment or tools that have never been used before, including any specialized supplies and systems software essential to the operation of the equipment or tools, and that are to be used primarily for the delivery of an eligible course. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

Exclusions from eligible equipment

(15)  The following things are not eligible equipment for the purposes of the educational technology tax incentive:

1. Office or classroom furniture.

2. Fixtures, wiring or components that are part of a building or structure.

3. Fibre optic cable.

4. A personal or laptop computer that a student will own after completing the eligible course.

5. Maintenance equipment.

6. Books. 2000, c. 42, s. 12; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2000, c. 42, s. 12](http://www.ontario.ca/laws/statute/S00042" \l "s12) - 03/05/2000

[2002, c. 8, Sched. P, s. 2](http://www.ontario.ca/laws/statute/S02008" \l "schedps2) - 27/06/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 6 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s6s1) - 16/12/2004

[2009, c. 22, s. 96 (1)](http://www.ontario.ca/laws/statute/S09022" \l "s96s1) - no effect - see [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2019

**13.6** Repealed: 2004, c. 31, Sched. 9, s. 7 (1).

**Section Amendments with date in force (d/m/y)**

[2002, c. 23, s. 2 (1)](http://www.ontario.ca/laws/statute/S02023" \l "s2s1) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 23, Sched. C, s. 2](http://www.ontario.ca/laws/statute/S04023" \l "schedcs2) - no effect - see [2004, c. 31, Sched. 9, s. 7 (1)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s7s1) - 09/12/2002; [2004, c. 31, Sched. 9, s. 7 (1)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s7s1) - 09/12/2002; [2004, c. 31, Sched. 9, s. 7 (2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s7s2) - 16/12/2004

Subdivision B — Taxable Capital Gains and Allowable Capital Losses

Application of *Income Tax Act* (Canada)

**14** (1)  Except as hereinafter provided, the taxable capital gains and allowable capital losses of a corporation for a taxation year from the disposition of any property shall for the purposes of this Act be determined in accordance with subdivision c of Division B of Part I of the Income Tax Act (Canada) and the said subdivision c is applicable to this Act in so far as the said subdivision applies to corporations. R.S.O. 1990, c. C.40, s. 14 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  In the application of paragraph 39 (1) (a) of the Income Tax Act (Canada) for the purposes of this Act, subparagraph 39 (1) (a) (ii.1) is not applicable. R.S.O. 1990, c. C.40, s. 14 (2); 2004, c. 16, s. 2 (2).

Idem

(3)  Subsections 39 (7) and (8) of the Income Tax Act (Canada) do not apply for the purposes of this Act. R.S.O. 1990, c. C.40, s. 14 (3); 1996, c. 29, s. 40 (1); 2004, c. 16, s. 2 (2).

Limit on capital gains reserve

(3.1)  Despite subparagraph 40 (1) (a) (iii) of the Income Tax Act (Canada), the amount a corporation may claim as a deduction under that subparagraph for the purposes of this Act in determining its gain for a taxation year from the disposition of a property shall not exceed the amount claimed for the taxation year for the purposes of the Income Tax Act (Canada) under that subparagraph in respect of the disposition. 1997, c. 43, Sched. A, s. 9 (1); 2004, c. 16, s. 2 (2).

Exception

(3.2)  Subsection (3.1) does not apply in determining the amount of a corporation’s gain for a taxation year from the disposition of a property if section 5.2 or 5.3 applies in determining the amount deducted by the corporation under subparagraph 40 (1) (a) (iii) of the Income Tax Act (Canada), as it applies for the purposes of this Act, in determining the amount of the gain. 1998, c. 34, s. 32 (1); 1999, c. 9, s. 79 (1); 2004, c. 16, s. 2 (2).

Same

(3.3)  Subsection (3.2) applies to taxation years ending after the day on which that subsection comes into force. 1998, c. 34, s. 32 (1); 2004, c. 16, s. 2 (2).

Idem

(4)  In the application of subparagraph 40 (2) (a) (i) and paragraph 44 (7) (a) of the Income Tax Act (Canada) for the purposes of this Act, the said provisions shall be read as though the words “was not resident” were deleted and the words “ceased to have a permanent establishment” were inserted in lieu thereof. R.S.O. 1990, c. C.40, s. 14 (4); 2004, c. 16, s. 2 (2).

Adjustments to cost base

(5)  The following rules apply for the purposes of this Act in computing the adjusted cost base to a corporation of property as required under subsection (1):

1. If the property is a foreign resource property, the adjusted cost base of the property to the corporation,

i. shall be increased by the amount, if any, of the foreign exploration and development expenses incurred by the corporation after 1971 with respect to the property that has not been allowed as a deduction from income for the purposes of this Act, and

ii. shall be reduced by,

A. any amount that has become receivable by the corporation at a particular time in a taxation year as the result of a transaction that occurred after May 6, 1974 in which the consideration given by the corporation for the amount was property or services the original cost of which may reasonably be regarded as having been foreign exploration and development expenses, and

B. any amount required by subsection 80 (9) of the Income Tax Act (Canada) to be applied to reduce the adjusted cost base of the property at or before the end of the taxation year.

2. Clause 53 (2) (c) (ii) (B) of the Income Tax Act (Canada) applies, except that the clause shall be read without the words “and foreign resource pool expenses”.

3. Subparagraph 53 (2) (k) (i) of the Income Tax Act (Canada) applies, except that the reference in clause 53 (2) (k) (i) (B) of that Act to section 65 shall be read as a reference to both section 65 of that Act and section 17 of this Act.

4. If the property is an interest in a partnership,

i. there shall be deducted in respect of each fiscal period of the partnership ending before that time all amounts deducted by the corporation for a taxation year commencing before that time,

A. under section 12 in respect of the corporation’s share of the qualified expenditures made by the partnership in the fiscal period,

B. under section 13 in respect of the portion of the property of the partnership deemed to be eligible assets acquired by the corporation,

C. under section 13.1 in respect of an amount deducted under clause 11 (10) (a) by the partnership as an Ontario new technology tax incentive,

D. under sections 13.2 and 13.3 in respect of the corporation’s share of the qualifying expenditures under each of those sections made by the partnership in the fiscal period,

E. under section 13.4 in respect of the corporation’s share of the capital costs incurred by the partnership in the fiscal period, and

F. under section 13.5 in respect of the corporation’s share of the amount described in subsection 13.5 (4), as determined under that subsection, and

ii. there shall be added in respect of each fiscal period of the partnership ending before that time all amounts included in the income of the corporation for a taxation year commencing before that time under subsection 12 (13) or section 11.1. 2005, c. 28, Sched. D, s. 4 (1).

Exception

(5.1)  Despite paragraph 4 of subsection (5), if the corporation’s partnership interest is in a limited partnership that had a non-capital loss for a fiscal period ending in a taxation year of the corporation, the following rules apply:

1. An amount described in subparagraph 4 i of subsection (5) shall be deducted from the adjusted cost base of the corporation’s interest in the limited partnership only to the extent that the amount may reasonably be considered not to have been included in the calculation of the amount of the corporation’s limited partnership loss for the taxation year.

2. An amount described in subparagraph 4 ii of subsection (5) shall be added to the adjusted cost base of the corporation’s interest in the limited partnership only to the extent that the amount may reasonably be considered not to have been included in the calculation of the amount of the corporation’s limited partnership loss for the taxation year. 2005, c. 28, Sched. D, s. 4 (1).

Definitions

(6)  In this section,

“foreign exploration and development expenses” incurred by a corporation means,

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by it on or in respect of exploring or drilling for petroleum or natural gas outside Canada,

(b) any prospecting, exploration or development expense incurred by it in searching for minerals outside Canada,

(c) any annual payment made by the corporation for the preservation of a foreign resource property, and

(d) its share of the foreign exploration and development expenses incurred by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period it was a member or partner thereof; (“frais d’exploration et d’aménagement à l’étranger”)

“foreign resource property” of a corporation means any property that would be a Canadian resource property of the corporation within the meaning of subsection 66 (15) of the Income Tax Act (Canada) if the definition of “Canadian resource property” were read as if the references therein to “in Canada” were references to “outside Canada”. (“avoir minier étranger”) R.S.O. 1990, c. C.40, s. 14 (6); 1996, c. 29, s. 40 (3); 2004, c. 16, s. 2 (2).

Interpretation

(7)  Subsections 127.2 (8) and 127.3 (6) of the Income Tax Act (Canada) apply in the determination of the cost of and capital gain from the disposition of capital property which includes shares, debt obligations and rights. R.S.O. 1990, c. C.40, s. 14 (7); 2004, c. 16, s. 2 (2).

Deemed government assistance

(8)  Despite subsection 1 (3.1), in the application of paragraph 53 (2) (k) of the Income Tax Act (Canada) for the purposes of this Act, all amounts deducted under subsection 127 (5) or (6) of that Act, or deemed to have been deducted under subsection 127 (5) by operation of subsection 127.1 (3) or 192 (10) of that Act in the application of paragraph 53 (2) (k) for the purposes of that Act, shall be deemed to be assistance received by the corporation before that time from a government. R.S.O. 1990, c. C.40, s. 14 (8); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 4 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 5 - 25/06/1992; 1996, c. 29, s. 40 (1) - 01/01/1993; 1996, c. 29, s. 40 (2) - 22/02/1994; 1996, c. 29, s. 40 (3) - 01/03/1994; 1997, c. 43, Sched. A, s. 9 (1, 2) - 25/11/1997; 1998, c. 5, s. 8 (1) - 26/06/1998; 1998, c. 5, s. 8 (2) - 01/09/1997; 1998, c. 34, s. 32 (1) - 18/12/1998; 1998, c. 34, s. 32 (2) - 06/05/1998; 1998, c. 34, s. 32 (3) - 01/07/1998; 1999, c. 9, s. 79 (1) - 14/12/1999; 1999, c. 9, s. 79 (2) - 05/05/1999

[2000, c. 42, s. 13](http://www.ontario.ca/laws/statute/S00042" \l "s13) - 03/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 8](http://www.ontario.ca/laws/statute/S04031" \l "sched9s8) - 16/12/2004

[2005, c. 28, Sched. D, s. 4 (1)](http://www.ontario.ca/laws/statute/S05028" \l "schedds4s1) - 16/12/2004; [2005, c. 28, Sched. D, s. 4 (2)](http://www.ontario.ca/laws/statute/S05028" \l "schedds4s2) - 01/01/2003

Subdivision C — Other Sources of Income

*Income Tax Act* (Canada), Part I (B) (d) applicable

**15** (1)  Except as hereinafter provided, subdivision d of Division B of Part I of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as the said subdivision applies to corporations. R.S.O. 1990, c. C.40, s. 15 (1); 2004, c. 16, s. 2 (2).

Disposition of resource property

(2)  In the application of section 59 of the Income Tax Act (Canada) for the purposes of this Act,

(a) subsection (1) and paragraphs (3.2) (a) and (3.3) (f) of the said section are not applicable; and

(b) the references in subsection (2) of the said section to amounts deducted as a reserve in computing income for the immediately preceding taxation year shall include any amount deducted under section 16 of the Corporations Tax Act, being chapter 97 of the Revised Statutes of Ontario, 1980, in computing income for the immediately preceding taxation year. R.S.O. 1990, c. C.40, s. 15 (2); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), s. 59.1

(3)  In the application of section 59.1 of the Income Tax Act (Canada) for the purposes of this Act, the reference to “this Part” shall be read as a reference to Part V of this Act. 1994, c. 14, s. 5 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 5 (1, 2) - 17/12/1991

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision D — Deductions in Computing Income

Application of s. 60 of *Income Tax Act* (Canada)

**16** (1)  Except as hereinafter provided, section 60 of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as the said section applies to corporations. R.S.O. 1990, c. C.40, s. 16 (1); 2004, c. 16, s. 2 (2).

Corporation taxes deductible

(2)  In addition to the deductions permitted by virtue of subsection (1), there may be deducted in computing the income of a corporation for a taxation year all corporation taxes payable in the taxation year by the corporation. R.S.O. 1990, c. C.40, s. 16 (2); 2004, c. 16, s. 2 (2).

Definitions

(3)  In this section,

“corporation income tax” means a tax imposed by the Parliament of Canada or by the Legislature of a province or by a municipality in the province that is declared by the regulations to be a tax of general application on the profits of corporations; (“impôt sur le revenu des sociétés”)

“corporation tax” means a tax imposed by the Legislature of a province or by a municipality in the province that is declared by the regulations to be a tax on corporations, but does not include,

(a) a corporation income tax, or

(b) any other tax declared by the regulations not to be a corporation tax. (“impôt sur les sociétés”) R.S.O. 1990, c. C.40, s. 16 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Application of *Income Tax Act* (Canada), ss. 61.3, 61.4

**16.1** Sections 61.3 and 61.4 of the Income Tax Act (Canada) apply for the purposes of this Act in so far as those sections apply to corporations. 1996, c. 29, s. 41 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 29, s. 41 (1, 2) - 22/02/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Allowance for oil or gas well, mine or timber limit

**17** (1)  There may be deducted in computing a corporation’s income for a taxation year such amount as an allowance, if any, in respect of,

(a) a natural accumulation of petroleum or natural gas, oil or gas well, mineral resource or timber limit; or

(b) the processing, to the prime metal stage or its equivalent, of ore from a mineral resource,

as is allowed by regulation. R.S.O. 1990, c. C.40, s. 17 (1); 2004, c. 16, s. 2 (2).

Regulations

(2)  For greater certainty it is hereby declared that, in the case of a regulation made under subsection (1),

(a) there may be prescribed by such regulation an amount in respect of any or all,

(i) natural accumulations of petroleum or natural gas, oil or gas wells or mineral resources in which the corporation has an interest, or

(ii) processing operations described in clause (1) (b) that are carried on by the corporation; and

(b) despite any other provision contained in this Act, the Lieutenant Governor in Council may prescribe the formula by which the amount that may be allowed to the corporation by such regulation shall be determined. R.S.O. 1990, c. C.40, s. 17 (2); 2004, c. 16, s. 2 (2).

Lessee’s share of allowance

(3)  Where a deduction is allowed under subsection (1) in respect of a coal mine operated by a lessee, the lessor and lessee may agree as to what portion of the allowance each may deduct and, in the event that they cannot agree, the Minister may fix the portions. R.S.O. 1990, c. C.40, s. 17 (3); 2004, c. 16, s. 2 (2).

Idem

(4)  For the purpose of subsection (3), where an agreement has been made pursuant to subsection 65 (3) of the Income Tax Act (Canada), the ratio of the apportionment of the allowance that has been determined thereunder shall be deemed to apply for the purposes of this Act. R.S.O. 1990, c. C.40, s. 17 (4); 2004, c. 16, s. 2 (2).

Application

(5)  For the purpose of subsection 1 (3.1), this section applies in lieu of section 65 of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 17 (5); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 5.

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 5](http://www.ontario.ca/laws/statute/S05028" \l "schedds5) - 01/01/2003

Exploration and development expenses

**18** (1)  A principal-business corporation may deduct, in computing its income for a taxation year, the lesser of,

(a) the aggregate of such of its Canadian exploration and development expenses as were incurred by it before the end of the taxation year, to the extent that they were not deductible in computing income for a previous taxation year; and

(b) of that aggregate, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or section 17, minus the deductions allowed for the taxation year by sections 112 and 113 of the Income Tax Act (Canada) as made applicable by section 34 of this Act. R.S.O. 1990, c. C.40, s. 18 (1); 2004, c. 16, s. 2 (2).

Expenses of other corporations

(2)  A corporation other than a principal-business corporation may deduct, in computing its income for a taxation year, the lesser of,

(a) the aggregate of such of its Canadian exploration and development expenses as were incurred by it before the end of the taxation year to the extent they were not deductible in computing its income for a previous taxation year; and

(b) of that aggregate, the greater of,

(i) such amount as the corporation may claim, not exceeding 20 per cent of the aggregate determined under clause (a), and

(ii) the aggregate of,

(A) such part of its income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells in Canada or to the production of minerals from mines in Canada,

(B) its income for the taxation year from royalties in respect of an oil or gas well in Canada or a mine in Canada, and

(C) the aggregate of amounts, each of which is an amount in respect of a Canadian resource property that has been disposed of by it, equal to the amount included in computing its income for the taxation year by virtue of subsection 15 (2) in respect of the disposition of the property,

if no deduction were allowed for the taxation year under this subsection, subsection (3) or section 17. R.S.O. 1990, c. C.40, s. 18 (2); 2004, c. 16, s. 2 (2).

Ontario exploration and development expenses: corporation other than a principal-business corporation

(3)  A corporation other than a principal-business corporation may deduct, in computing its income for a taxation year, the lesser of,

(a) the aggregate of such of its Ontario exploration and development expenses as were incurred by it before the end of the taxation year to the extent that they were not deducted in computing its income for a previous year, minus that portion of the deduction allowed, if any, in computing its income for the taxation year under subsection (2) which is reasonably attributable to Ontario exploration and development expenses; and

(b) that portion of the amount determined under clause (a) equal to the amount of its income for the taxation year if no deductions were allowed under this section, minus,

(i) that portion of the deduction allowed for the taxation year under subsection (2) which is reasonably attributable to Ontario exploration and development expenses, and

(ii) the deduction allowed for the taxation year under sections 112 and 113 of the Income Tax Act (Canada) as made applicable by section 34 of this Act. R.S.O. 1990, c. C.40, s. 18 (3); 2004, c. 16, s. 2 (2).

Dealers

(4)  Section 16 of the Corporations Tax Act, being chapter 97 of the Revised Statutes of Ontario, 1980, and subsection 15 (2), subsections (2) and (3) of this section and sections 19 and 21 do not apply in computing the income for a taxation year under this Part of a corporation, other than a principal-business corporation, whose business includes trading or dealing in rights, licences or privileges to explore for, drill for or take minerals, petroleum, natural gas or other related hydrocarbons. 1994, c. 14, s. 6 (1); 2004, c. 16, s. 2 (2).

Joint exploration corporation: renunciation of its exploration and development expenses in favour of shareholder corporation

(5)  The portion, if any, of its Canadian exploration and development expenses that a joint exploration corporation may renounce in favour of a shareholder corporation shall be determined in accordance with the rules provided in subsection 66 (10) of the Income Tax Act (Canada) and paragraphs (a) and (b) of the said subsection are applicable, except that for the purposes of this subsection,

(a) the references in the said subsection to subsections (1) and (3) of that section shall be deemed to be references to subsections (1) and (2) of this section; and

(b) the references in paragraph (b) of the said subsection to paragraph (1) (a) of that section shall be deemed to be a reference to clause (1) (a) of this section. R.S.O. 1990, c. C.40, s. 18 (5); 2004, c. 16, s. 2 (2).

Idem

(6)  Subsections 66 (10.1), (10.2), (10.3) and (10.4) of the Income Tax Act (Canada) are applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 18 (6); 2004, c. 16, s. 2 (2).

Change in control

(7)  Subsections 66 (11) and (11.3) of the Income Tax Act (Canada), except paragraph 66 (11) (e), are applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 18 (7); 2004, c. 16, s. 2 (2).

Idem

(8)  Subsections 66 (11.4) and (11.5) of the Income Tax Act (Canada) are applicable for the purposes of this Act with respect to acquisitions of Canadian resource properties. R.S.O. 1990, c. C.40, s. 18 (8); 2004, c. 16, s. 2 (2).

Computation of exploration and development expenses

(9)  In computing the Canadian exploration and development expenses and Ontario exploration and development expenses of a corporation,

(a) there shall be deducted the aggregate of all amounts paid to it after 1971 and before the 25th day of May, 1976,

(i) under the Northern Mineral Exploration Assistance Regulations (Canada) made under an Appropriation Act (Canada) that provides for payments in respect of the Northern Mineral Grants Program,

(ii) pursuant to any agreement entered into between the corporation and Her Majesty in right of Canada under the Northern Mineral Grants Program or the Development Program of the Department of Indian Affairs and Northern Development, or

(iii) under the Mineral Exploration Assistance Program (Ontario),

to the extent that the amounts have been expended by the corporation as or on account of Canadian exploration and development expenses or Ontario exploration and development expenses, as the case may be; and

(b) there shall be included any amount, except an amount in respect of interest, paid by the corporation, after 1971 in respect of amounts paid to it before the 25th day of May, 1976, under the Regulations referred to in subclause (a) (i) to Her Majesty in right of Canada and under the Mineral Exploration Assistance Program (Ontario) to Her Majesty in right of Ontario. R.S.O. 1990, c. C.40, s. 18 (9); 2004, c. 16, s. 2 (2).

Limitations

(10)  Except as otherwise provided in this section or section 19, where a corporation has incurred an outlay or expense in respect of which a deduction from income is authorized under more than one provision of this section or section 19, the corporation is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction. R.S.O. 1990, c. C.40, s. 18 (10); 2004, c. 16, s. 2 (2).

Idem

(11)  Despite subsection (10), a corporation that is entitled to a deduction under both subsections (2) and (3) may, in addition to the deduction under subsection (2), deduct such additional amount as it may claim in respect of Ontario exploration and development expenses under subsection (3). R.S.O. 1990, c. C.40, s. 18 (11); 2004, c. 16, s. 2 (2).

Limitations of Canadian exploration and development expenses

(12)  Subsection 66 (12.1) of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as the said subsection applies to corporations, except that, in its application for the purposes of this Act, the reference in paragraph (a) thereof to “before May 7, 1974” shall be deemed to be a reference to “before the 20th day of May, 1981”. R.S.O. 1990, c. C.40, s. 18 (12); 2004, c. 16, s. 2 (2).

Unitized oil or gas field in Canada

(13)  Subsections 66 (12.2), (12.3) and (12.5) of the Income Tax Act (Canada) are, in so far as the said subsections apply to corporations, applicable for the purposes of this Act except that, in the application of the said subsection (12.2) for the purposes of this Act, the reference therein to “before May 7, 1974” shall be deemed to be a reference to “before the 20th day of May, 1981”. R.S.O. 1990, c. C.40, s. 18 (13); 2004, c. 16, s. 2 (2).

Amount deemed deductible under this Subdivision

(14)  For the purposes of section 9, any amount deductible under The Corporations Tax Application Rules, 1972 in respect of this section shall be deemed to be deductible under this Subdivision. R.S.O. 1990, c. C.40, s. 18 (14); 2004, c. 16, s. 2 (2).

Definitions

(15)  In this section and in sections 19, 20 and 21 and in the provisions of the Income Tax Act (Canada) made applicable for the purposes of this Act,

“agreed portion” has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada); (“partie convenue”)

“assistance” has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada); (“montant à titre d’aide”)

“Canadian exploration and development expenses” incurred by a corporation means any expense incurred before the 20th day of May, 1981 that is,

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the corporation after 1971 on or in respect of exploring or drilling for petroleum or natural gas in Canada,

(b) any prospecting, exploration or development expense incurred by it after 1971 in searching for minerals in Canada,

(c) despite paragraph 18 (1) (m) of the Income Tax Act (Canada), as that paragraph applies to this Act for a taxation year ending before January 1, 2003 by virtue of subsection 11 (1) of this Act, the cost to the corporation of a Canadian resource property, but for greater certainty not including any payment made to any of the persons referred to in any of the subparagraphs (i) to (iii) of the said paragraph (m) for the preservation of a person’s rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the corporation after 1971, and not including a payment to which the said paragraph (m) applied by virtue of subparagraph (v) thereof,

(c.1) despite subsection 11.0.1 (5) of this Act, for taxation years ending after December 31, 2002, the cost to the corporation of a Canadian resource property, but for greater certainty not including any payment made to any of the persons referred to in clause 11.0.1 (5) (a) for the preservation of a person’s rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the corporation after 1971, and not including a payment to which subsection 11.0.1 (5) applies by virtue of subclause 11.0.1 (5) (b) (ii),

(d) the corporation’s share of any of the expenses referred to in clauses (a), (b) and (c) incurred after 1971 by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period the corporation was a member or partner thereof, and

(e) any expenses referred to in clauses (a), (b) and (c) incurred after 1971 pursuant to an agreement with another corporation under which the corporation incurred the expense solely in consideration for shares of the capital stock of the other corporation issued to it by the other corporation or any interest in such shares or right thereto,

but for greater certainty, does not include,

(f) any consideration given by the corporation for any share or any interest therein or right thereto, except as provided by clause (e), or

(g) any expense described in clause (e) incurred by another person to the extent that the expense was, by virtue of clause (e), a Canadian exploration and development expense of that other person,

but no amount of assistance or benefit that a corporation has received or is entitled to receive after the 25th day of May, 1976 in respect of or related to its Canadian exploration and development expenses made or incurred before the 1st day of January, 1981, from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, shall reduce the amount of any of the expenses described in any of clauses (a) to (e); (“frais d’exploration et d’aménagement au Canada”)

“drilling or exploration expense” incurred on or in respect of exploring or drilling for petroleum or natural gas has the meaning given to that expression by subsection 66 (15) of the *Income Tax Act* (Canada); (“frais d’exploration ou de forage”)

“flow-through share” has the meaning given to that expression by subsection 66 (15) of the *Income Tax Act* (Canada) and includes a share issued pursuant to an agreement entered into by a corporation after the 28th day of February, 1986 and before the 1st day of January, 1987 which qualifies as a “flow-through share” for the purposes of that Act; (“action accréditive”)

“joint exploration corporation” has the meaning given to that expression by subsection 66 (15) of the *Income Tax Act* (Canada); (“société d’exploration en commun”)

“oil or gas well” has the meaning given to that expression by subsection 248 (1) of the *Income Tax Act* (Canada); (“puits de pétrole ou de gaz”)

“Ontario exploration and development expenses” incurred by a corporation means any expenses that would be Canadian exploration and development expenses incurred by the corporation if the definition of “Canadian exploration and development expenses” were read as if the references therein to,

(a) “in Canada” were references to “in Ontario”,

(b) “after 1971” were references to “after the 9th day of April, 1974 and before the 20th day of May, 1981”, and

(c) “Canadian” were references to “Ontario”; (“frais d’exploration et d’aménagement en Ontario”)

“Ontario resource property” of a corporation means any property acquired after the 9th day of April, 1974 and before the 20th day of May, 1981 that would be a Canadian resource property of the corporation within the meaning of paragraph 66 (15) (c) of the *Income Tax Act* (Canada) if that paragraph were read as if the references therein to “in Canada” were references to “in Ontario”; (“avoir minier ontarien”)

“original owner”, of a Canadian resource property, means the person who would be the “original owner” of that property under subsection 66 (15) of the *Income Tax Act* (Canada) if the definition of “original owner” in that subsection were read without the references therein to “foreign resource property”, “foreign exploration and development expenses” and to subsections 66 (2), (3) and (4) and 66.7 (2) and (13) of that Act; (“propriétaire obligé”)

“outlay” or “expense” have the meaning given to those expressions by subsection 66 (15) of the Income Tax Act (Canada); (“dépenses”)

“predecessor owner”, of a Canadian resource property, means the person who would be the “predecessor owner” of that property under subsection 66 (15) of the Income Tax Act (Canada) if the definition of “predecessor owner” in that subsection were read without the references therein to “foreign resource property” and to subsections 66.7 (2) and (15) of that Act; (“propriétaire antérieur”)

“principal-business corporation” has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada); (“société exploitant une entreprise principale”)

“production”, from a Canadian resource property, has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada), except that with respect to iron ore, the production from a Canadian resource property means the iron ore produced from the property processed to any stage that is not beyond the prime metal stage or its equivalent; (“production”)

“reserve amount” has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada); (“provision”)

“selling instrument” has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada); (“avis d’émission”)

“shareholder corporation” of a joint exploration corporation has the meaning given to that expression by subsection 66 (15) of the Income Tax Act (Canada). (“société actionnaire”) R.S.O. 1990, c. C.40, s. 18 (15); 1996, c. 29, s. 42; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 9.

Application

(16)  For the purposes of subsection 1 (3.1), this section applies in lieu of section 66 of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 18 (16); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 6.

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 6 (1, 2) - 17/12/1991; 1996, c. 29, s. 42 - 01/03/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 9](http://www.ontario.ca/laws/statute/S04031" \l "sched9s9) - 16/12/2004

[2005, c. 28, Sched. D, s. 6](http://www.ontario.ca/laws/statute/S05028" \l "schedds6) - 01/01/2003

Canadian exploration expense, Canadian development expense and Canadian oil and gas property expense

**19** (1)  Sections 66.1, 66.2 and 66.4 of the Income Tax Act (Canada) are applicable for the purposes of this Act in so far as the said sections apply to corporations except that, in the application of the said sections for the purposes of this Act,

(a) the references therein to “Canadian exploration expense”, “Canadian development expense”, “Canadian oil and gas property expense”, “cumulative Canadian exploration expense”, “cumulative Canadian development expense” and “cumulative Canadian oil and gas property expense” shall be deemed to be references to such of those outlays or expenses as are made or incurred after the 19th day of May, 1981;

(b) subject to section 22, in addition to the deduction provided under this section by virtue of subsection 66.2 (2) of the Income Tax Act (Canada), a corporation may claim in respect of its Canadian development expenses made or incurred in Ontario in the taxation year or in a previous taxation year a deduction of an amount equal to 70 per cent of the amount, if any, by which,

(i) the aggregate of the amounts described in subparagraphs 66.2 (5) (b) (i) to (iii) of the Income Tax Act (Canada) that are in respect of expenses made or incurred in Ontario,

exceeds the aggregate of all amounts each of which is,

(ii) any amount previously deducted in computing its income for a taxation year by virtue of this clause, or

(iii) the aggregate of the amounts described in subparagraphs 66.2 (5) (b) (iv) to (xi) and (xiii) of the Income Tax Act (Canada) that are in respect of expenses incurred in Ontario;

(c) for the purpose of computing a corporation’s cumulative Canadian development expense at any time, any amount deducted by virtue of clause (b) in computing income for a taxation year ending before that time shall be deemed to be an amount deducted in computing its income for a taxation year ending before that time, but such amount shall not be included in computing the amount under subclause (b) (iii); and

(d) the reference to the Minister in clause 66.1 (6) (a) (ii.1) (D) of the Income Tax Act (Canada) shall be read as a reference to the Minister of National Revenue. R.S.O. 1990, c. C.40, s. 19; 2004, c. 16, s. 2 (2).

Taxation years after 2002

(2)  Despite subsection (1), paragraph (e) of the definition of “Canadian development expense” in subsection 66.2 (5) of the Income Tax Act (Canada) shall be deemed to refer to section 11.0.1 of this Act and shall be read as follows for the purposes of the application of that definition for taxation years ending after December 31, 2002:

(e) despite subsection 11.0.1 (5), for taxation years ending after December 31, 2002, the cost to the corporation of, including any payment for the preservation of a corporation’s rights in respect of, any property described in paragraph (b), (e) or (f) of the definition of “Canadian resource property” in subsection 66 (15) of the Income Tax Act (Canada) or any right to or interest in such property (other than such a right or an interest that the corporation has by reason of being a beneficiary under a trust or a member of a partnership) but not including any payment made to any of the persons referred to in clause 11.0.1 (5) (a) for the preservation of a corporation’s rights in respect of a Canadian resource property nor a payment to which subsection 11.0.1 (5) applied because of subclause 11.0.1 (5) (b) (ii). 2004, c. 31, Sched. 9, s. 10.

Same

(3)  Despite subsection (1), paragraph (a) of the definition of “Canadian oil and gas property expense” in subsection 66.4 (5) of the Income Tax Act (Canada) shall be deemed to refer to section 11.0.1 of the Act and shall be read as follows for the purposes of the application of that definition for taxation years ending after December 31, 2002:

(a) despite subsection 11.0.1 (5), for taxation years ending after December 31, 2002, the cost to the corporation of, including any payment for the preservation of a corporation’s rights in respect of, any property described in paragraph (a), (c) or (d) of the definition of “Canadian resource property” in subsection 66 (15) of the Income Tax Act (Canada) or any right to or interest in such property (other than such a right or an interest that the corporation has by reason of being a beneficiary under a trust or a member of a partnership) or an amount paid or payable to Her Majesty in right of the Province of Saskatchewan as a net royalty payment pursuant to a net royalty petroleum and natural gas lease that was in effect on March 31, 1977 to the extent that it can reasonably be regarded as a cost of acquiring the lease, but not including any payment made to any of the persons referred to in clause 11.0.1 (5) (a) for the preservation of a corporation’s rights in respect of a Canadian resource property nor a payment (other than a net royalty payment referred to in this paragraph) to which subsection 11.0.1 (5) applied because of subclause 11.0.1 (5) (b) (ii). 2004, c. 31, Sched. 9, s. 10.

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 10](http://www.ontario.ca/laws/statute/S04031" \l "sched9s10) - 16/12/2004

Application of *Income Tax Act* (Canada), s. 66, part

**20** Subsections 66 (12.6) to (12.741), (16), (17), (18) and (19) of the Income Tax Act (Canada) are applicable for the purposes of this Act in so far as they apply to corporations, except that in the application of these subsections,

(a) references to the “Minister” in subsections 66 (12.68), (12.69), (12.691), (12.7), (12.701), (12.73), (12.74) and (12.741) of that Act shall be read as references to the Minister of National Revenue;

(b) the reference to “this Part” in subsection 66 (12.71) of that Act shall be read as a reference to Part II of this Act;

(c) a prescribed form referred to in subsection 66 (12.68), (12.69) or (12.7) of that Act that was required to be filed, and that was filed, on or before the 19th day of March, 1987, shall be deemed to have been filed at the time required under that subsection; and

(d) expenditures described in subparagraph 66.1 (6) (a) (i) or (ii.1) of that Act renounced before the 14th day of October, 1988 shall be deemed to have been renounced within ninety days after the 31st day of December, 1987. R.S.O. 1990, c. C.40, s. 20; 1994, c. 14, s. 7 (1, 2); 1996, c. 29, s. 43 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 7 (1, 2) - 17/12/1991; 1996, c. 29, s. 43 (1, 2) - 01/03/1993

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Successor rules

**21** Section 66.7 of the Income Tax Act (Canada), other than subsections (2), (8), (13) and (15) and paragraph (10) (h), is applicable for the purposes of this Act, except that in the application thereof,

(a) references to “Canadian exploration and development expenses” shall be read as references to only Canadian exploration and development expenses incurred before the 20th day of May, 1981;

(b) the section shall be read without the references to “foreign exploration and development expenses”, “foreign resource property” and “foreign resource properties”; and

(c) references to “the Minister” in subsection (12.1) shall be read as references to the Minister of National Revenue. R.S.O. 1990, c. C.40, s. 21; 1994, c. 14, s. 8 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 8 (1, 2) - 17/12/1991

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Proration of “CDE” and “COGPE” for short taxation years

**22** Subsection 66 (13.1) of the Income Tax Act (Canada) is applicable for the purposes of this Act and in the application thereof the reference to paragraph 66.2 (2) (c) of that Act shall be deemed to include a reference to clause 19 (1) (b). R.S.O. 1990, c. C.40, s. 22; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 11.

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 11](http://www.ontario.ca/laws/statute/S04031" \l "sched9s11) - 16/12/2004

Limited partnership resource expenditures

**23** Section 66.8 of the Income Tax Act (Canada) is applicable for the purposes of this Act and in the application thereof the foreign exploration and development expenses referred to in clause (1) (a) (i) (D) of that section shall be limited to only those foreign exploration and development expenses that are deductible. R.S.O. 1990, c. C.40, s. 23; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Shares taxed as inventory

**24** Section 66.3 of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as that section applies to corporations. R.S.O. 1990, c. C.40, s. 24; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Application of *Income Tax Act* (Canada), s. 66.6

**25** Section 66.6 of the Income Tax Act (Canada) is applicable for the purposes of this Act with the references therein to “this Part” read as references to Part II of this Act. R.S.O. 1990, c. C.40, s. 25; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision E — Rules Relating to Computation of Income

*Income Tax Act* (Canada), Part I (B) (f), applicable

**26** (1)  The rules provided in subdivision f of Division B of Part I of the Income Tax Act (Canada), relating to the computation of income are, in so far as the said rules apply to corporations, applicable in computing income for the purposes of this Act. R.S.O. 1990, c. C.40, s. 26 (1); 2004, c. 16, s. 2 (2).

General limitation re expenses

(2)  In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances. R.S.O. 1990, c. C.40, s. 26 (2); 2004, c. 16, s. 2 (2).

Treatment of foreign resource properties on amalgamation

(3)  In the application of subsection 69 (13) of the Income Tax Act (Canada) for the purposes of this Act, the proceeds of disposition of a foreign resource property shall be deemed to be the cost amount to the corporation of the foreign resource property immediately before the amalgamation or merger. R.S.O. 1990, c. C.40, s. 26 (3); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada)

(4)  References in section 67.3 of the Income Tax Act (Canada) to the prescribed rate shall mean the prescribed rate determined in accordance with the regulations made under the Income Tax Act (Canada). 1992, c. 3, s. 6; 2004, c. 16, s. 2 (2).

Disposition of petroleum, etc.

(4.1)  Where a corporation is an operator with respect to a natural accumulation of petroleum or natural gas in Canada, an oil or gas well in Canada or a mineral resource in Canada and at any time in a taxation year beginning after December 31, 2006 disposes of or acquires property produced in the operation that is petroleum, natural gas or related hydrocarbons or metal or minerals produced in the operation, the rules prescribed by the regulations apply to determine the amount of the proceeds of disposition deemed to be received by the corporation or the cost to the corporation of the property. 2004, c. 31, Sched. 9, s. 12.

Reduction of resource expenditures

(5)  Subsection 80 (8) of the Income Tax Act (Canada) shall be read as if paragraph (e) of that subsection had not been enacted. 1996, c. 29, s. 44 (1); 2004, c. 16, s. 2 (2).

Resource royalties, reimbursement by corporation

(6)  The rules set out in subsection (7) apply for the purposes of this Act, other than this section, where for taxation years beginning after December 31, 2006,

(a) a corporation, under the terms of a contract, pays to another person an amount (in this subsection referred to as the “specified payment”) that may reasonably be considered to have been received by the other person as a reimbursement, contribution or allowance in respect of an amount (referred to in clause (b) as the “particular amount”) paid or payable by the other person;

(b) the particular amount is included in the income of the other person or is denied as a deduction in computing the income of the other person by reason of subsection 11.0.1 (3) or (5), as the case may be; and

(c) the corporation was resident in Canada or carrying on business in Canada at the time the specified payment was made by the corporation. 2004, c. 31, Sched. 9, s. 12.

Same

(7)  The following are the rules for the purposes of subsection (6):

1. The corporation shall be deemed neither to have made nor to have become obligated to make the specified payment to the other person but to have paid an amount described in subsection 11.0.1 (5) equal to the amount of the specified payment.

2. The other person shall be deemed neither to have received nor to have become entitled to receive the specified payment from the corporation. 2004, c. 31, Sched. 9, s. 12.

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 6 - 25/06/1992; 1994, c. 14, s. 9 (1, 2) - 01/06/1993; 1996, c. 29, s. 44 (1, 2) - 22/02/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 12](http://www.ontario.ca/laws/statute/S04031" \l "sched9s12) - 16/12/2004

Benefit conferred on corporation

**27** (1)  If a person at any time confers a benefit on a corporation either directly or indirectly by any means, the amount of the benefit shall be included in computing the corporation’s income or taxable income earned in Canada for the taxation year in which the benefit is conferred, to the extent that,

(a) the amount of the benefit is not otherwise included in the corporation’s income or taxable income earned in Canada; and

(b) the amount of the benefit would be so included if the amount were a payment made directly by the person to the corporation and the corporation were resident in Canada. R.S.O. 1990, c. C.40, s. 27 (1); 2004, c. 16, s. 2 (2).

Arm’s length

(2)  If it is established that a transaction was entered into by persons dealing at arm’s length, in good faith and not pursuant to or as part of any other transaction, and not to effect payment, in whole or in part, of an existing or future obligation, no party to the transaction shall be regarded for the purpose of this section as having conferred a benefit on a party with whom he, she or it was dealing. R.S.O. 1990, c. C.40, s. 27 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision F — Amounts not Included in Computing Income

Amounts not included in income:

**28** There shall not be included in computing the income of a corporation for a taxation year,

federal grants

(a) an amount paid to a corporation on account of a grant under the Regional Development Incentives Act (Canada) or the Employment Support Act (Canada); and

other amounts

(b) an amount determined in accordance with the rules provided in paragraph 81 (1) (b), (c), (l) or (m) of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 28; 1994, c. 14, s. 10; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 10 - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision G — Corporations Resident in Canada and Their Shareholders

*Income Tax Act* (Canada), Part I (B) (h), applicable

**29** (1)  Except as hereinafter provided, the rules provided in subdivision h of Division B of Part I of the Income Tax Act (Canada) are applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 29 (1); 2004, c. 16, s. 2 (2).

Amalgamations consideration for resource property disposition

(2)  In lieu of the rule provided in paragraph 87 (2) (p) of the Income Tax Act (Canada) with respect to amalgamations, the following rule is applicable for the purposes of this Act:

For the purpose of computing a deduction from the income of the new corporation for a taxation year under section 16 of the Corporations Tax Act, being chapter 97 of the Revised Statutes of Ontario, 1980, any amount that has been included in computing the income of a predecessor corporation for its last taxation year or a previous taxation year by virtue of clause 14 (3) (a) or (c) of the Corporations Tax Act, being chapter 97 of the Revised Statutes of Ontario, 1980, or subsection 18 (11) or (12) of that Act, or by virtue of subsection 58 (15) or (16) of The Corporations Tax Act as it read in its application to the taxation years prior to 1972, shall be deemed to have been included in computing the income of the new corporation for a previous taxation year by virtue thereof. R.S.O. 1990, c. C.40, s. 29 (2); 2004, c. 16, s. 2 (2).

Provisions of *Income Tax Act* (Canada), not applicable

(3)  Paragraphs 87 (2) (y.1), (z), (cc) and (pp) and 88 (1) (e.7) of the Income Tax Act (Canada) are not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 29 (3); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), s. 88 (1) (e.2)

(4)  Paragraph 88 (1) (e.2) of the Income Tax Act (Canada) shall, in its application for the purposes of this Act, be read without reference therein to paragraphs 87 (2) (y.1), (cc) and (pp) of the said Act, and as though the reference therein to paragraph 87 (2) (p) were a reference to subsection (2) of this section. R.S.O. 1990, c. C.40, s. 29 (4); 2004, c. 16, s. 2 (2).

“Minister” deemed to be Minister of National Revenue

(5)  The references to “Minister” in the following provisions of the Income Tax Act (Canada) are deemed to be references to the Minister of National Revenue for Canada for the purposes of this Act:

1. Subsection 85 (7.1).

2. The definition of “public corporation” in subsection 89 (1).

3. Subsection 89 (3). 2001, c. 23, s. 25 (1); 2004, c. 16, s. 2 (2).

Time of election

(6)  In applying subsection 85 (6) of the Income Tax Act (Canada), the reference to “the earliest of the days” shall be read as “the latest of the days” in the situation where subsection 29.1 (4) or (5) applies to the corporations making the election under section 85 of that Act. 1997, c. 43, Sched. A, s. 10; 2001, c. 23, s. 25 (2); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), s. 86.1 (5)

(7)  In the application of subsection 86.1 (5) of the Income Tax Act (Canada), the reference to “subsections 152 (4) to (5)” is deemed to be a reference to subsection 80 (11) of this Act. 2001, c. 23, s. 25 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 10 - 06/05/1997

[2001, c. 23, s. 25 (1)](http://www.ontario.ca/laws/statute/S01023" \l "s25s1) - 01/12/1991; [2001, c. 23, s. 25 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s25s2) - 05/12/2001; [2001, c. 23, s. 25 (3)](http://www.ontario.ca/laws/statute/S01023" \l "s25s3) - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Ontario corporations and partnerships

**29.1** (1)  In this section,

(a) a corporation is an Ontario corporation for a taxation year if not more than 10 per cent of its taxable income for the year is deemed, or would be deemed if it had had income for that year, to have been earned outside Ontario for the purposes of section 39; and

(b) a partnership is an Ontario partnership for a fiscal period of the partnership if not more than 10 per cent of its income for the fiscal period would be deemed to have been earned outside Ontario for the purposes of section 39 if the partnership were a corporation, its fiscal period were its taxation year and it had had income for the fiscal period. 1997, c. 43, Sched. A, s. 11 (1); 1998, c. 34, s. 33 (1); 2004, c. 16, s. 2 (2).

Elections

(2)  The following rules apply in respect of elections under provisions of the Income Tax Act (Canada) that apply for the purposes of this Subdivision:

1. No election may be made by a corporation or the members of a partnership for the purposes of this Act unless the election has been properly made by the corporation or members of the partnership for the purposes of the Income Tax Act (Canada).

2. If the amount elected or deemed to have been elected for the purposes of the Income Tax Act (Canada) is different from the amount that would be elected or deemed to have been elected for the purposes of this Act, without reference to section 5.1, the amount determined for the purposes of the Income Tax Act (Canada) shall apply for the purposes of this Act. 1997, c. 43, Sched. A, s. 11 (1); 2004, c. 16, s. 2 (2).

Exception to subs. (2)

(3)  Paragraph 2 of subsection (2) does not apply if,

(a) the property in respect of which an election is made is property described in subclause 5.1 (8) (a) (iii) or prescribed by the regulations and the conditions described in clauses (7) (a) and (b) would not be met if subsection (7) applied in respect of the property; or

(b) the rules or conditions prescribed by the regulations have been satisfied and the conditions described in clauses (7) (a) and (b) would not be met if subsection (7) applied in respect of the property. 2001, c. 23, s. 26 (1); 2004, c. 16, s. 2 (2).

Elected amounts

(4)  If all of the corporations required to make an election referred to in subsection (2), in respect of a disposition occurring after May 4, 1998, are Ontario corporations for the taxation year to which the election relates, and any partnership whose partners are required to make the election is an Ontario partnership for the fiscal period to which the election relates and all of its partners are corporations at the end of that fiscal period, or the rules or conditions prescribed by the regulations are satisfied, the corporations making an election under the Income Tax Act (Canada) may, upon delivering a joint election in a form approved by the Minister within the time specified in subsection 85 (6) of the Income Tax Act (Canada) as it reads for the purposes of this section, elect an amount in respect of the property equal to,

(a) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada);

(b) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada), less the cost amount of the property for the purposes of that Act, plus the cost amount of the property for the purposes of this Act, calculated immediately before the disposition to which the election relates; or

(c) an amount that is greater than the lesser of the amounts described in clauses (a) and (b), but less than the greater of the amounts described in clauses (a) and (b). 1998, c. 34, s. 33 (2); 2004, c. 16, s. 2 (2).

Same

(5)  If the property, in respect of which an election is made under the Income Tax Act (Canada), in respect of a disposition occurring after May 4, 1998, is property referred to in subclause 5.1 (8) (a) (i) or (ii), the corporations making the election, if each of them has a permanent establishment in Ontario, may, upon delivering a joint election in a form approved by the Minister within the time specified in subsection 85 (6) of the Income Tax Act (Canada) as it reads for the purposes of this section, elect an amount in respect of the property equal to,

(a) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada);

(b) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada), less the cost amount of the property for the purposes of that Act, plus the cost amount of the property for the purposes of this Act, calculated immediately before the disposition to which the election relates; or

(c) an amount that is greater than the lesser of the amounts described in clauses (a) and (b), but less than the greater of the amounts described in clauses (a) and (b). 1998, c. 34, s. 33 (2); 2004, c. 16, s. 2 (2).

Anti-avoidance

(6)  Subsection (4) does not apply in respect of the disposition of a property occurring after May 4, 1998 if,

(a) the corporation that holds the property immediately after the disposition,

(i) ceases to be an Ontario corporation within 36 months after the end of its taxation year to which the election relates and still holds the property immediately after it ceases to be an Ontario corporation, or

(ii) disposes of the property within 36 months after the end of its taxation year to which the election relates; or

(b) it is reasonable to believe that one of the reasons the corporation or any other person conducted its business and affairs in a manner that resulted in the corporation being an Ontario corporation for the taxation year to which the election relates is to increase or reduce an amount elected for the purposes of this Act. 1998, c. 34, s. 33 (2); 2004, c. 16, s. 2 (2).

Same

(7)  Subsection (5) does not apply in respect of the disposition of a property occurring after May 4, 1998 referred to in that subsection if,

(a) within 36 months after the end of its taxation year to which the election relates,

(i) the corporation that holds the property immediately after the disposition, disposes of the property, or

(ii) that corporation’s Ontario allocation factor is at least 10 percentage points less than its Ontario allocation factor for the taxation year to which the election relates; or

(b) it is reasonable to believe that one of the reasons for the manner in which the corporation or any other person has conducted their business and affairs is to increase or reduce an amount elected for the purposes of this Act. 1998, c. 34, s. 33 (2); 2001, c. 23, s. 26 (2); 2004, c. 16, s. 2 (2).

Deemed fair market value of the consideration

(8)  The amount agreed upon by two corporations in an election in respect of the disposition of property to which subsection (3), (4) or (5) applies is deemed to be the fair market value of the consideration received by the transferor on the disposition, if the amount agreed upon in the election is more than the fair market value, as determined at the time of the disposition, of the consideration or the portion of the consideration received by the transferor that is not in the form of shares or a right to receive shares in the capital stock of the transferee. 2001, c. 23, s. 26 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 11 (1, 2) - 06/05/1997; 1998, c. 34, s. 33 (1-3) - 05/05/1998

[2001, c. 23, s. 26 (1-3)](http://www.ontario.ca/laws/statute/S01023" \l "s26s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision H — Shareholders of Corporations not Resident in Canada

*Income Tax Act* (Canada), Part I (B) (i), applicable

**30** (1)  The provisions of subdivision i of Division B of Part I of the Income Tax Act (Canada) are applicable in computing the income of a corporation for a taxation year for the purposes of this Act. R.S.O. 1990, c. C.40, s. 30 (1); 2004, c. 16, s. 2 (2).

Definition

(2)  In the application of the said subdivision i for the purposes of this Act,

(a) the references therein to “Minister” shall be deemed to be references to the Minister of National Revenue for Canada;

(b) the reference in subsection 94.1 (1) to “this Part” shall be deemed to be a reference to Part II of this Act; and

(c) the aggregate referred to in paragraph 94.1 (1) (f) computed for the purposes of that Act shall apply for the purposes of this Act. R.S.O. 1990, c. C.40, s. 30 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision I — Partnerships and Their Members

*Income Tax Act* (Canada), Part I (B) (j), applicable

**31** (1)  Except as hereinafter provided, the rules provided in subdivision j of Division B of Part I of the Income Tax Act (Canada) with respect to partnerships and their members are applicable for the purposes of this Act in so far as the said rules apply to corporations. R.S.O. 1990, c. C.40, s. 31 (1); 2004, c. 16, s. 2 (2).

No deduction of reserve

(1.1)  Paragraph 20 (1) (n) of the Income Tax Act (Canada) does not apply in determining for the purposes of this Act a partnership’s income for a fiscal period from a business in respect of a property sold in the course of the business if any property taken as security on the sale of the property has been sold, pledged, assigned or otherwise disposed of. 1998, c. 34, s. 34 (1); 2004, c. 16, s. 2 (2).

Application of s. 11.0.1

(1.2)  If a corporation holds a direct interest in and is a majority interest partner of a partnership at the end of a fiscal period of the partnership ending after December 31, 2002, the corporation’s share of the income or loss of the partnership for the fiscal period in respect of that interest shall be the amount that would be determined if,

(a) section 11.0.1 applied to the partnership for the fiscal period on the basis that the partnership was a corporation and the fiscal period was its taxation year; and

(b) section 11.0.1 applied to any other partnership in which the corporation had an indirect interest through the partnership and of which the corporation is a majority interest partner at any time in the fiscal period on the basis that the partnership was a corporation and its fiscal period was its taxation year. 2005, c. 28, Sched. D, s. 7 (1).

Exception

(2)  Subsection 96 (1.6) of the Income Tax Act (Canada) is not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 31 (2); 2004, c. 16, s. 2 (2).

(3)  Repealed: 2005, c. 28, Sched. D, s. 7 (2).

(3.1)  Repealed: 2005, c. 28, Sched. D, s. 7 (2).

Members of partnerships deemed to have permanent establishment in Ontario

(4)  Where any activity in Ontario of a partnership in a taxation year is such that, if it were a corporation, it would be subject to subsection 2 (2), each corporation that is deemed to be a member of the partnership shall be deemed to be subject to subsection 2 (2) for that taxation year. R.S.O. 1990, c. C.40, s. 31 (4); 2004, c. 16, s. 2 (2).

Definition

(5)  In the application of the said subdivision j for the purposes of this Act, the reference in subsection 96 (5.1) to “Minister” shall be deemed to be a reference to the Minister of National Revenue for Canada. R.S.O. 1990, c. C.40, s. 31 (5); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), cl. 96 (2.1) (b) (iv) (A)

(6)  For the purposes of this Act, the amount referred to in clause 96 (2.1) (b) (iv) (A) of the Income Tax Act (Canada) shall equal the corporation’s share of the foreign exploration and development expenses incurred by the partnership in the fiscal period that are deductible in computing income for the purposes of this Act. R.S.O. 1990, c. C.40, s. 31 (6); 2004, c. 16, s. 2 (2).

Limited partnership losses

(7)  In the application of subsection 96 (2.1) of the Income Tax Act (Canada) for the purposes of this Act, in determining the amount otherwise determined under paragraph 96 (2.1) (a) of that Act,

(a) there shall be added all amounts deducted by the corporation for the taxation year,

(i) under section 12 in respect of the corporation’s share of the qualified expenditures made by the partnership in the fiscal period, and

(ii) under section 13 in respect of the portion of the property of the partnership deemed to be eligible assets acquired by the corporation; and

(b) there shall be deducted all amounts included in the income of the corporation for the taxation year under subsection 12 (13) in respect of dispositions made by the partnership. R.S.O. 1990, c. C.40, s. 31 (7); 1992, c. 3, s. 7; 2004, c. 16, s. 2 (2).

Time of election

(8)  In applying subsection 96 (4) of the Income Tax Act (Canada), the reference to “the earliest of the days” shall be read as “the latest of the days” in the situation where subsection 31.1 (4) or (5) applies to the corporations and members of the partnership making the election under section 97 of that Act. 1997, c. 43, Sched. A, s. 12; 2001, c. 23, s. 27; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 7 - 25/06/1992; 1997, c. 43, Sched. A, s. 12 - 06/05/1997; 1998, c. 34, s. 34 (1, 2) - 18/12/1998

[2001, c. 23, s. 27](http://www.ontario.ca/laws/statute/S01023" \l "s27) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 13](http://www.ontario.ca/laws/statute/S04031" \l "sched9s13) - 16/12/2004

[2005, c. 28, Sched. D, s. 7 (1)](http://www.ontario.ca/laws/statute/S05028" \l "schedds7s1) - 01/01/2003; [2005, c. 28, Sched. D, s. 7 (2)](http://www.ontario.ca/laws/statute/S05028" \l "schedds7s2) - 16/12/2004

Tax elections

Definitions

**31.1** (1)  In this section,

“Ontario corporation” has the same meaning as in subsection 29.1 (1); (“société ontarienne”)

“Ontario partnership” has the same meaning as in subsection 29.1 (1). (“société de personnes ontarienne”) 1997, c. 42, Sched. A, s. 13 (1); 2004, c. 16, s. 2 (2).

Elections

(2)  The following rules apply in respect of elections under provisions of the Income Tax Act (Canada) that apply for the purposes of this Subdivision:

1. No election may be made by a corporation and the members of a partnership for the purposes of this Act unless the election has been properly made by the corporation and the members of the partnership for the purposes of the Income Tax Act (Canada).

2. If the amount elected or deemed to have been elected for the purposes of the Income Tax Act (Canada) is different from the amount that would be elected or deemed to have been elected for the purposes of this Act, without reference to section 5.1, the amount determined for the purposes of the Income Tax Act (Canada) shall apply for the purposes of this Act. 1997, c. 42, Sched. A, s. 13 (1); 2004, c. 16, s. 2 (2).

Exception to subs. (2)

(3)  Paragraph 2 of subsection (2) does not apply if,

(a) the property in respect of which an election is made is property described in subclause 5.1 (8) (a) (iii) or prescribed in the regulations and the conditions described in clauses (7) (a) and (b) would not be met if subsection (7) applied on the disposition of the property; or

(b) the rules or conditions prescribed by the regulations have been satisfied and the conditions described in clauses (7) (a) and (b) would not be met if subsection (7) applied on the disposition of the property. 2001, c. 23, s. 28 (1); 2004, c. 16, s. 2 (2).

Elected amounts

(4)  If every corporation required to make an election referred to in subsection (2), in respect of a disposition occurring after May 4, 1998, is an Ontario corporation for the taxation year to which the election relates, and the partnership whose partners are required to make the election is an Ontario partnership for the fiscal period to which the election relates, or the conditions or rules prescribed by the regulations are satisfied, the corporation and members of the partnership making an election under the Income Tax Act (Canada) may, upon delivering a joint election in a form approved by the Minister within the time specified in subsection 96 (4) of the Income Tax Act (Canada) as it reads for the purposes of this section, elect an amount in respect of the disposition equal to,

(a) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada);

(b) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada), less the cost amount of the property for the purposes of that Act, plus the cost amount of the property for the purposes of this Act, calculated immediately before the disposition to which the election relates; or

(c) an amount that is greater than the lesser of the amounts described in clauses (a) and (b), but less than the greater of the amounts described in clauses (a) and (b). 1998, c. 34, s. 35; 2004, c. 16, s. 2 (2).

Same

(5)  If the property in respect of which an election is made under the Income Tax Act (Canada), in respect of a disposition occurring after May 4, 1998, is property referred to in subclause 5.1 (8) (a) (i) or (ii), the corporations and members of the partnership making the election, if each of them has a permanent establishment in Ontario, may, upon delivering a joint election in a form approved by the Minister within the time specified in subsection 96 (4) of the Income Tax Act (Canada) as it reads for the purposes of this section, elect an amount in respect of the property equal to,

(a) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada);

(b) the amount elected or deemed to have been elected in respect of the property under the Income Tax Act (Canada), less the cost amount of the property for the purposes of that Act, plus the cost amount of the property for the purposes of this Act, calculated immediately before the disposition to which the election relates; or

(c) an amount that is greater than the lesser of the amounts described in clauses (a) and (b), but less than the greater of the amounts described in clauses (a) and (b). 1998, c. 34, s. 35; 2004, c. 16, s. 2 (2).

Anti-avoidance

(6)  Subsection (4) does not apply in respect of the disposition of a property occurring after May 4, 1998 if,

(a) the partnership that holds the property immediately after the disposition,

(i) ceases to be an Ontario partnership within 36 months after the end of its fiscal period to which the election relates and still holds the property immediately after it ceases to be an Ontario corporation, or

(ii) disposes of the property within 36 months after the end of its fiscal period to which the election relates; or

(b) it is reasonable to believe that one of the reasons the partnership, a member of the partnership or any other person conducted their business and affairs in a manner that resulted in the partnership being an Ontario partnership for the fiscal period to which the election relates is to increase or reduce an amount elected for the purposes of this Act. 1998, c. 34, s. 35; 2004, c. 16, s. 2 (2).

Same

(7)  Subsection (5) does not apply in respect of the disposition of a property occurring after May 4, 1998 referred to in that subsection if,

(a) within 36 months after the end of its fiscal period to which the election relates,

(i) the partnership that holds the property immediately after the disposition, disposes of the property, or

(ii) the percentage of the partnership’s income for the fiscal period that would be deemed to have been earned outside Ontario for the purposes of section 39, if the partnership were a corporation, its fiscal period were its taxation year and it had income for the fiscal period, is at least 10 percentage points less than the percentage of its income that would be deemed to be earned outside Ontario for the fiscal period to which the election relates; or

(b) it is reasonable to believe that one of the reasons for the manner in which the partnership, a member of the partnership or any other person has conducted their business and affairs is to increase or reduce an amount elected for the purposes of this Act. 1998, c. 34, s. 35; 2001, c. 23, s. 28 (2); 2004, c. 16, s. 2 (2).

Deemed fair market value of the consideration

(8)  The amount agreed upon by a corporation and the members of a partnership in an election in respect of the disposition of property to which subsection (3), (4) or (5) applies is deemed to be the fair market value of the consideration received by the transferor on the disposition of the property if the amount agreed upon in the election is more than the fair market value, as determined at the time of the disposition, of the consideration or the portion of the consideration received by the transferor that is not in the form of shares or a right to receive shares in the capital stock of a corporation. 2001, c. 23, s. 28 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 13 (1, 2) - 06/05/1997; 1998, c. 34, s. 35 - 05/05/1998

[2001, c. 23, s. 28 (1-3)](http://www.ontario.ca/laws/statute/S01023" \l "s28s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Subdivision J — Beneficiaries of Trusts

*Income Tax Act* (Canada), Part I (B) (k), applicable

**32** (1)  In determining for the purposes of this Act the income of a corporation that is a beneficiary of a trust, subdivision k of Division B of Part I of the Income Tax Act (Canada) is applicable in so far as the said subdivision applies to corporations that are beneficiaries of trusts, and any amount included in or deducted from the income of a corporation for a taxation year by virtue of that subdivision shall be included or deducted, as the case may be, in computing its income for the taxation year for the purposes of this Act. R.S.O. 1990, c. C.40, s. 32 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  In the application of the said subdivision for the purposes of this Act,

(a) subsection 1 (3.1) of this Act does not apply; and

(b) the references therein to “Minister” shall be deemed to be references to the Minister of National Revenue for Canada. R.S.O. 1990, c. C.40, s. 32 (2); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 8.

Anti-avoidance of provincial tax

(3)  If a trust, other than a mutual fund trust, is resident in a province other than Ontario and designates or elects an amount under the Income Tax Act (Canada) in respect of a beneficiary under the trust that is a corporation that has a permanent establishment in Ontario, the trust shall be deemed not to have designated or elected an amount under that Act for the purposes of this Act unless the designated or elected amount in each province in which the trust is resident is the same as the amount designated or elected for the purposes of the Income Tax Act (Canada). 1997, c. 43, Sched. A, s. 14 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 14 (1, 2) - 25/11/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 8](http://www.ontario.ca/laws/statute/S05028" \l "schedds8) - 01/01/2003

Division C — Computation of Taxable Income

Application of *Income Tax Act* (Canada), s. 132.1

**33** (1)  A corporation that is required under paragraph 132.1 (1) (d) of the Income Tax Act (Canada) to include an amount in its income for a taxation year for the purposes of that Act shall include the amount in its income for the taxation year for the purposes of this Act. R.S.O. 1990, c. C.40, s. 33 (1); 2004, c. 16, s. 2 (2).

Mutual fund trust unit

(2)  In computing the adjusted cost base to the corporation of a unit in a mutual fund trust, there shall be included any amount added to the adjusted cost base of the unit under subsection 132.1 (2) of that Act for the purposes of that Act. R.S.O. 1990, c. C.40, s. 33 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

*Income Tax Act* (Canada), Part I (C), applicable

**34** (1)  Except as hereinafter in this Division provided, in computing the taxable income of a corporation for a taxation year ending before January 1, 2009, Division C of Part I of the Income Tax Act (Canada) is applicable for the purposes of this Act in so far as the said Division applies to additions and deductions permitted to corporations. R.S.O. 1990, c. C.40, s. 34 (1); 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (5).

Restriction on carry back of losses incurred after 2008

(1.0.1)  The amount deducted under section 111 of the Income Tax Act (Canada), as it applies for the purposes of this Act, in computing the taxable income of a corporation for a taxation year ending before January 1, 2009 in respect of a non-capital loss, net capital loss, farm loss, restricted farm loss or limited partnership loss for a taxation year ending after December 31, 2008 shall not exceed the amount deducted under that section for the purposes of the Income Tax Act (Canada) by the corporation in respect of the loss for that taxation year ending before January 1, 2009. 2007, c. 11, Sched. B, s. 2 (6).

Gifts to Her Majesty in right of Ontario

(1.1)  The amount of a deduction for a taxation year under subsection 110.1 (1) of the Income Tax Act (Canada) in respect of gifts made to Her Majesty in right of Ontario, to a Crown agency within the meaning of the Crown Agency Act or to a foundation established under the Crown Foundations Act, 1996 is the lesser of “A” and “B”,

where,

“A” is the amount by which the income of the corporation for the taxation year exceeds the total of all other amounts, if any, deducted by the corporation under this Act for the taxation year,

(a) under paragraph 110.1 (1) (b) of the Income Tax Act (Canada), as it applies for the purposes of this Act in respect of gifts to Her Majesty in right of Canada or to a province other than Ontario, or

(b) under paragraph 110.1 (1) (a) of the Income Tax Act (Canada) as it applies for the purposes of this Act in respect of other gifts, and

“B” is the lesser of the amount of the corporation’s income for the taxation year and the total of,

(a) the amount of gifts made before March 23, 2004 to Her Majesty in right of Ontario, a Crown agency within the meaning of the Crown Agency Act or a foundation established under the Crown Foundations Act, 1996 to the extent that,

(i) the gifts were made in the taxation year or in the five preceding taxation years, and

(ii) the amount of the gifts is not otherwise deducted in computing the corporation’s income or taxable income for the year and was not deducted for a previous taxation year, and

(b) the total of all amounts each of which is the fair market value of a gift made after March 22, 2004 to Her Majesty in right of Ontario, a Crown agency within the meaning of the Crown Agency Act or a foundation established under the Crown Foundations Act, 1996 if,

(i) the gift was made in the taxation year or in the five preceding taxation years,

(ii) the gift is not a gift to which subsection 110.1 (1.2) of the Income Tax Act (Canada) would apply for the taxation year if that subsection applied to amounts deductible under this subsection, and

(iii) the fair market value of the gift is not otherwise deducted in computing the corporation’s income or taxable income under the Act for the taxation year and was not deducted for a previous taxation year. 1998, c. 34, s. 36 (1); 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 4.

Receipts for gifts to charities, etc.

(2)  In the application of subsections 110.1 (2) and (3) of the Income Tax Act (Canada) for the purposes of this Act, a “receipt” includes a photostatic reproduction of the receipt. R.S.O. 1990, c. C.40, s. 34 (2); 2004, c. 16, s. 2 (2).

Interpretation

(3)  In the application of the definition of “registered Canadian amateur athletic association” and “registered charity” in subsection 248 (1) of the Income Tax Act (Canada) for the purposes of this Act, the references therein to “Minister” shall be read as references to the Minister of National Revenue. R.S.O. 1990, c. C.40, s. 34 (3); 2004, c. 16, s. 2 (2).

Losses: application of *Income Tax Act* (Canada), subs. 111 (3)

(4)  In the application, for the purposes of this Act, of subsection 111 (3) of the Income Tax Act (Canada), paragraph (a) thereof shall be read as if subparagraph (ii) thereof were deleted. R.S.O. 1990, c. C.40, s. 34 (4); 2004, c. 16, s. 2 (2).

Losses: deemed deduction and claim

(5)  Despite subsection 111 (3) of the Income Tax Act (Canada), as made applicable by this section, where a corporation claims a deduction under subsection 42 (1) of this Act, or under clause 33 (1) (b) of the Corporations Tax Act, being chapter 97 of the Revised Statutes of Ontario, 1980, from tax otherwise payable in a taxation year, the corporation shall be deemed to have,

(a) deducted, in the computation of its taxable income for that year, the amount of all losses deductible under subsection 111 (1) of the Income Tax Act (Canada), as made applicable by subsection (1), which were neither deducted nor deemed by this subsection to have been deducted in the computation of taxable income for any previous taxation year; and

(b) claimed, in the computation of its taxable income for that year, the amount in respect of a net capital loss that is available to be claimed for that taxation year under subsection 111 (1) of the Income Tax Act (Canada), as made applicable by subsection (1), which was neither claimed nor deemed by this subsection to have been claimed in the computation of taxable income for any previous taxation year. 1994, c. 14, s. 11 (1); 2004, c. 16, s. 2 (2).

Idem

(6)  Where, under subsection (5),

(a) a corporation;

(b) a predecessor corporation of the corporation, within the meaning of section 87 of the Income Tax Act (Canada); or

(c) a subsidiary of the corporation, prior to a winding-up of the subsidiary to which the rules in subsection 88 (1) of the Income Tax Act (Canada) apply,

has been deemed to have deducted or claimed a loss in the computation of its taxable income for a taxation year, the amount of such loss shall be neither deducted nor claimed by the corporation in the computation of its taxable income for any other taxation year. R.S.O. 1990, c. C.40, s. 34 (6); 1994, c. 14, s. 11 (2); 2004, c. 16, s. 2 (2).

Same

(7)  In the application of section 110.5 or subparagraph 115 (1) (a) (vii) of the Income Tax Act (Canada) and in the application of the definition of “non-capital loss” in subsection 111 (8) of that Act for the purposes of this Act, the amount determined under section 110.5 or subparagraph 115 (1) (a) (vii) that is added for the purposes of that Act to the taxable income of the corporation for the taxation year and to the non-capital loss of the corporation for the taxation year under element B of the formula in the definition of “non-capital loss” in subsection 111 (8) shall be the amount added to the taxable income and included in the non-capital loss of the corporation for the taxation year for the purposes of this Act. 1996, c. 29, s. 45; 2001, c. 23, s. 29 (1); 2004, c. 16, s. 2 (2).

Idem, *Income Tax Act* (Canada), subpar. 110 (1) (f) (i)

(8)  Subparagraph 110 (1) (f) (i) of the Income Tax Act (Canada) is not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 34 (8); 2004, c. 16, s. 2 (2).

Idem, *Income Tax Act* (Canada), subcl. 111 (1) (e) (ii) (C) (I)

(9)  For the purposes of this Act, the amount referred to in subclause 111 (1) (e) (ii) (C) (I) of the Income Tax Act (Canada) shall equal the corporation’s share of the foreign exploration and development expenses incurred by the partnership in that fiscal period that are deductible in computing income for the purposes of this Act. R.S.O. 1990, c. C.40, s. 34 (9); 2004, c. 16, s. 2 (2).

Application of par. 111 (4) (e) of *Income Tax Act* (Canada)

(10)  The following rules apply in the application of paragraph 111 (4) (e) of the Income Tax Act (Canada) for the purposes of this Act:

1. The reference to the Minister shall be read as a reference to the Minister of National Revenue.

2. The paragraph shall be read without reference to the words “under this Part”.

3. If the corporation designates an amount under that paragraph for the purposes of determining the amount of the proceeds of disposition of a capital property for the purposes of the Income Tax Act (Canada), the corporation shall be deemed to have designated under that paragraph for the purposes of this Act the amount designated in respect of the property for the purposes of the Income Tax Act (Canada).

4. No amount may be designated by the corporation under that paragraph for the purposes of determining the amount of the proceeds of disposition of a capital property for the purposes of this Act unless the corporation designates an amount under that paragraph for the purposes of the Income Tax Act (Canada). 1997, c. 43, Sched. A, s. 15 (1); 2004, c. 16, s. 2 (2).

Exception

(10.1)  Paragraph 3 of subsection (10) does not apply if,

(a) the property in respect of which a designation is made is property described in clause 5.1 (8) (a) or prescribed by the regulations; or

(b) the rules or conditions prescribed by the regulations have been satisfied. 1997, c. 43, Sched. A, s. 15 (1); 2004, c. 16, s. 2 (2).

Designated amounts

(10.2)  Despite paragraph 3 of subsection (10), if the corporation making a designation under paragraph 111 (4) (e) of the Income Tax Act (Canada) for a taxation year ending after May 4, 1998 is an Ontario corporation for the taxation year to which the designation relates, or the rules or conditions prescribed in the regulations have been met, the corporation may, upon filing a designation in a form approved by the Minister with the return required under section 75 for the taxation year, designate an amount in respect of a property equal to the total of,

(a) an amount equal to,

(i) the amount designated in respect of the property under the Income Tax Act (Canada),

(ii) the amount designated in respect of the property under the Income Tax Act (Canada), less the cost amount of the property for the purposes of that Act, plus the cost amount of the property for the purposes of this Act, calculated immediately before making the designation, or

(iii) an amount that is greater than the lesser of the amounts described in subclauses (i) and (ii), but less than the greater of the amounts described in subclauses (i) and (ii); and

(b) the sum of,

(i) the amount of the excess, if any, by which the corporation’s non-capital loss balance at the end of the preceding taxation year, as determined under this Act, exceeds its non-capital loss balance at the end of that year, as determined for the purposes of the Income Tax Act (Canada), to the extent the excess has not been included in an amount designated under this subsection in respect of another property, and

(ii) the amount of the excess, if any, by which 4/3 of the corporation’s net capital loss balance at the end of the preceding taxation year, as determined under this Act, exceeds 4/3 of its net capital loss balance at the end of that year, as determined for the purposes of the Income Tax Act (Canada), to the extent the excess has not been included in an amount designated under this subsection in respect of another property. 1998, c. 34, s. 36 (2); 2004, c. 16, s. 2 (2).

Anti-avoidance

(10.3)  Subsection (10.2) does not apply in respect of a designation if,

(a) the corporation that made the designation,

(i) ceases to be an Ontario corporation within 36 months after the taxation year to which the designation relates and still holds the property immediately after it ceases to be an Ontario corporation, or

(ii) disposes of the property within 36 months after the taxation year to which the designation relates; or

(b) it is reasonable to believe that one of the reasons the corporation or any other person conducted their business and affairs in a manner that resulted in the corporation being an Ontario corporation for the taxation year to which the designation relates is to increase or reduce an amount designated for the purposes of this Act under paragraph 111 (4) (e) of the Income Tax Act (Canada). 1997, c. 43, Sched. A, s. 15 (1); 1998, c. 34, s. 36 (3); 2001, c. 23, s. 29 (2); 2004, c. 16, s. 2 (2).

Definition

(10.4)  In this section,

“Ontario corporation” has the same meaning as in subsection 29.1 (1). 1997, c. 43, Sched. A, s. 15 (1); 2004, c. 16, s. 2 (2).

Idem

(11)  In the application of subsections 111 (5.1), (5.2) and (5.3) of the Income Tax Act (Canada) for the purposes of this Act, the references therein to “this Part” shall be read as references to Part II of this Act. R.S.O. 1990, c. C.40, s. 34 (11); 2004, c. 16, s. 2 (2).

Limited partnership losses

(12)  In the application of paragraph 111 (1) (e) of the Income Tax Act (Canada) for the purposes of this Act, in determining the amount otherwise determined under clause 111 (1) (e) (ii) (B) of that Act,

(a) there shall be included all amounts deducted by the corporation for the taxation year under,

(i) section 12 in respect of the corporation’s share of the qualified expenditures made by the partnership in that fiscal period, and

(ii) section 13 in respect of the portion of the property of the partnership deemed to be eligible assets acquired by the corporation; and

(b) there shall be deducted all amounts included in the income of the corporation for the taxation year under subsection 12 (13) with respect to dispositions made by the partnership. R.S.O. 1990, c. C.40, s. 34 (12); 1992, c. 3, s. 8; 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), subss. 111 (10), (11)

(13)  Subsections 111 (10) and (11) of the Income Tax Act (Canada) do not apply for the purposes of this Act. 1997, c. 43, Sched. A, s. 15 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 8 - 25/06/1992; 1994, c. 14, s. 11 (1-3) - 17/12/1991; 1996, c. 29, s. 45 - 01/03/1994; 1997, c. 43, Sched. A, s. 15 (1, 2) - 06/05/1997; 1997, c. 43, Sched. A, s. 15 (3, 4) - 01/01/1997; 1998, c. 34, s. 36 (1) - 19/02/1997; 1998, c. 34, s. 36 (2-4) - 05/05/1998

[2001, c. 23, s. 29 (1)](http://www.ontario.ca/laws/statute/S01023" \l "s29s1) - 28/06/1999; [2001, c. 23, s. 29 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s29s2) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 4](http://www.ontario.ca/laws/statute/S05031" \l "sched5s4) - 23/03/2004

[2007, c. 11, Sched. B, s. 2 (5, 6)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s5) - 04/06/2007

Reduction of non-capital loss deductible

**35** (1)  The Minister may direct that the maximum amount that may be deducted by a corporation in a taxation year under paragraph 111 (1) (a) of the Income Tax Act (Canada), as applicable for the purposes of this Act, in respect of a non-capital loss incurred in a particular taxation year, shall not exceed the amount determined under subsection (2) if,

(a) the corporation deducted an amount under any of sections 12, 13, 13.1, 13.2, 13.3, 13.4 and 13.5 in determining the amount of its non-capital loss for the particular taxation year and the Ontario allocation factor of the corporation for the taxation year in which an amount in respect of the loss is to be deducted is greater than 120 per cent of the Ontario allocation factor for the particular taxation year in which the loss was incurred; or

(b) the Minister has directed the maximum amount deductible in respect of the loss for a prior taxation year. R.S.O. 1990, c. C.40, s. 35 (1); 1997, c. 43, Sched. A, s. 16; 1998, c. 34, s. 37 (1, 2); 1999, c. 9, s. 80 (1); 2000, c. 42, s. 14 (1); 2004, c. 16, s. 2 (2).

Maximum amount

(2)  If the Minister makes a direction under subsection (1) in respect of a loss to be deducted in a taxation year of a corporation, the maximum amount that may be deducted by the corporation in respect of a non-capital loss incurred in a particular taxation year shall be determined according to the following formula:

D = (A + B) – C

where:

“D” is the maximum amount deductible by the corporation in the taxation year in respect of the non-capital loss incurred in the particular taxation year;

“A” is the amount by which the non-capital loss for the particular taxation year exceeds the total of any amounts deducted under any of sections 12, 13, 13.1, 13.2, 13.3, 13.4 and 13.5 for the particular taxation year;

“B” is the allocation adjustment as determined under clause (3) (c); and

“C” is the aggregate of all amounts, each of which is the amount by which the non-capital loss deducted under paragraph 111 (1) (a) of the Income Tax Act (Canada), as applicable for the purposes of this Act, in computing the taxable income of the corporation for a prior taxation year, exceeds the allocation adjustment in respect of the loss for the prior taxation year.

R.S.O. 1990, c. C.40, s. 35 (2); 1998, c. 5, s. 9 (1); 1998, c. 34, s. 37 (3, 4); 1999, c. 9, s. 80 (2); 2000, c. 42, s. 14 (2); 2004, c. 16, s. 2 (2).

Idem

(3)  For the purposes of this section,

(a) “Ontario allocation factor” has the same meaning as in subsection 12 (1);

(b) the allocation factor for the taxation year in which the loss arose is the allocation factor of the corporation that incurred the loss in that year;

(c) the allocation adjustment is the product obtained where the amount of a non-capital loss incurred in a particular taxation year attributable to amounts deducted under any of sections 12, 13, 13.1, 13.2, 13.3, 13.4 and 13.5 is multiplied by the ratio of the Ontario allocation factor for the particular taxation year to the Ontario allocation factor for the year for which the allocation adjustment is being determined; and

(d) the amount of a non-capital loss incurred in a particular taxation year which is attributable to amounts deducted under any of sections 12, 13, 13.1, 13.2, 13.3, 13.4 and 13.5 is the amount by which the lesser of,

(i) the non-capital loss for the particular taxation year, or

(ii) the total of all amounts, each of which is an amount deducted under any of sections 12, 13, 13.1, 13.2, 13.3, 13.4 and 13.5,

exceeds,

(iii) the aggregate of all amounts, each of which is the amount deducted under paragraph 111 (1) (a) of the Income Tax Act (Canada), as applicable for the purposes of this Act, in computing its taxable income for a taxation year prior to the taxation year for which the allocation adjustment is being determined, in respect of the non-capital loss incurred in the particular taxation year, multiplied by the ratio of the Ontario allocation factor for the taxation year in which the amount in respect of the loss was deducted to the Ontario allocation factor for the particular taxation year in which the loss was incurred. R.S.O. 1990, c. C.40, s. 35 (3); 1998, c. 5, s. 9 (2); 1998, c. 34, s. 37 (5, 6); 1999, c. 9, s. 80 (3); 2000, c. 42, s. 14 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 16 - 07/05/1997; 1998, c. 5, s. 9 (1, 2) - 26/06/1998; 1998, c. 34, s. 37 (1, 3, 5) - 06/05/1998; 1998, c. 34, s. 37 (2, 4, 6) - 01/07/1998; 1999, c. 9, s. 80 (1-3) - 05/05/1999

[2000, c. 42, s. 14 (1-3)](http://www.ontario.ca/laws/statute/S00042" \l "s14s1) - 03/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Political donations

**36** (1)  In computing a corporation’s taxable income for a taxation year, there may be deducted the aggregate of amounts (the aggregate of which amounts is hereafter in this subsection referred to as “the amount contributed”) that are contributions for the purposes of the Election Finances Act and that are contributed in the taxation year, and in any previous taxation year ending after the 12th day of February, 1975 to the extent that such contributions have not already been deducted, by the corporation to registered candidates, to registered constituency associations or to registered parties, provided that,

(a) subject to subsection (3), such deduction shall not exceed the least of,

(i) the amount contributed,

(ii) its taxable income computed without reference to this section, and

(iii) $15,000, multiplied by the indexation factor determined under section 40.1 of the Election Finances Act and rounded to the nearest dollar;

(b) payment of each amount that is included in the amount contributed is proven by filing with the Minister receipts that are signed by a recorded agent of the registered candidate, registered constituency association or registered party, as the case may be, and that contain the information prescribed to be shown on such receipts. R.S.O. 1990, c. C.40, s. 36 (1); 1998, c. 9, s. 80 (1); 2004, c. 16, s. 2 (2).

Application

(1.1)  Subclause (1) (a) (iii), as re-enacted by the Statutes of Ontario, 1998, chapter 9, section 80, applies to contributions made after December 31, 1998, and each change to the amount determined under that subclause applies to contributions made on or after the date the change takes effect. 1998, c. 34, s. 38; 2004, c. 16, s. 2 (2).

Definitions

(2)  In this section,

“recorded agent” means a person on record with the Chief Electoral Officer as being authorized to accept contributions on behalf of a political party, constituency association or candidate registered under the Election Finances Act; (“agent désigné”)

“registered candidate”, with respect to an election of a member or members to serve in the Assembly, means a person who has been registered as a candidate for such election by the Chief Electoral Officer and whose name has not been deleted from the register of candidates maintained by the Chief Electoral Officer with respect to such election; (“candidat inscrit”)

“registered constituency association” means a registered constituency association within the meaning given to that expression by the Election Finances Act; (“association de circonscription inscrite”)

“registered party” means a registered party within the meaning given to that expression by the Election Finances Act. (“parti inscrit”) R.S.O. 1990, c. C.40, s. 36 (2); 1998, c. 9, s. 80 (2); 2004, c. 16, s. 2 (2); 2007, c. 15, s. 40 (1).

Corporations to which s. 39 is applicable

(3)  In respect of a corporation to which section 39 is applicable, the amount deductible under clause (1) (a) is the aggregate of,

(a) the amount which would otherwise be deducted under clause (1) (a);

(b) that proportion of the amount determined under clause (a) that,

(i) the taxable income of the corporation that is earned in jurisdictions other than Ontario (as computed for the purposes of section 39 and without reference to this section),

is to,

(ii) the amount by which the taxable income of the corporation exceeds the amount referred to in subclause (i). R.S.O. 1990, c. C.40, s. 36 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 9, s. 80 (1, 2) - 01/01/1999; 1998, c. 34, s. 38 - 01/01/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 15, s. 40 (1, 2)](http://www.ontario.ca/laws/statute/S07015" \l "s40s1) - 04/06/2007

Division D — Taxable Income Earned in Canada by Non-Residents

Non-residents’ taxable income earned in Canada

**37** (1)  The taxable income earned in Canada for a taxation year of a corporation to which subsection 2 (2) applies shall be computed in accordance with the rules provided in section 115 of the Income Tax Act (Canada) in so far as the said rules apply to corporations, except that for the purposes of this Act,

(a) there shall be included,

(i) income from property that is real property situated in Canada, or any interest therein, including,

(A) amounts that arose from the sale or rental of such property or interest therein, or both, and

(B) royalties and similar payments in respect of such property or interest therein, and

(ii) timber royalties in respect of a timber resource property or a timber limit situated in Canada;

(b) the amount of the income included in accordance with the said rules and clause (a) shall be determined in accordance with this Act; and

(c) in the application of paragraph 115 (1) (d) of the Income Tax Act (Canada), no deduction is permitted with respect to an amount referred to in subparagraph 110 (1) (f) (i) of that Act. R.S.O. 1990, c. C.40, s. 37 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  For the purpose of subsection (1), the taxable income earned in Canada of a corporation to which clause 2 (2) (b) applies shall not include any amount referred to in paragraph 115 (1) (b) of the Income Tax Act (Canada) in respect of the disposition of taxable Canadian property where a Tax Treaty or Convention between Canada and another country has determined that no tax is payable by the corporation in respect of the disposition. R.S.O. 1990, c. C.40, s. 37 (2); 2004, c. 16, s. 2 (2).

Idem

(3)  Where a transitional rule in a prescribed Tax Treaty or Convention between Canada and another country has applied to exclude an amount otherwise included in taxable income earned in Canada for the purposes of the Income Tax Act (Canada) in respect of a disposition of a taxable Canadian property, that rule shall be applied for the purposes of this Act to determine the amount, if any, to be excluded from taxable income earned in Canada in respect of that disposition. R.S.O. 1990, c. C.40, s. 37 (3); 2004, c. 16, s. 2 (2).

Competent authority agreements

(4)  Section 115.1 of the Income Tax Act (Canada) applies for the purposes of this Act in respect of an agreement made under the provisions of a tax treaty, convention or agreement if a regulation has been made under subsection 1 (8) to modify the provisions of this Act for the purpose of giving effect to a provision of the treaty, convention or agreement. 1996, c. 29, s. 46; 2004, c. 16, s. 2 (2).

Same

(5)  If a regulation has not been made under subsection 1 (8) in respect of a particular treaty, convention or agreement, section 115.1 of the Income Tax Act (Canada) is applicable for the purposes of this Act in respect of an agreement referred to in section 115.1 of that Act that was made under that treaty, convention or agreement only to the extent that,

(a) the agreement deals with a provision of that Act,

(i) that applies for the purposes of this Act,

(ii) that has not been replaced for the purposes of this Act by a provision of this Act, and

(iii) in respect of which this Act does not contain provisions that are to apply in addition to the provision; and

(b) the agreement does not deal with a disposition of taxable Canadian property to a non-resident individual or a non-resident partnership. 1996, c. 29, s. 46; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 5.

Designated investment services to qualified non-resident

(6)  For the purposes of this Division and subsection 2 (2), a qualified non-resident is not considered to have a permanent establishment in Ontario at any particular time in a taxation year ending after December 31, 1998 solely because a Canadian service provider provides designated investment services to the qualified non-resident through a permanent establishment of the Canadian service provider in Ontario, if the conditions described in paragraph 115.2 (2) (b) of the Income Tax Act (Canada) are met. 2001, c. 23, s. 30; 2004, c. 16, s. 2 (2).

Interpretation

(7)  For the purposes of subsection (6), “Canadian service provider”, “designated investment services” and “qualified non-resident” have the meanings assigned by subsection 115.2 (1) of the Income Tax Act (Canada). 2001, c. 23, s. 30; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 29, s. 46 - 01/01/1985

[2001, c. 23, s. 30](http://www.ontario.ca/laws/statute/S01023" \l "s30) - 01/01/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 5](http://www.ontario.ca/laws/statute/S05031" \l "sched5s5) - 15/12/2005

Division D.1 — Tax Incentive for Investing in Ontario Jobs and Opportunity Bonds

Tax incentive, Ontario Jobs and Opportunity Bonds

**37.1** (1)  In this section,

“Authority” means the Ontario Strategic Infrastructure Financing Authority continued under subsection 2 (1) of the Ontario Strategic Infrastructure Financing Authority Act, 2002; (“Office”)

“Ontario Jobs and Opportunity Bond” means a bond, debenture or other security,

(a) that is issued by the Authority and is designated by it as an Ontario Jobs and Opportunity Bond,

(b) that is issued by a subsidiary, trust, partnership or other entity established or acquired by the Authority and is designated by the Authority as an Ontario Jobs and Opportunity Bond, or

(c) that is designated by the Minister as an Ontario Jobs and Opportunity Bond. (“obligation ontarienne de financement d’emplois et de projets”) 2002, c. 22, s. 40; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 14.

Tax incentive

(2)  A corporation that owns an Ontario Jobs and Opportunity Bond at any time in a taxation year is entitled to receive a tax incentive under this section in respect of the interest received or receivable on the Bond in the taxation year. 2002, c. 22, s. 40; 2004, c. 16, s. 2 (2).

Eligible corporation

(3)  A corporation is eligible to receive a tax incentive under this section if it satisfies the prescribed conditions. 2002, c. 22, s. 40; 2004, c. 16, s. 2 (2).

Certificate

(4)  A certificate of the chair, a vice-chair, the chief executive officer or any officer of the Authority designated by its board of directors which states that an entity is a subsidiary, trust, partnership or other entity established or acquired by the Authority or that a bond, debenture or other security is an Ontario Jobs and Opportunity Bond is conclusive evidence of the facts stated. 2002, c. 22, s. 40; 2004, c. 16, s. 2 (2).

Regulations

(5)  The Minister may make regulations,

(a) prescribing the nature of the tax incentive and the manner in which it is calculated;

(b) prescribing the conditions that must be satisfied for a corporation to be eligible to receive a tax incentive under this section;

(c) prescribing circumstances in which a tax incentive must be repaid by a corporation and prescribing the rules applicable to the repayment;

(d) prescribing any other matter that the Minister considers necessary or advisable for the purposes of this section. 2002, c. 22, s. 40; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2002, c. 22, s. 40](http://www.ontario.ca/laws/statute/S02022" \l "s40) - 27/03/2003

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 14](http://www.ontario.ca/laws/statute/S04031" \l "sched9s14) - 16/12/2004

Division E — Computation of Income Tax Payable

Amount of tax payable

**38** (1)  The tax payable by a corporation for a taxation year under this Part on its taxable income or on its taxable income earned in Canada, as the case may be, is the amount determined by multiplying such amount by the specified basic rate of the corporation for the taxation year. 2000, c. 10, s. 2; 2004, c. 16, s. 2 (2).

Specified basic rate

(2)  The specified basic rate of a corporation for a taxation year is the total of,

(a) 15.5 per cent multiplied by the ratio of the number of days in the taxation year that are before May 2, 2000 to the number of days in the taxation year;

(b) 14.5 per cent multiplied by the ratio of the number of days in the taxation year that are after May 1, 2000 and before January 1, 2001 to the total number of days in the taxation year;

(c) 14 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2000 and before October 1, 2001 to the total number of days in the taxation year;

(d) 12.5 per cent multiplied by the ratio of the number of days in the taxation year that are after September 30, 2001 and before January 1, 2004 to the total number of days in the taxation year;

(e) 14 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2003 to the total number of days in the taxation year.

(f) Repealed: 2003, c. 7, s. 2.

(g) Repealed: 2003, c. 7, s. 2.

2000, c. 10, s. 2; 2001, c. 8, s. 20 (1); 2001, c. 23, s. 31 (1-3); 2002, c. 22, s. 41; 2003, c. 7, s. 2; 2004, c. 16, s. 2 (2).

(3)  Repealed: 2001, c. 23, s. 31 (4).

(4)  Repealed: 2001, c. 23, s. 31 (5).

**Section Amendments with date in force (d/m/y)**

[2000, c. 10, s. 2](http://www.ontario.ca/laws/statute/S00010" \l "s2) - 02/05/2000

[2001, c. 8, s. 20 (1)](http://www.ontario.ca/laws/statute/S01008" \l "s20s1) - 01/01/2002; [2001, c. 8, s. 20 (2)](http://www.ontario.ca/laws/statute/S01008" \l "s20s2) - no effect - see [2001, c. 23, s. 31 (5)](http://www.ontario.ca/laws/statute/S01023" \l "s31s5) - 01/10/2001; [2001, c. 23, s. 31 (1, 3-5)](http://www.ontario.ca/laws/statute/S01023" \l "s31s1) - 01/10/2001; [2001, c. 23, s. 31 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s31s2) - 01/01/2002

[2002, c. 22, s. 41](http://www.ontario.ca/laws/statute/S02022" \l "s41) - 09/12/2002

[2003, c. 7, s. 2](http://www.ontario.ca/laws/statute/S03007" \l "s2) - 01/01/2004

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Temporary surtax on banks

**38.1** In addition to the tax, if any, otherwise payable under this Part by a bank for a taxation year ending after April 30, 1992 and commencing before November 1, 1993, the bank shall pay a surtax for each such taxation year calculated according to the following formula:

S = 0.1 × T × A/B

where:

“S” is the amount of the surtax for the taxation year;

“T” is the amount of tax, if any, otherwise payable under this Part by the bank for the taxation year, determined without reference to this section and section 40;

“A” is the number of days in the taxation year after April 30, 1992 and before November 1, 1993; and

“B” is the total number of days in the taxation year.

1994, c. 14, s. 12 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 12 (1, 2) - 01/05/1992

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Deduction from income tax, inter-provincial allocation

**39** (1)  There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation an amount calculated using the formula,

A × B

in which,

“A” is the specified basic rate of the corporation for the taxation year, as determined under subsection 38 (2), and

“B” is that portion of the taxable income or the taxable income earned in Canada, as the case may be, of the corporation which is earned in the taxation year in each jurisdiction other than Ontario, determined under rules prescribed by the regulations.

2000, c. 10, s. 2; 2004, c. 16, s. 2 (2).

Application provision, 2000 Budget

(2)  This section, as it is re-enacted by the Taxpayer Dividend Act, 2000, applies with respect to taxation years ending after May 1, 2000. 2000, c. 10, s. 2; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2000, c. 10, s. 2](http://www.ontario.ca/laws/statute/S00010" \l "s2) - 02/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Foreign tax deduction

**40** (1)  Where a corporation has a permanent establishment in Ontario, and,

(a) the corporation has included in computing its income for the taxation year,

(i) income that was derived from sources within a jurisdiction outside Canada in the form of dividends, interest, rents or royalties received in the year, or

(ii) the amount by which,

(A) the aggregate of that part of the corporation’s taxable capital gains for the taxation year from the disposition of property as may reasonably be considered to be income from a source within a jurisdiction outside Canada,

exceeds,

(B) the aggregate of such of the corporation’s allowable capital losses for the year from the disposition of property as may reasonably be considered to be a loss from a source within that jurisdiction outside Canada,

hereinafter in this section referred to as “foreign investment income”; or

(b) the corporation, having included in its income for the taxation year foreign investment income from sources within a jurisdiction outside Canada, also included income from a business carried on by it in that jurisdiction, hereinafter in this section referred to as “foreign business income”,

and where,

(c) for the purposes of subsection 126 (2) of the Income Tax Act (Canada),

(i) such foreign investment income has not been included as part of such foreign business income,

(ii) such foreign investment income has been excluded from the calculation of gross revenue or any part thereof for the purpose of allocating taxable income to a jurisdiction outside Ontario in accordance with the regulations made under section 39, and

(iii) where the corporation is a bank which has allocated any of its taxable income for the taxation year to a jurisdiction outside Canada under the regulations made under section 39, such foreign investment income has not been derived from loans and deposits of the bank’s permanent establishments in jurisdictions outside Canada used in the determination of such allocation; and

(d) the corporation is entitled to a deduction under section 126 of the Income Tax Act (Canada), hereinafter in this section referred to as a “foreign tax credit”, with respect to any income or profits tax paid to such jurisdiction on such foreign investment income or on such foreign investment income and foreign business income,

the corporation may deduct from the tax otherwise payable under this Part for the taxation year an amount equal to the lesser of,

(e) the amount calculated using the formula,

A × B × C

in which,

“A” is the amount of the foreign investment income,

“B” is the specified basic rate of the corporation for the taxation year, as determined under subsection 38 (2), and

“C” is the corporation’s Ontario allocation factor for the taxation year;

(f) the amount determined by applying the Ontario allocation factor for the taxation year to the deficiency, if any, between,

(i) that portion of the income or profits tax paid for the taxation year by the corporation to the jurisdiction outside Canada in respect of such foreign investment income, that was not deducted, by virtue of subsection 20 (12) of the Income Tax Act (Canada) for the purposes of that Act or for the purposes of this Act by virtue of that subsection as made applicable by section 11 of this Act, in computing the corporation’s income for the year, and

(ii) the foreign tax credit allowed for the taxation year in respect of such foreign investment income under subsection 126 (1) of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 40 (1); 2000, c. 10, s. 3 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  For greater certainty, where the income of a corporation for a taxation year is in whole or in part from sources in more than one jurisdiction outside Canada, subsection (1) shall be read as providing for a separate deduction in respect of each jurisdiction outside Canada. R.S.O. 1990, c. C.40, s. 40 (2); 2004, c. 16, s. 2 (2).

Ontario allocation factor

(3)  For the purposes of this section, the Ontario allocation factor for the taxation year is the ratio that,

(a) that portion of the corporation’s taxable income not deemed to have been earned in jurisdictions outside of Ontario for the purposes of section 39,

is to,

(b) the corporation’s taxable income. R.S.O. 1990, c. C.40, s. 40 (3); 2004, c. 16, s. 2 (2).

Idem

(4)  In this section,

“foreign investment income”, of a corporation for a taxation year, does not include interest income attributable to a loan for any period in the year during which the loan was an “eligible loan” as defined in subsection 33.1 (1) of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 40 (4); 2004, c. 16, s. 2 (2).

Calculation for banks

(5)  In calculating the amount of a deduction permitted to a bank under subsection (1) for a taxation year ending after April 30, 1992 and commencing before November 1, 1993, the amount determined under clause (1) (e) shall be deemed to be the amount otherwise determined under that clause for the taxation year plus an additional amount calculated according to the following formula:

Q = 0.1 × T × A/B

where:

“Q” is the additional amount for the taxation year;

“T” is the amount otherwise determined under clause (1) (e) for the taxation year without reference to this subsection;

“A” is the number of days in the taxation year after April 30, 1992 and before November 1, 1993; and

“B” is the total number of days in the taxation year.

1994, c. 14, s. 13; 2004, c. 16, s. 2 (2).

Application provision, 2000 Budget

(6)  Clause (1) (e), as it is re-enacted by the Taxpayer Dividend Act, 2000, applies with respect to taxation years ending after May 1, 2000. 2000, c. 10, s. 3 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 13 - 01/05/1992

[2000, c. 10, s. 3 (1, 2)](http://www.ontario.ca/laws/statute/S00010" \l "s3s1) - 02/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Small business incentive

**41** (1)  There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to the percentage described in subsection (1.1) of the amount determined under subsection (2), if the corporation has made a deduction under section 125 of the Income Tax Act (Canada) for the taxation year, or could have made a deduction under that section if its business limit for the taxation year under paragraph 125 (1) (c) of that Act had been determined without reference to subsection 125 (5.1) of that Act. 1996, c. 1, Sched. B, s. 5 (1); 1998, c. 5, s. 10 (1); 2004, c. 16, s. 2 (2).

Same

(1.1)  Subject to subsections (1.2) to (1.4), the percentage referred to in subsection (1) is,

(a) 6 per cent, in respect of a taxation year that ends after June 30, 1994 and before May 5, 1998;

(b) 6.5 per cent, in respect of a taxation year that ends after May 4, 1998 and before January 1, 1999;

(c) 7 per cent, in respect of a taxation year that ends after December 31, 1998 and before January 1, 2000;

(d) 7.5 per cent, in respect of a taxation year that ends after December 31, 1999 and before October 1, 2001;

(e) 6.5 per cent, in respect of a taxation year that ends after September 30, 2001 and before January 1, 2003;

(f) 7 per cent, in respect of a taxation year that ends after December 31, 2002 and before January 1, 2004;

(g) 8.5 per cent, in respect of a taxation year that ends after December 31, 2003.

(h) Repealed: 2003, c. 7, s. 3 (1).

(i) Repealed: 2003, c. 7, s. 3 (2).

(j) Repealed: 2000, c. 10, s. 4 (1).

1998, c. 5, s. 10 (2); 2000, c. 10, s. 4 (1); 2001, c. 8, s. 21 (1); 2001, c. 23, s. 32 (1-3); 2002, c. 22, s. 42 (1, 2); 2003, c. 7, s. 3 (1, 2); 2004, c. 16, s. 2 (2).

Same, 1998

(1.2)  Despite clause (1.1) (b), if the taxation year begins before May 5, 1998, the increase from 6 per cent to 6.5 per cent shall be prorated according to the number of days in the taxation year that are after May 4, 1998. 1998, c. 5, s. 10 (2); 2004, c. 16, s. 2 (2).

Same, 1999

(1.3)  Despite clause (1.1) (c),

(a) if the taxation year begins before May 5, 1998, the reference to 7 per cent in clause (c) shall be read as the percentage equal to the total of,

(i) 6 per cent multiplied by the ratio of the number of days in the taxation year that are before May 5, 1998 to the total number of days in the taxation year,

(ii) 6.5 per cent multiplied by the ratio of the number of days in the taxation year that are after May 4, 1998 and before January 1, 1999 to the total number of days in the taxation year, and

(iii) 7 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 1998 and before January 1, 2000 to the total number of days in the taxation year; and

(b) if the taxation year begins after May 4, 1998 and before January 1, 1999, the increase from 6.5 per cent to 7 per cent shall be prorated according to the number of days in the taxation year that are after December 31, 1998 and before January 1, 2000. 1998, c. 5, s. 10 (2); 2004, c. 16, s. 2 (2).

Same, 2000 and later

(1.4)  Despite clauses (1.1) (d) to (g), if the taxation year begins on or before the particular September 30 or December 31 indicated in clause (d), (e), (f) or (g), the change in the percentage from the percentage set out in the preceding clause to the percentage set out in the applicable clause must be prorated according to the number of days in the taxation year that are after the particular September 30 or December 31, as the case may be. 2003, c. 7, s. 3 (3); 2004, c. 16, s. 2 (2).

Same

(2)  For the purpose of subsection (1), the amount determined under this subsection is the amount calculated using the formula,

A × B

in which,

“A” is the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the Income Tax Act (Canada) for the taxation year and not exceeding the total of the amounts described in clauses (3.2) (a) to (f), and

“B” is the Ontario small business allocation factor for the taxation year.

2000, c. 10, s. 4 (3); 2003, c. 7, s. 3 (4); 2004, c. 16, s. 2 (2); 2009, c. 18, Sched. 9, s. 1.

Adjustment to taxable income

(3)  For the purposes of determining the amount of any deduction for a taxation year under subsection 41 (1), 42 (1) or 43 (1) from the tax otherwise payable under this Part, the amount of the corporation’s taxable income for the year for the purposes of paragraph 125 (1) (b) of the Income Tax Act (Canada) shall be deemed, for the purposes of the application of that paragraph to subsections 41 (2), 42 (2) and 43 (2), to be,

(a) the aggregate of,

(i) the amount of the corporation’s taxable income for the year for the purposes of the Income Tax Act (Canada), and

(ii) the amount of losses deducted under section 111 of the Income Tax Act (Canada) by the corporation in the computation of its taxable income for the year for the purposes of that Act,

minus,

(b) the amount of losses deducted by the corporation under section 111 of the Income Tax Act (Canada), as made applicable by subsection 34 (1), or deemed to have been deducted by subsection 34 (5), in the computation of its taxable income for the year for the purposes of this Act. R.S.O. 1990, c. C.40, s. 41 (3); 2004, c. 16, s. 2 (2).

Business limit

(3.1)  For the purposes of this section and subsection 43 (4), the amount of the corporation’s business limit for the taxation year under paragraph 125 (1) (c) of the Income Tax Act (Canada) shall be determined without reference to subsection 125 (5.1) of that Act. 2004, c. 31, Sched. 9, s. 15 (1).

Application of certain federal provisions

(3.2)  In applying subsections 125 (2) and (3) of the Income Tax Act (Canada) to determine a corporation’s business limit under paragraph 125 (1) (c) of that Act for the purposes of this section and subsection 43 (4) for a taxation year, the dollar amount set out in subsections 125 (2) and (3) of the Income Tax Act (Canada) shall be read as a reference to the total of,

(a) $200,000 multiplied by the ratio of the number of days in the taxation year that are before January 1, 2001 to the total number of days in the taxation year;

(b) $240,000 multiplied by the ratio of the number of days in the taxation year that are after December 31, 2000 and before October 1, 2001 to the total number of days in the taxation year;

(c) $280,000 multiplied by the ratio of the number of days in the taxation year that are after September 30, 2001 and before January 1, 2003 to the total number of days in the taxation year;

(d) $320,000 multiplied by the ratio of the number of days in the taxation year that are after December 31, 2002 and before January 1, 2004 to the total number of days in the taxation year;

(e) $400,000 multiplied by the ratio of the number of days in the taxation year that are after December 31, 2003 and before January 1, 2007 to the total number of days in the taxation year; and

(f) $500,000 multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year. 2003, c. 7, s. 3 (5); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 15 (2); 2008, c. 7, Sched. E, s. 2.

Ontario small business allocation factor

(4)  For the purposes of this section, the Ontario small business allocation factor for the taxation year is the ratio of “A” to “B” where,

“A” is the amount of that portion of the corporation’s taxable income for the taxation year that is determined to have been earned in Ontario under the rules referred to in the definition of “taxable income earned in the year in a province” in subsection 124 (4) of the Income Tax Act (Canada), and

“B” is the total amount of the portions of the corporation’s taxable income for the taxation year that are determined to have been earned in provinces of Canada, under the rules referred to in the definition of “taxable income earned in the year in a province” in subsection 124 (4) of the Income Tax Act (Canada). 2004, c. 31, Sched. 9, s. 15 (3).

Definition

(5)  In this section and section 42,

“tax otherwise payable under this Part” means the tax for the taxation year otherwise payable by the corporation under this Part after making any deduction applicable under sections 39 and 40, but before making any deduction under this section or section 42, whichever is applicable, or section 43. R.S.O. 1990, c. C.40, s. 41 (5); 2004, c. 16, s. 2 (2).

Specified partnership income

(6)  In applying subparagraph 125 (1) (a) (ii) of the Income Tax Act (Canada) for the purposes of this section for a taxation year ending after May 1, 2000, the reference to “specified partnership income” in that subparagraph shall be read as a reference to the amount that would be determined under the definition of “specified partnership income” in subsection 125 (7) of that Act in respect of a partnership if the variable “M” in that definition were the amount equal to the lesser of,

(a) the amount determined under subsection (3.2); and

(b) the amount determined under subsection (7). 2002, c. 22, s. 42 (4); 2004, c. 16, s. 2 (2).

Same

(7)  For the purposes of clause (6) (b), the amount is determined using the formula,

( B/365 ) × C

in which,

“B” is the amount determined under subsection (3.2), and

“C” is the total of all amounts each of which is the number of days contained in a fiscal period of the partnership ending in the year.

2002, c. 22, s. 42 (4); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 14 (1, 2) - 01/05/1992; 1996, c. 1, Sched. B, s. 5 (1, 2) - 01/07/1994; 1998, c. 5, s. 10 (1, 2) - 05/05/1998

[2000, c. 10, s. 4 (1-4)](http://www.ontario.ca/laws/statute/S00010" \l "s4s1) - 02/05/2000

[2001, c. 8, s. 21 (1)](http://www.ontario.ca/laws/statute/S01008" \l "s21s1) - 01/01/2002; [2001, c. 8, s. 21 (2, 3)](http://www.ontario.ca/laws/statute/S01008" \l "s21s2) - no effect - see [2001, c. 23, s. 32 (5, 8)](http://www.ontario.ca/laws/statute/S01023" \l "s32s5) - 01/10/2001; [2001, c. 23, s. 32 (1-8)](http://www.ontario.ca/laws/statute/S01023" \l "s32s1) - 01/10/2001

[2002, c. 22, s. 42 (1-3)](http://www.ontario.ca/laws/statute/S02022" \l "s42s1) - 09/12/2002; [2002, c. 22, s. 42 (4)](http://www.ontario.ca/laws/statute/S02022" \l "s42s4) - 02/05/2000

[2003, c. 7, s. 3 (1-4)](http://www.ontario.ca/laws/statute/S03007" \l "s3s1) - 01/01/2004; [2003, c. 7, s. 3 (5)](http://www.ontario.ca/laws/statute/S03007" \l "s3s5) - 01/01/2003

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 15 (1, 3)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s15s1) - 16/12/2004; [2004, c. 31, Sched. 9, s. 15 (2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s15s2) - 01/01/2003

[2008, c. 7, Sched. E, s. 2](http://www.ontario.ca/laws/statute/S08007" \l "schedes2) - 01/01/2007

[2009, c. 18, Sched. 9, s. 1](http://www.ontario.ca/laws/statute/S09018" \l "sched9s1) - 01/01/2007

Surtax on Canadian-controlled private corporations

**41.1** (1)  Every corporation that has claimed a deduction under subsection 41 (1) for a taxation year shall pay, in addition to the amount of tax otherwise payable for the taxation year under this Part, a surtax equal to the lesser of,

(a) the amount claimed as a deduction by the corporation under subsection 41 (1) for the taxation year; or

(b) the amount calculated using the formula,

A × B × C/D

in which,

“A” is the specified rate of the corporation for the taxation year, as determined under subsection (3),

“B” is the amount, if any, by which “X” plus “Y” exceeds “Z”, where “X” is the taxable income of the corporation for the taxation year, “Y” is the taxable income of each corporation (“associated corporation”) with which the corporation was associated at any time during the taxation year, for the last taxation year of the associated corporation that ended on or before the last day of the taxation year of the corporation, and “Z” is the total of the amounts described in clauses 41 (3.2) (a) to (f),

“C” is the amount determined by the corporation for the taxation year under subsection 41 (2), and

“D” is the total of the amounts described in clauses 41 (3.2) (a) to (f).

1992, c. 3, s. 9; 1994, c. 14, s. 15 (1); 2000, c. 10, s. 5 (1); 2003, c. 7, s. 4 (1, 2); 2004, c. 16, s. 2 (2); 2009, c. 18, Sched. 9, s. 2.

Rules for short taxation years and associated corporations

(2)  The following rules apply in computing a corporation’s surtax for a taxation year under subsection (1):

1. If the taxation year of the corporation is less than fifty-one weeks, the taxable income of the corporation for the taxation year shall be deemed to be the amount of its taxable income as otherwise determined, multiplied by the ratio of 365 to the number of days in the taxation year.

2. If the taxation year of a corporation (called in this subsection the “associated corporation”) that was associated with the corporation during the corporation’s taxation year is less than fifty-one weeks and is the only taxation year of the associated corporation ending in the corporation’s taxation year, the taxable income of the associated corporation for that taxation year shall be deemed to be the amount of its taxable income as otherwise determined for that taxation year, multiplied by the ratio of 365 to the number of days in the taxation year.

3. If the associated corporation has two or more taxation years ending in the corporation’s taxation year, the taxable income of the associated corporation for the last taxation year ending on or before the last day of the corporation’s taxation year is deemed to be the aggregate of all amounts, each of which is the taxable income of the associated corporation for each taxation year which ended in the corporation’s taxation year and during which the associated corporation was at any time associated with the corporation, multiplied by the ratio of 365 to the total number of days in all of those taxation years. 1992, c. 3, s. 9; 1994, c. 14, s. 15 (2); 2004, c. 16, s. 2 (2).

Specified rate

(3)  For the purposes of this section, the specified rate of a corporation for a taxation year ending after May 4, 1998 is the total of,

(a) 4 per cent multiplied by the ratio of the number of days in the taxation year that are after April 30, 1992 and before May 5, 1998 to the total number of days in the taxation year;

(b) 4.33 per cent multiplied by the ratio of the number of days in the taxation year that are after May 4, 1998 and before January 1, 1999 to the total number of days in the taxation year;

(c) 4.67 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 1998 and before January 1, 2000 to the total number of days in the taxation year;

(d) 5 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 1999 and before October 1, 2001 to the total number of days in the taxation year;

(e) 4.333 per cent multiplied by the ratio of the number of days in the taxation year that are after September 30, 2001 and before January 1, 2003 to the total number of days in the taxation year;

(f) 4.667 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2002 and before January 1, 2007 to the total number of days in the taxation year; and

(g) 4.25 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year.

(h) Repealed: 2003, c. 7, s. 4 (3).

(i) Repealed: 2003, c. 7, s. 4 (4).

2000, c. 10, s. 5 (2); 2001, c. 8, s. 22 (1); 2001, c. 23, s. 33 (1-3); 2002, c. 22, s. 43; 2003, c. 7, s. 4 (3, 4); 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 3.

Transitional

(4)  The amount of a corporation’s surtax under this section for a taxation year that commences before January 1, 1992 and ends after December 31, 1991 shall be that proportion of the amount otherwise determined for the taxation year under subsection (1) that the number of days in the taxation year after December 31, 1991 is of the total number of days in the taxation year. 1994, c. 14, s. 15 (3); 2004, c. 16, s. 2 (2).

Taxable income determination

(5)  For the purposes of this section, the taxable income of a corporation that is subject to tax under subsection 2 (2) or that is not subject to tax under this Act shall be determined as if the corporation were a corporation described in and taxable under subsection 2 (1). 1994, c. 14, s. 15 (4); 2004, c. 16, s. 2 (2).

Associated corporations

(6)  Where two corporations would, but for the provisions of subsection 256 (2) of the Income Tax Act (Canada), not be associated with each other at any time, but are each associated with, or are deemed to be associated with, a third corporation at a particular time, the corporations shall be deemed for the purposes of this section to be associated with each other at the particular time, unless,

(a) the third corporation is not a Canadian-controlled private corporation at the particular time; or

(b) the third corporation elects under subsection 256 (2) of the Income Tax Act (Canada) not to be associated with either of the two corporations for its taxation year that includes the particular time. 1994, c. 14, s. 15 (4); 2004, c. 16, s. 2 (2).

(7)  Repealed: 2001, c. 23, s. 33 (4).

(8)  Repealed: 2001, c. 23, s. 33 (5).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 9 - 25/06/1992; 1994, c. 14, s. 15 (1-4) - 25/06/1992; 1998, c. 5, s. 11 - 05/05/1998

[2000, c. 10, s. 5 (1, 2)](http://www.ontario.ca/laws/statute/S00010" \l "s5s1) - 02/05/2000

[2001, c. 8, s. 22 (1, 2)](http://www.ontario.ca/laws/statute/S01008" \l "s22s1) - no effect - see [2001, c. 23, s. 33 (3, 5)](http://www.ontario.ca/laws/statute/S01023" \l "s33s3) - 01/10/2001; [2001, c. 23, s. 33 (1-5)](http://www.ontario.ca/laws/statute/S01023" \l "s33s1) - 01/10/2001

[2002, c. 22, s. 43](http://www.ontario.ca/laws/statute/S02022" \l "s43) - 09/12/2002

[2003, c. 7, s. 4 (1-4)](http://www.ontario.ca/laws/statute/S03007" \l "s4s1) - 01/01/2004

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2008, c. 7, Sched. E, s. 3](http://www.ontario.ca/laws/statute/S08007" \l "schedes3) - 01/01/2007

[2009, c. 18, Sched. 9, s. 2 (1, 2)](http://www.ontario.ca/laws/statute/S09018" \l "sched9s2s1) - 01/01/2007

New enterprise incentive

**42** (1)  There may be deducted from the tax otherwise payable by a corporation under this Part for the corporation’s first, second or third taxation year ending after the date of its incorporation an amount equal to 15.5 per cent of the amount determined under subsection 41 (2), if,

(a) the corporation was incorporated after the 13th day of May, 1982 and before the 21st day of April, 1988;

(b) the corporation commenced carrying on an active business in Canada before the 21st day of April, 1988; and

(c) the corporation is eligible to claim and has claimed a deduction under section 125 of the Income Tax Act (Canada) from the tax otherwise payable by the corporation under that Act for the taxation year. R.S.O. 1990, c. C.40, s. 42 (1); 2004, c. 16, s. 2 (2).

Incorporation before the 1st day of May, 1988

(2)  For the purposes of subsection (1), a corporation incorporated after the 20th day of April, 1988 and before the 1st day of May, 1988 shall be deemed to have been incorporated before the 21st day of April, 1988 and to have commenced carrying on an active business in Canada before the 21st day of April, 1988 if,

(a) arrangements for the incorporation of the corporation were substantially advanced and application for the incorporation of the corporation had been prepared and sent to the appropriate government authority prior to the 21st day of April, 1988;

(b) one or more persons commenced carrying on an active business prior to the 21st day of April, 1988, in trust for the corporation to be incorporated; and

(c) all agreements entered into before the date of incorporation of the corporation by the person or persons carrying on active business in trust for it were adopted by the corporation after its incorporation. R.S.O. 1990, c. C.40, s. 42 (2); 2004, c. 16, s. 2 (2).

Eligibility

(3)  Despite subsection (1), a corporation is not eligible for a deduction for the year under subsection (1) if it, or any predecessor corporation thereof within the meaning of section 87 of the Income Tax Act (Canada), at any time since the date of its incorporation,

(a) was related to any other corporation;

(b) carried on a non-qualifying business in Canada;

(c) carried on an active business by reason of being a member of a partnership;

(d) was a beneficiary of a trust;

(e) carried on an active business by reason of being a co-venturer in a joint venture with any other corporation;

(f) has carried on an active business by reason of having acquired (by purchase or otherwise) or leased property from another corporation (hereinafter referred to as the “vendor”) in respect of which, it, any of its shareholders, or any persons related to it or its shareholders, beneficially owned at any time, directly or indirectly, more than 10 per cent of the issued shares of any class of the capital stock of the vendor; or

(g) has carried on an active business by reason of having acquired (by purchase or otherwise) or leased property in a manner prescribed by regulation or has engaged in any activities prescribed by regulation. R.S.O. 1990, c. C.40, s. 42 (3); 2004, c. 16, s. 2 (2).

Idem

(4)  A corporation shall not be entitled to a deduction under subsection (1) for the year if, as a result of a transaction or an event, or a series of transactions or events, property of a business has been transferred, or has been deemed to have been transferred, either directly or indirectly, to the corporation, and it is reasonable for the Minister to believe that one of the principal purposes of the transfer or deemed transfer is to enable a corporation to claim a deduction from tax under subsection (1) that would not otherwise be allowed. R.S.O. 1990, c. C.40, s. 42 (4); 2004, c. 16, s. 2 (2).

Idem

(5)  A corporation shall not be entitled to a deduction under subsection (1) for the year if, as a result of a disposition, a deemed disposition or a series of dispositions of shares of any corporation, it is reasonable for the Minister to believe that one of the principal purposes of the disposition or deemed disposition is to enable a corporation to claim a deduction from tax under subsection (1) to which it would not otherwise be entitled. R.S.O. 1990, c. C.40, s. 42 (5); 2004, c. 16, s. 2 (2).

Non-qualifying business

(6)  For the purposes of this section,

“non-qualifying business” means a business, other than a personal services business, which is,

(a) the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor,

(b) a business of providing services if more than 66 2/3 per cent of the gross revenue for the year of that business derived from services,

(i) is derived from services provided to, or performed for or on behalf of, one entity, and

(ii) can reasonably be attributed to services performed by persons who are specified shareholders of the corporation or persons related thereto,

unless the corporation employs in the business throughout the year more than five full-time employees who are not specified shareholders of the corporation or persons related thereto, or

(c) a business the principal purpose of which is to provide managerial, administrative, financial, maintenance or other similar services, to lease property (other than real property), or to provide any such services and to lease property (other than real property), to one or more businesses connected at any time in the year with the corporation. R.S.O. 1990, c. C.40, s. 42 (6); 2004, c. 16, s. 2 (2).

Definitions

(7)  For the purposes of subsection (6),

“business connected” has the meaning ascribed thereto by paragraph 125 (9) (a) of the Income Tax Act (Canada) as that paragraph read on the 1st day of January, 1984; (“entreprise rattachée”)

“entity” has the meaning ascribed thereto by paragraph 125 (9) (b) of the Income Tax Act (Canada) as that paragraph read on the 1st day of January, 1984; (“entité”)

“specified shareholder” has the meaning ascribed thereto by paragraph 125 (9) (c) of the Income Tax Act (Canada) as that paragraph read on the 1st day of January, 1984. (“actionnaire désigné”) R.S.O. 1990, c. C.40, s. 42 (7); 2004, c. 16, s. 2 (2).

Deemed connected

(8)  For the purposes of this section, where a business is at any time a business connected with one or more corporations, that business shall be deemed to be a business connected with any other corporation that is controlled at that time by the one or more corporations. R.S.O. 1990, c. C.40, s. 42 (8); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Tax credit for manufacturing, processing, etc.

**43** (1)  There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation an amount equal to 2 per cent of that proportion of the amount determined under subsection (2) that,

(a) that portion of its taxable income or taxable income earned in Canada, as the case may be, for the year remaining after deducting therefrom that portion thereof which is earned in the taxation year in jurisdictions other than Ontario as determined for the purpose of section 39,

is of,

(b) the aggregate of the portions of its taxable income or taxable income earned in Canada, as the case may be, for the taxation year which were earned in the provinces or territories of Canada as determined for the purpose of section 39. R.S.O. 1990, c. C.40, s. 43 (1); 1994, c. 14, s. 16 (1); 2004, c. 16, s. 2 (2).

Transition, electricity corporation

(1.1)  Despite subsection (1), for a corporation that generates electrical energy for sale or produces steam for use in the generation of electrical energy for sale, the amount that may be deducted by the corporation for a taxation year ending after December 31, 1998 on its eligible Canadian profits from the generation of electrical energy for sale or the production of steam for use in the generation of electrical energy for sale is the amount that would be determined under subsection (1) if the reference in that subsection to “2 per cent” were read as the total of,

(a) 0.5 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 1998 and before January 1, 2000 to the total number of days in the taxation year;

(b) 1 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 1999 and before January 1, 2001 to the total number of days in the taxation year;

(c) 1.5 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2000 and before January 1, 2004 to the total number of days in the taxation year;

(d) 2 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2003 to the total number of days in the taxation year.

(e), (f) Repealed: 2003, c. 7, s. 5 (1).

2000, c. 42, s. 15; 2001, c. 8, s. 23 (1); 2002, c. 22, s. 44 (1); 2003, c. 7, s. 5 (1); 2004, c. 16, s. 2 (2).

Transition, 2002 Budget

(1.2)  The amount that may be deducted under subsection (1) by a corporation for a taxation year ending after September 30, 2001 may not exceed the amount that would be determined under subsection (1) for the taxation year if the reference in that subsection to “2 per cent” were read as the total of,

(a) 2 per cent multiplied by the ratio of the number of days in the taxation year that are before October 1, 2001 to the total number of days in the taxation year;

(b) 1.5 per cent multiplied by the ratio of the number of days in the taxation year that are after September 30, 2001 and before January 1, 2004 to the total number of days in the taxation year;

(c) 2 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2003 to the total number of days in the taxation year.

(d), (e) Repealed: 2003, c. 7, s. 5 (2).

2002, c. 22, s. 44 (2); 2003, c. 7, s. 5 (2); 2004, c. 16, s. 2 (2).

Transition, other steam producers

(1.3)  Despite subsection (1), the amount that may be deducted under this section by a corporation that produces steam for sale, other than a corporation referred to in subsection (1.1), for a taxation year ending after December 31, 1999 on its eligible Canadian profits from the production of steam for sale is the amount that would be determined under subsection (1) if the reference in that subsection to “2 per cent” were read as the total of,

(a) 1.0 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 1999 and before January 1, 2001 to the total number of days in the taxation year;

(b) 1.5 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2000 and before January 1, 2004 to the total number of days in the taxation year;

(c) 2 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2003 to the total number of days in the taxation year.

(d), (e) Repealed: 2003, c. 7, s. 5 (3).

2001, c. 23, s. 34 (2); 2002, c. 22, s. 44 (3); 2003, c. 7, s. 5 (3); 2004, c. 16, s. 2 (2).

Tax credit base

(2)  The amount determined under this subsection is the lesser of,

(a) the amount, if any, by which the corporation’s eligible Canadian profits for the taxation year exceed the corporation’s adjusted Ontario small business income for the year; or

(b) the amount, if any, by which the corporation’s taxable income for the year exceeds the aggregate of,

(i) the corporation’s adjusted Ontario small business income for the year,

(ii) the amount, if any, of that portion of the corporation’s taxable income for the year which is earned in jurisdictions outside Canada determined in the same manner as for the purposes of section 39, and

(iii) the corporation’s aggregate investment income for the year, as defined in subsection 129 (4) of the Income Tax Act (Canada). 1992, c. 3, s. 10 (1); 2004, c. 16, s. 2 (2); 2006, c. 33, Sched. G, s. 1.

Definition, “eligible Canadian profits”

(3)  For the purposes of subsection (2),

“eligible Canadian profits”, of a corporation for a taxation year, means such portion of the aggregate of all amounts each of which is the income of the corporation for the year from manufacturing and processing, mining, farming, logging or fishing carried on in Canada as is determined under rules prescribed for that purpose by the regulations. R.S.O. 1990, c. C.40, s. 43 (3); 2004, c. 16, s. 2 (2).

Adjusted Ontario small business income

(4)  For the purposes of subsections (2) and 51 (4), a corporation’s adjusted Ontario small business income for a taxation year is the amount, if any, by which,

(a) the least of the amounts determined in respect of the corporation for the taxation year under paragraphs 125 (1) (a), (b) and (c) of the Income Tax Act (Canada), as modified by section 41 of this Act,

exceeds,

(b) the amount that is the total of each of the amounts calculated using the following formulas, for which the variables are defined in subsection (5):

1. B/C × D/Z × A/0.06

2. B/C × E/Z × A/0.065

3. B/C × F/Z × A/0.07

4. B/C × G/Z × A/0.075

5. B/C × H/Z × A/0.065

6. B/C × I/Z × A/0.07

7. B/C × J/Z × A/0.085

8. Repealed: 2003, c. 7, s. 5 (4).

9. Repealed: 2003, c. 7, s. 5 (5).

1992, c. 3, s. 10 (2); 1994, c. 14, s. 16 (2); 1998, c. 5, s. 12 (1); 2000, c. 10, s. 6 (1); 2001, c. 8, s. 23 (3); 2002, c. 22, s. 44 (4); 2003, c. 7, s. 5 (4, 5); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 16.

Same

(5)  For the purposes of clause (4) (b),

“A” is the amount, if any, of the surtax determined under section 41.1 for the taxation year,

“B” is the amount, if any, determined under clause (1) (b) for the taxation year,

“C” is the amount, if any, determined under clause (1) (a) for the taxation year,

“D” is the number of days in the taxation year that are after April 30, 1992 and before May 5, 1998,

“E” is the number of days in the taxation year that are after May 4, 1998 and before January 1, 1999,

“F” is the number of days in the taxation year that are after December 31, 1998 and before January 1, 2000,

“G” is the number of days in the taxation year that are after December 31, 1999 and before October 1, 2001,

“H” is the number of days in the taxation year that are after September 30, 2001 and before January 1, 2003,

“I” is the number of days in the taxation year that are after December 31, 2002 and before January 1, 2004,

“J” is the number of days in the taxation year that are after December 31, 2003, and

“K” Repealed: 2003, c. 7, s. 5 (7).

“L” Repealed: 2003, c. 7, s. 5 (8).

“Z” is the number of days in the taxation year. 2000, c. 10, s. 6 (2); 2001, c. 23, s. 34 (3); 2002, c. 22, s. 44 (5); 2003, c. 7, s. 5 (6-8); 2004, c. 16, s. 2 (2).

(6)  Repealed: 2001, c. 23, s. 34 (4).

(7)  Repealed: 2001, c. 23, s. 34 (5).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 10 (1, 2) - 25/06/1992; 1994, c. 14, s. 16 (1, 3) - 01/01/1993; 1994, c. 14, s. 16 (2, 4) - 01/05/1992; 1998, c. 5, s. 12 (1, 2) - 05/05/1998

[2000, c. 10, s. 6 (1, 2)](http://www.ontario.ca/laws/statute/S00010" \l "s6s1) - 02/05/2000; [2000, c. 42, s. 15](http://www.ontario.ca/laws/statute/S00042" \l "s15) - 01/01/1999

[2001, c. 8, s. 23 (1-3)](http://www.ontario.ca/laws/statute/S01008" \l "s23s1) - 01/01/2002; [2001, c. 8, s. 23 (4)](http://www.ontario.ca/laws/statute/S01008" \l "s23s4) - no effect - see [2001, c. 23, s. 34 (5)](http://www.ontario.ca/laws/statute/S01023" \l "s34s5) - 01/10/2001; [2001, c. 23, s. 34 (1, 3-5)](http://www.ontario.ca/laws/statute/S01023" \l "s34s1) - 01/10/2001; [2001, c. 23, s. 34 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s34s2) - 01/01/2000

[2002, c. 22, s. 44 (1-5)](http://www.ontario.ca/laws/statute/S02022" \l "s44s1) - 09/12/2002

[2003, c. 7, s. 5 (1-8)](http://www.ontario.ca/laws/statute/S03007" \l "s5s1) - 01/01/2004

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 16](http://www.ontario.ca/laws/statute/S04031" \l "sched9s16) - 16/12/2004

[2006, c. 33, Sched. G, s. 1](http://www.ontario.ca/laws/statute/S06033" \l "schedgs1) - 20/12/2006

Corporate minimum tax credit

Definitions

**43.1** (1)  In this section,

“amalgamated corporation” means a corporation that is a “new corporation” for the purposes of section 87 of the Income Tax Act (Canada); (“société issue de la fusion”)

“parent corporation” means a corporation that is a “parent” under subsection 88 (1) of the Income Tax Act (Canada); (“société mère”)

“predecessor corporation” means a corporation that is a predecessor corporation referred to in section 87 of the Income Tax Act (Canada) and includes a corporation that was a predecessor corporation of a predecessor corporation; (“société remplacée”)

“subsidiary corporation” means a corporation that is a “subsidiary” under subsection 88 (1) of the Income Tax Act (Canada). (“filiale”) 1994, c. 14, s. 17 (1); 2004, c. 16, s. 2 (2).

Corporate minimum tax credit

(2)  There may be deducted from tax otherwise payable under this Part by a corporation for a taxation year an amount in respect of corporate minimum tax payable by the corporation for a prior taxation year under Part II.1 equal to,

(a) in the case of a corporation that is not a life insurance corporation, the lesser of,

(i) the amount of the corporation’s corporate minimum tax account for the taxation year, or

(ii) the amount by which,

(A) the tax payable by the corporation under this Part for the taxation year, after all other deductions from tax to which the corporation is entitled under this Part,

exceeds,

(B) the amount, if any, by which the corporation’s corporate minimum tax for the taxation year, if any, determined under Part II.1, before any deduction permitted under subsection 57.3 (2), exceeds the amount of the corporation’s foreign tax credit under Part II.1 for the taxation year; or

(b) in the case of a life insurance corporation, the lesser of,

(i) the amount of the corporation’s corporate minimum tax account for the taxation year, or

(ii) the amount by which the tax payable by the corporation under this Part for the taxation year, after all other deductions from tax to which the corporation is entitled under this Part, exceeds the greater of,

(A) the corporation’s corporate minimum tax for the taxation year determined under Part II.1, before any deduction permitted under subsection 57.3 (2), or

(B) the amount that would be determined in respect of the corporation for the taxation year under clause 74.1 (1) (a). 1994, c. 14, s. 17 (1); 2004, c. 16, s. 2 (2).

Corporate minimum tax account, taxation years ending before March 23, 2007

(3)  The amount of a corporation’s corporate minimum tax account for a taxation year ending before March 23, 2007 is,

(a) in the case of a corporation that is not a life insurance corporation, the amount of corporate minimum tax payable by the corporation under Part II.1 for the ten taxation years immediately before the taxation year that has not been deducted under this section in determining the amount of tax payable under this Part by the corporation for a prior taxation year; or

(b) in the case of a life insurance corporation, the total of the amounts determined in respect of each of the ten taxation years immediately before the taxation year, to the extent that the amount has not been deducted under this section in determining the amount of tax payable under this Part by the corporation for a prior taxation year, equal to the amount by which the corporation’s corporate minimum tax for that previous taxation year determined under Part II.1, before any deduction permitted under subsection 57.3 (2), exceeds the greater of,

(i) the amount that would be determined in respect of the corporation for that taxation year under clause 74.1 (1) (a), or

(ii) the tax payable under this Part for that taxation year after all deductions from tax to which the corporation is entitled for that year, other than a deduction permitted under this section. 1994, c. 14, s. 17 (1); 2004, c. 16, s. 2 (2); 2007, c. 7, Sched. 6, s. 2 (1).

Corporate minimum tax account, taxation years ending after March 22, 2007

(3.1)  The amount of a corporation’s corporate minimum tax account for a taxation year ending after March 22, 2007 is determined as follows:

1. If the corporation is not a life insurance corporation, the amount of the corporation’s corporate minimum tax account for the year is the sum of all amounts each of which is,

i. the amount of corporate minimum tax payable by the corporation under Part II.1 for a previous taxation year that ends before March 23, 2007 and is not earlier than the tenth taxation year before the taxation year, to the extent the tax has not been deducted under this section in determining the amount of tax payable under this Part by the corporation for a previous taxation year, or

ii. the amount of corporate minimum tax payable by the corporation under Part II.1 for a previous taxation year that ends after March 22, 2007 and is not earlier than the twentieth taxation year before the taxation year, to the extent the tax has not been deducted under this section in determining the amount of tax payable under this Part by the corporation for a previous taxation year.

2. If the corporation is a life insurance corporation, the amount of the corporation’s corporate minimum tax account for the year is the sum of all amounts each of which is,

i. the amount determined under subsection (3.2) in respect of a previous taxation year that ends before March 23, 2007 and is not earlier than the tenth taxation year before the taxation year, to the extent the amount has not been deducted under this section in determining the amount of tax payable under this Part by the corporation for a previous taxation year, or

ii. the amount determined under subsection (3.2) in respect of a previous taxation year that ends after March 22, 2007 and is not earlier than the twentieth taxation year before the taxation year, to the extent that the amount has not been deducted under this section in determining the amount of tax payable under this Part by the corporation for a previous taxation year. 2007, c. 7, Sched. 6, s. 2 (2).

Same

(3.2)  For the purposes of subparagraphs 2 i and ii of subsection (3.1), the amount determined in respect of a previous taxation year is the amount by which the corporation’s corporate minimum tax for that year, as determined under Part II.1 before any deduction permitted under subsection 57.3 (2), exceeds the greater of,

(a) the amount that would be determined in respect of the corporation under clause 74.1 (1) (a) for that year; and

(b) the amount of tax payable under this Part for that year after all deductions from tax to which the corporation is entitled for that year, other than a deduction permitted under this section. 2007, c. 7, Sched. 6, s. 2 (2).

Same

(4)  The following rules apply in determining the amount of a corporation’s corporate minimum tax account for a taxation year:

1. Tax payable under Part II.1 for a particular taxation year that is otherwise included in the account is deductible before any tax payable under Part II.1 for later years.

2. If there has been an amalgamation of corporations to which section 87 of the Income Tax Act (Canada) applies, the amalgamated corporation shall be deemed to be the same corporation as and a continuation of each predecessor corporation for the purposes of determining an amount of tax under Part II.1 deducted under this section or payable by the amalgamated corporation for a prior taxation year.

3. If the rules in subsection 88 (1) of the Income Tax Act (Canada) applied to the winding-up of a subsidiary corporation, its parent corporation shall be deemed to be the same corporation as and a continuation of the subsidiary corporation for the purposes of determining an amount of tax under Part II.1 deducted under this section or payable by the parent corporation for a prior taxation year.

4. If the conditions described in paragraphs 142.7 (12) (a) and (b) of the Income Tax Act (Canada) apply in respect of the winding up of a Canadian affiliate of an entrant bank (within the meaning of subsection 142.7 (1) of that Act) or in respect of the dissolution of a Canadian affiliate of an entrant bank under a dissolution order (within the meaning of subsection 142.7 (12) of that Act), the entrant bank shall be deemed to be the same corporation as, and a continuation of, the Canadian affiliate for the purposes of determining an amount of tax under Part II.1 that was deducted under this section or was payable by the entrant bank for a prior taxation year.

5. Paragraph 4 does not apply unless,

i. before the later of the date determined under paragraph 142.7 (11) (b) of the Income Tax Act (Canada) and the day that is 180 days after the day the Budget Measures Act (Fall), 2004 receives Royal Assent,

A. the entrant bank and the Canadian affiliate jointly elect that paragraph 4 applies, if the Canadian affiliate has not been wound up or dissolved before the election is made, or

B. the entrant bank elects that paragraph 4 applies, if the Canadian affiliate has been wound up or dissolved and has ceased to exist before the election is made, or

ii. the entrant bank and the Canadian affiliate have jointly elected under paragraph 142.7 (12) (c) of the Income Tax Act (Canada) to have section 142.7 of that Act apply.

6. Paragraph 4 applies only to,

i. taxation years for which an election by the affiliate and bank under paragraph 142.7 (12) (c) of the Income Tax Act (Canada) applies or to which section 142.7 of the Income Tax Act (Canada) would have applied if an election had been made under paragraph 142.7 (12) (c) of that Act, and

ii. preceding taxation years in which a credit under this section was earned. 1994, c. 14, s. 17 (1); 2002, c. 22, s. 45; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 17.

Acquisition of control

(5)  If at any time control of a corporation has been acquired by a person or group of persons, no amount in respect of its tax payable under Part II.1 for a taxation year ending before that time is deductible by the corporation for a taxation year ending after that time, except that where a business was carried on by the corporation in a taxation year ending before that time, an amount in respect of its tax payable under Part II.1 for that year is deductible by the corporation for a particular taxation year ending after that time only if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular year and only to the extent of that proportion of the amount determined under subclause (2) (a) (ii) or (2) (b) (ii), as the case may be, for the particular year that,

(a) the amount by which,

(i) the total of its income for the particular year from that business, as determined under this Part, and, where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income for the particular year, as determined under this Part, from any other business substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services,

exceeds,

(ii) the total of all amounts each of which is an amount deducted under paragraph 111 (1) (a) or (d) of the Income Tax Act (Canada), as it applies for the purposes of this Part, in computing its taxable income for the particular taxation year, or, if the corporation is a corporation referred to in subsection 2 (2), in computing its taxable income earned in Canada for the particular taxation year, in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of that business or the other business,

is of the greater of,

(b) the amount determined under clause (a); or

(c) the corporation’s taxable income for the particular taxation year, or its taxable income earned in Canada for the particular taxation year in the case of a corporation referred to in subsection 2 (2). 1994, c. 14, s. 17 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 17 (1, 2) - 01/01/1994

[2002, c. 22, s. 45](http://www.ontario.ca/laws/statute/S02022" \l "s45) - 28/06/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 17 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s17s1) - 28/06/1999

[2007, c. 7, Sched. 6, s. 2 (1, 2)](http://www.ontario.ca/laws/statute/S07007" \l "sched6s2s1) - 17/05/2007

Qualifying environmental trust tax credit

**43.2** (1), (2)  Repealed: 1996, c. 29, s. 47 (1).

Qualifying environmental trust tax credit

(3)  The amount of a corporation’s qualifying environmental trust tax credit for a taxation year is the amount that would be determined under subsection 127.41 (1) of the Income Tax Act (Canada) to be the amount of its “Part XII.4 tax credit” for the taxation year if the tax payable under Part XII.4 of the Income Tax Act (Canada) by a qualifying environmental trust for a taxation year ending in the corporation’s taxation year equalled the amount of tax payable by the trust for that year under the Income Tax Act. 1996, c. 1, Sched. B, s. 6 (1); 1998, c. 34, s. 39 (1); 2004, c. 16, s. 2 (2).

Deemed tax payment

(4)  A corporation, other than a corporation that is exempt from tax under this Act by virtue of section 57, shall be deemed to pay on account of its tax payable under this Act for a taxation year ending before January 1, 2009 an amount claimed by the corporation that does not exceed its qualifying environmental trust tax credit for the taxation year. 1996, c. 29, s. 47 (2); 1998, c. 34, s. 39 (2); 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (7).

Time of deemed payment

(5)  A corporation shall be deemed to make the payment referred to in subsection (4) and the Minister shall be deemed to apply the deemed payment on the day referred to in clause 78 (2) (b) on or before which the corporation would be required to pay any balance of tax payable for the taxation year. 1996, c. 1, Sched. B, s. 6 (1); 2004, c. 16, s. 2 (2).

(6)  Repealed: 1996, c. 29, s. 47 (3).

**Section Amendments with date in force (d/m/y)**

1996, c. 1, Sched. B, s. 6 (1, 2) - 23/02/1994; 1996, c. 29, s. 47 (1-4) - 23/02/1994; 1998, c. 34, s. 39 (1-3) - 19/02/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 11, Sched. B, s. 2 (7)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s7) - 04/06/2007

Ontario innovation tax credit

**43.3** (1)  A corporation that is a qualifying corporation for a taxation year may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41 and 43 for the taxation year, an amount not exceeding the amount of its Ontario innovation tax credit for the taxation year. 1996, c. 1, Sched. B, s. 7 (1); 1996, c. 29, s. 48; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that is a qualifying corporation for a taxation year may deduct from its tax otherwise payable for the year under Parts III and IV of the Act an amount not exceeding the amount by which its Ontario innovation tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a qualifying corporation’s Ontario innovation tax credit for a taxation year is 10 per cent of the lesser of,

(a) the total of the amount of the corporation’s SR & ED qualified expenditure pool at the end of the year and the amount of its eligible repayments, if any, for the taxation year; and

(b) the amount of the corporation’s expenditure limit for the taxation year. 1997, c. 43, Sched. A, s. 17 (1); 1999, c. 9, s. 81 (1); 2004, c. 16, s. 2 (2).

Expenditure limit

(3.1)  The amount of a corporation’s expenditure limit for a taxation year that ends before May 5, 1999 is the amount that would be determined to be the corporation’s expenditure limit for the taxation year for the purposes of subsection 127 (10.1) of the Income Tax Act (Canada). 1999, c. 9, s. 81 (2); 2004, c. 16, s. 2 (2).

Expenditure limit, taxation year ending after May 4, 1999 and before February 26, 2008

(3.2)  Subject to subsections (3.3) and (3.7), the amount of a corporation’s expenditure limit for a taxation year that ends after May 4, 1999 and before February 26, 2008 is the amount that would be determined to be its expenditure limit for the taxation year for the purposes of subsection 127 (10.1) of the Income Tax Act (Canada) if, for the purposes of the definition of “B” in subsection 127 (10.2) of that Act, the business limit of a corporation were considered to be the amount, if any, by which the business limit of the corporation for the taxation year as determined under subsection 41 (3.1) without the application of paragraph 125 (5) (b) of the Income Tax Act (Canada) and this subsection exceeds the amount calculated using the formula,

C × D/$25 million

in which,

“C” is the amount that would be determined under subsection 41 (3.1) to be the business limit of the corporation for the taxation year without the application of paragraph 125 (5) (b) of the Income Tax Act(Canada) and this subsection, and

“D” is,

(a) for a corporation that is not associated with any other corporation in the taxation year, the amount, if any, by which $25 million is less than,

(i) the corporation’s taxable paid-up capital for the preceding taxation year as determined under Part III, if the corporation is a corporation that is not a financial institution as defined in subsection 58 (2), a credit union or an insurance corporation,

(ii) the corporation’s adjusted taxable paid-up capital for the preceding taxation year as determined under Part III, if the corporation is a financial institution as defined in subsection 58 (2), other than a credit union, or

(iii) the corporation’s taxable capital employed in Canada for the preceding taxation year as determined under Part I.3 of the Income Tax Act (Canada), if the corporation is a credit union or an insurance corporation, or

(b) for a corporation that is associated with one or more other corporations in the taxation year, the amount, if any, by which $25 million is less than the total of all amounts, each of which is an amount described in subclause (a) (i), (ii) or (iii) in respect of the corporation for the preceding taxation year or in respect of an associated corporation for its last taxation year ending in the corporation’s preceding taxation year.

1999, c. 9, s. 81 (2); 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 4; 2008, c. 19, Sched. C, s. 1 (1).

Expenditure limit, taxation year ending after February 25, 2008

(3.2.1)  Subject to subsections (3.2.5) and (3.7), the amount of a corporation’s expenditure limit for a taxation year ending after February 25, 2008 is the amount calculated using the formula,

($7 million – 10A) × [($25 million – B)/$25 million]

in which,

“A” is the greater of,

(a) $400,000, and

(b) the amount that is,

(i) if the corporation is not associated with any other corporation in the taxation year, the corporation’s taxable income under the Income Tax Act (Canada) for its immediately preceding taxation year, determined before taking into consideration the specified future tax consequences for that preceding year, or

(ii) if the corporation is associated with one or more corporations in the taxation year, the associated group’s taxable income for the corporation’s immediately preceding taxation year, as determined under subsection (3.2.2), and

“B” is,

(a) nil if,

(i) the corporation’s taxable capital amount for the immediately preceding taxation year, as determined under subsection (3.2.3), is not more than $25 million and the corporation is not associated with any other corporation in the taxation year, or

(ii) the corporation is associated with one or more corporations in the taxation year and the associated group’s taxable capital amount for the preceding taxation year as determined under subsection (3.2.4) is not more than $25 million, or

(b) in any other case, the lesser of $25 million and the amount by which the corporation’s taxable capital amount for the immediately preceding taxation year or, if the corporation is associated with one or more corporations in the taxation year, the associated group’s taxable capital amount for the immediately preceding taxation year exceeds $25 million.

2008, c. 19, Sched. C, s. 1 (2).

Associated group’s taxable income

(3.2.2)  If a corporation is associated with one or more corporations in a particular taxation year, the associated group’s taxable income for the corporation’s immediately preceding taxation year is the sum of,

(a) the corporation’s taxable income under the Income Tax Act (Canada) for its last taxation year ending in the last calendar year that ended before the end of the particular taxation year, determined before taking into consideration the specified future tax consequences for that preceding year; and

(b) the sum of all amounts each of which is the taxable income of an associated corporation under the Income Tax Act (Canada) for the associated corporation’s last taxation year ending in the last calendar year that ended before the end of the particular taxation year of the corporation referred to in clause (a), determined before taking into consideration the specified future tax consequences for that last taxation year. 2008, c. 19, Sched. C, s. 1 (2).

Taxable capital amount

(3.2.3)  A corporation’s taxable capital amount for a taxation year is,

(a) the corporation’s taxable paid-up capital for the year as determined under Part III, if the corporation is a corporation that is not a financial institution as defined in subsection 58 (2), a credit union or an insurance corporation;

(b) the corporation’s adjusted taxable paid-up capital for the year as determined under Part III, if the corporation is a financial institution as defined in subsection 58 (2), other than a credit union; or

(c) the corporation’s taxable capital employed in Canada for the year as determined under Part I.3 of the Income Tax Act (Canada), if the corporation is a credit union or an insurance corporation. 2008, c. 19, Sched. C, s. 1 (2).

Associated group’s taxable capital amount

(3.2.4)  If a corporation is associated with one or more corporations in a particular taxation year, the associated group’s taxable capital amount for the immediately preceding taxation year is the sum of,

(a) the corporation’s taxable capital amount for its last taxation year ending in the last calendar year that ended before the end of the particular taxation year, as determined under subsection (3.2.3); and

(b) the sum of all amounts each of which is the taxable capital amount, as determined under subsection (3.2.3), of a corporation with which the corporation is associated in the taxation year, for the associated corporation’s last taxation year ending in the last calendar year that ended before the end of the particular taxation year of the corporation referred to in clause (a). 2008, c. 19, Sched. C, s. 1 (2).

Transitional, February 26, 2008

(3.2.5)  A corporation’s expenditure limit for a taxation year that straddles February 26, 2008 is equal to the amount determined by the formula:

A + [(B – A) × (C/D)]

in which,

“A” is the amount that would be determined in respect of the corporation under subsection (3.2) if that subsection applied for the taxation year,

“B” is the amount that would be determined in respect of the corporation for the taxation year under subsection (3.2.1) if this subsection did not apply,

“C” is the number of days in the taxation year that are after February 25, 2008, and

“D” is the number of days in the taxation year.

2008, c. 19, Sched. C, s. 1 (2).

Application of federal rules

(3.2.6)  Subsections 127 (10.21), (10.22), (10.23), (10.3), (10.4) and (10.6) of the Income Tax Act (Canada) apply with necessary modifications for the purposes of subsections (3.2.1) and (3.7) and, without limiting the generality of the foregoing, in the application of section 127 of the Income Tax Act (Canada) for the purposes of subsections (3.2.1) and (3.7), a reference to a Canadian-controlled private corporation is deemed to be a reference to a qualifying corporation as defined in subsection (4). 2008, c. 19, Sched. C, s. 1 (2).

Transition

(3.3)  A corporation’s expenditure limit for a taxation year that straddles May 5, 1999 is the sum of the following amounts:

1. The expenditure limit that would be determined under subsection (3.1) for the corporation for the taxation year if the taxation year ended on May 4, 1999, multiplied by the ratio of the number of days in the taxation year before May 5, 1999 to the number of days in the taxation year.

2. The expenditure limit that would be determined under subsection (3.2) for the corporation for the taxation year, multiplied by the ratio of the number of days in the taxation year after May 4, 1999 to the number of days in the taxation year. 1999, c. 9, s. 81 (2); 2004, c. 16, s. 2 (2).

Interpretation

(3.4)  In the application of subsection 41 (3.1) of this Act and sections 125 and 127 of the Income Tax Act (Canada) for the purposes of subsection (3.2) of this section, a reference to a Canadian-controlled private corporation shall be deemed to be a reference to a qualifying corporation as defined in subsection (4). 1999, c. 9, s. 81 (2); 2004, c. 16, s. 2 (2).

(3.5)  Repealed: 2005, c. 28, Sched. D, s. 9 (1).

Rules for taxation years ending after May 11, 2005

(3.6)  The following rules apply for the purposes of subsection (3.2) for a taxation year that commences after December 8, 2002 and ends on or before May 11, 2005:

1. A corporation that is required to compute its paid-up capital employed in Canada for a taxation year under Division C of Part III shall determine the amount that would be its taxable paid-up capital for the taxation year under Part III as if it were a corporation incorporated in Canada.

2. A corporation that would be a financial institution as defined in subsection 58 (2) in a taxation year if it carried on business in Canada and if it had been incorporated in Canada shall determine the amount that would be its adjusted taxable paid-up capital for the taxation year under Part III as if it were a financial institution defined in subsection 58 (2) and had a permanent establishment in Ontario.

3. A corporation that is a financial institution as defined in subsection 58 (2) and that has a permanent establishment in Canada but not in Ontario in a taxation year shall determine the amount that would be its adjusted taxable paid-up capital for the taxation year under Part III as if it had a permanent establishment in Ontario.

4. A corporation that is an insurance corporation that was not resident in Canada at any time in a taxation year shall determine the amount that would be its taxable capital employed in Canada under Part I.3 of the Income Tax Act (Canada) as if it were resident in Canada at any time during the year.

5. A corporation that has a permanent establishment in Canada but not in Ontario shall, if the corporation is not a financial institution as defined in subsection 58 (2) or an insurance corporation, determine the amount that would be its taxable paid-up capital for the taxation year under Part III as if it were a corporation incorporated in Canada and had a permanent establishment in Ontario.

6. A corporation that does not have a permanent establishment in Canada shall, if the corporation is not an insurance corporation or a corporation that would be a financial institution as defined in subsection 58 (2) if it carried on business in Canada and had been incorporated in Canada, determine the amount that would be its taxable paid-up capital for the taxation year under Part III as if it were a corporation incorporated in Canada and had a permanent establishment in Ontario.

7. The taxable income of a corporation incorporated outside Canada and that does not have a permanent establishment in Canada shall be determined, for the purposes of calculating the expenditure limit of the corporation under subsection 127 (10.2) of the Income Tax Act (Canada) as it applies for the purposes of subsection (3.2), in accordance with that Act as if it were subject to tax under that Act. 2002, c. 22, s. 46 (2); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 9 (2).

Rules for taxation years ending after May 11, 2005

(3.7)  The following rules apply for the purposes of subsection (3.2) for a taxation year ending after May 11, 2005:

1. A corporation that is required to compute its paid-up capital employed in Canada for a taxation year under Division C of Part III shall determine the amount that would be its taxable paid-up capital for the taxation year under Part III as if it were a corporation resident in Canada.

2. A corporation that would be a financial institution, as defined in subsection 58 (2), in a taxation year if it carried on business in Canada and if it had been incorporated in Canada shall determine the amount that would be its adjusted taxable paid-up capital for the taxation year under Part III as if it were a financial institution, as defined in subsection 58 (2), that had a permanent establishment in Ontario.

3. A corporation that is a financial institution, as defined in subsection 58 (2), and that has a permanent establishment in Canada but not in Ontario in a taxation year shall determine the amount that would be its adjusted taxable paid-up capital for the taxation year under Part III as if it had a permanent establishment in Ontario.

4. A corporation that is an insurance corporation that was not resident in Canada at any time in a taxation year shall determine the amount that would be its taxable capital employed in Canada under Part I.3 of the Income Tax Act (Canada) as if it were resident in Canada at any time during the year.

5. A corporation that has a permanent establishment in Canada but not in Ontario shall, if the corporation is not a financial institution, as defined in subsection 58 (2), or an insurance corporation, determine the amount that would be its taxable paid-up capital for the taxation year under Part III as if the corporation were resident in Canada and had a permanent establishment in Ontario.

6. A corporation that does not have a permanent establishment in Canada shall, if the corporation is not an insurance corporation or a corporation that would be a financial institution, as defined in subsection 58 (2), if it carried on business in Canada and had been incorporated in Canada, determine the amount that would be its taxable paid-up capital for the taxation year under Part III as if the corporation were resident in Canada and had a permanent establishment in Ontario.

7. The taxable income of a non-resident corporation that does not have a permanent establishment in Canada shall be determined, for the purposes of calculating the expenditure limit of the corporation under subsection 127 (10.2) of the Income Tax Act (Canada) as it applies for the purposes of subsection (3.2), in accordance with that Act as if it were subject to tax under that Act. 2005, c. 28, Sched. D, s. 9 (3).

Qualifying corporation

(4)  A corporation is a qualifying corporation for a taxation year for the purposes of this section if,

(a) it has a permanent establishment in Ontario at any time during the taxation year;

(b) it carries on scientific research and experimental development in Ontario during the taxation year; and

(c) it is eligible to claim an investment tax credit for the taxation year under section 127 of the Income Tax Act (Canada) with respect to a qualified expenditure made by the corporation in the taxation year and it files a prescribed form under that section in respect of the investment tax credit. 1996, c. 1, Sched. B, s. 7 (1); 1999, c. 9, s. 81 (3); 2004, c. 16, s. 2 (2).

Qualified expenditure

(5)  An expenditure made by a corporation is a qualified expenditure for a taxation year for the purposes of this section if,

(a) the expenditure is incurred by the corporation in respect of scientific research and experimental development carried on in Ontario;

(b) the expenditure would be considered to be a qualified expenditure made by the corporation in that year for the purposes of section 127 of the Income Tax Act (Canada); and

(c) the expenditure is incurred by the corporation at a time when the corporation has a permanent establishment in Ontario. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

SR & ED qualified expenditure pool

(6)  The amount of a corporation’s SR & ED qualified expenditure pool at the end of a taxation year for the purposes of this section is the amount that would be determined to be the corporation’s SR & ED qualified expenditure pool at the end of the year under the definition of that expression in subsection 127 (9) of the Income Tax Act (Canada), if the following rules applied in determining that amount:

1. The expression “qualified expenditure” in the definition of “SR & ED qualified expenditure pool” in subsection 127 (9) means an expenditure that is a qualified expenditure for the purposes of this section.

2. Only 40 per cent of qualified expenditures of a capital nature for the taxation year may be included in determining the amount of qualified expenditures in the year.

3. Any tax credit available to the corporation under this section or section 43.9 in respect of qualified expenditures is deemed not to be government assistance for the purposes of that section.

4. No amount is required to be deducted in respect of a specified contract payment received, receivable or reasonably expected to be received by the corporation.

5. No amount is included in respect of any expenditure incurred by a partnership of which the corporation is a member.

6. In determining the amount that is “C” in the formula in the definition of “SR & ED qualified expenditure pool” in subsection 127 (9) of the Income Tax Act (Canada), no amount needs to be included in respect of an amount transferred by the corporation under subsection 127 (13) of that Act to a person not dealing at arm’s length with the corporation, if that person is not eligible to claim, under this Act or under an Act of another province, a tax credit or incentive, other than a deduction under section 37 of the Income Tax Act (Canada) as it applies for income tax purposes under this Act and in other provinces, in respect of the amount transferred by the corporation. 1997, c. 43, Sched. A, s. 17 (2, 3); 2004, c. 16, s. 2 (2).

Specified contract payment

(7)  For the purposes of this section, a payment is a specified contract payment if,

(a) the payment is a contract payment for the performance of scientific research and experimental development carried on in Ontario; and

(b) the payment is from a corporation that,

(i) does not have a permanent establishment in Ontario, and

(ii) is not entitled to receive a payment from a corporation that is eligible to claim a tax credit under this section, or a research and development super allowance under section 12, in respect of the scientific research and experimental development to which the contract payment relates. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

(8)  Repealed: 1997, c. 43, Sched. A, s. 17 (4).

Eligible repayments

(9)  The amount of a corporation’s eligible repayments for a taxation year for the purposes of this section is the amount determined according to the following formula:

R = C + 0.4 (D + E)

where:

“R” is the amount of the corporation’s eligible repayments for the taxation year;

“C” is the total of the corporation’s designated repayments, if any, for the taxation year in respect of government assistance, non-government assistance or contract payments relating to qualified expenditures of a current nature;

“D” is the total of the corporation’s designated repayments, if any, for the taxation year in respect of government assistance, non-government assistance or contract payments relating to qualified expenditures of a capital nature, other than qualified expenditures referred to in paragraph 127 (11.5) (b) of the Income Tax Act (Canada);

“E” is one-quarter of the total of the designated repayments, if any, considered to be repayments made by the corporation in the taxation year, for the purposes of paragraph (e.2) of the definition of “investment tax credit” in subsection 127 (9) of the Income Tax Act (Canada), in respect of government assistance, non-government assistance or contract payments relating to qualified expenditures referred to in paragraph 127 (11.5) (b) of that Act.

1996, c. 1, Sched. B, s. 7 (1); 1997, c. 43, Sched. A, s. 17 (5); 2004, c. 16, s. 2 (2).

Designated repayment

(10)  An amount repaid in a taxation year by a corporation, or deemed under subsection 127 (10.8) of the Income Tax Act (Canada) to be repaid in a taxation year by a corporation, is a designated repayment made by the corporation in the year for the purposes of this section to the extent the repayment can reasonably be considered to be a repayment of,

(a) government assistance, non-government assistance or a contract payment received, receivable or reasonably expected to be received by the corporation, other than a specified contract payment;

(b) an amount that was deducted in determining for the purposes of this section the amount of a qualified expenditure made by the corporation for the taxation year or a prior taxation year;

(c) an amount, the deduction of which in determining for the purposes of this section the amount of a qualified expenditure, resulted in a reduction in the amount of a tax credit that would have otherwise been available to the corporation under this section for the taxation year or a prior taxation year; and

(d) an amount that under subsections 127 (11.5) and (18) to (21) of the Income Tax Act (Canada) reduced the amount of a qualified expenditure made by the corporation for the purposes of the definition of “investment tax credit” in subsection 127 (9) of that Act. 1996, c. 1, Sched. B, s. 7 (1); 1997, c. 43, Sched. A, s. 17 (6); 2004, c. 16, s. 2 (2).

Deemed tax payment

(11)  A qualifying corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount, if any, by which,

(a) the corporation’s Ontario innovation tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

Time of deemed payment

(12)  A qualifying corporation shall be deemed to make the payment referred to in subsection (11) and the Minister to apply the deemed payment on the day referred to in clause 78 (2) (b) on or before which the corporation would be required to pay any balance of tax payable for the taxation year. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

Waiver of tax credit

(13)  A corporation may waive its eligibility for a tax credit, or a portion of a tax credit, under this section for a taxation year by delivering a written waiver with its return required to be delivered under this Act for the taxation year or in an amended return for that year. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

Same

(14)  If a corporation files a waiver under subsection (13) in respect of a taxation year,

(a) the corporation shall be deemed never to have been a qualifying corporation under this section for that year in respect of the tax credit or the portion of the tax credit that is waived; and

(b) the corporation’s instalments of tax, balance of tax payable and interest payable under this Act in respect of any taxation year shall be determined as if the corporation had qualified for a tax credit under this section for the taxation year only in the amount of the tax credit that is not waived. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

Anti-avoidance

(15)  A corporation is not entitled to a tax credit under this section for a taxation year if, as a result of a transaction or event, or a series of transactions or events, it is reasonable for the Minister to believe that one of the principal purposes of the transaction or event, or series of transactions or events, is to render the corporation eligible for a tax credit under this section to which it would not have otherwise been entitled, or a tax credit in an amount in excess of the amount to which it would have otherwise been entitled. 1996, c. 1, Sched. B, s. 7 (1); 2004, c. 16, s. 2 (2).

Interpretation

(16)  For the purposes of this section, the following rules apply:

1. The terms “contract payment”, “government assistance” and “non-government assistance” each have the meaning given to those terms in section 127 of the Income Tax Act (Canada), except that a tax credit under this section or section 43.9 shall be deemed not to be government assistance.

2. Expenditures in respect of scientific research and experimental development will be considered to be of a current or capital nature if they are considered to be such under the Income Tax Act (Canada). 1996, c. 1, Sched. B, s. 7 (1); 1997, c. 43, Sched. A, s. 17 (7); 2004, c. 16, s. 2 (2).

Definition

(17)  In this section,

“associated group” means, in respect of a corporation for a taxation year, the corporation and all corporations associated with the corporation in the taxation year. 2008, c. 19, Sched. C, s. 1 (3).

(18)  Repealed: 1996, c. 24, s. 26.

**Section Amendments with date in force (d/m/y)**

1996, c. 1, Sched. B, s. 7 (1, 2) - 01/01/1995; 1996, c. 24, s. 26 - 08/05/1996; 1996, c. 29, s. 48 - 01/01/1995; 1997, c. 43, Sched. A, s. 17 (1, 2, 4-6, 8) - 01/01/1996; 1997, c. 43, Sched. A, s. 17 (3, 7) - 07/05/1997; 1999, c. 9, s. 81 (1-4) - 05/05/1999

[2002, c. 22, s. 46 (1)](http://www.ontario.ca/laws/statute/S02022" \l "s46s1) - 05/05/1999; [2002, c. 22, s. 46 (2)](http://www.ontario.ca/laws/statute/S02022" \l "s46s2) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 9 (1-3)](http://www.ontario.ca/laws/statute/S05028" \l "schedds9s1) - 11/05/2005

[2008, c. 7, Sched. E, s. 4 (1, 2)](http://www.ontario.ca/laws/statute/S08007" \l "schedes4s1) - 05/05/1999; [2008, c. 19, Sched. C, s. 1 (1-3)](http://www.ontario.ca/laws/statute/S08019" \l "schedcs1s1) - 26/02/2008

[CTS 3 NO 14 - 1](http://www.ontario.ca/laws/consolidated-statutes-change-notices)

Co-operative education tax credit

**43.4** (1)  A corporation that complies with the requirements of this section may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41, 43 and 43.3 for the taxation year, an amount not exceeding the amount of its co-operative education tax credit for the taxation year. 1996, c. 24, s. 27; 1996, c. 29, s. 49 (1); 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its co-operative education tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a corporation’s co-operative education tax credit for a taxation year is the sum of,

(a) all amounts each of which is in respect of a qualifying work placement that ends in the taxation year, equal to the lesser of the corporation’s eligible amount for the taxation year in respect of the qualifying work placement determined under subsection (3.1) and $1,000; and

(b) the total of all amounts, each of which is an amount determined by multiplying the eligible percentage by the amount of a repayment, if any, made by the corporation during the taxation year, of government assistance in respect of a qualifying work placement to the extent the repayment does not exceed the amount of the assistance in respect of the qualifying work placement that,

(i) has not been repaid in a prior taxation year, and

(ii) can reasonably be considered to have reduced the amount of a co-operative education tax credit that would otherwise have been allowed to the corporation under this Act in respect of the qualifying work placement. 1997, c. 43, Sched. A, s. 18 (1); 2004, c. 16, s. 2 (2).

Eligible amount

(3.1)  A corporation’s eligible amount for a taxation year in respect of a qualifying work placement is the amount determined under the following rules:

1. If the total of all salaries or wages paid by the corporation in the previous taxation year is equal to or greater than $600,000, the amount is 10 per cent of the total of all eligible expenditures made by the corporation in respect of the qualifying work placement.

2. If the total of all salaries or wages paid by the corporation in the previous taxation year is not greater than $400,000, the amount is 15 per cent of the total of all eligible expenditures made by the corporation in respect of the qualifying work placement.

3. If the total of all salaries or wages paid by the corporation in the previous taxation year is greater than $400,000 but less than $600,000, the amount is the amount determined in accordance with the following formula:

A = (10% × B) + [(5% × B) × (1 – C/$200,000)]

where,

“A” is the corporation’s eligible amount for the taxation year in respect of the qualifying work placement,

“B” is the amount of all eligible expenditures made by the corporation in respect of the qualifying work placement, and

“C” is the amount by which the total of all salaries or wages paid by the corporation in the previous taxation year exceeds $400,000.

1997, c. 43, Sched. A, s. 18 (1); 2004, c. 16, s. 2 (2).

Certification of qualifying work placement

(4)  Every eligible educational institution in Ontario that has a qualified educational program that has qualifying work placements shall certify in a manner or form approved by the Minister to every corporation providing a qualifying work placement that the placement is a qualifying work placement for the purposes of this section, and the certification shall contain the name of the student in the placement and any additional information required by the Minister. 1997, c. 43, Sched. A, s. 18 (2); 2004, c. 16, s. 2 (2).

Part of records and books of account

(5)  Unless otherwise directed by the Minister, the certification provided by an eligible educational institution under subsection (4) in respect of a qualifying work placement shall form part of the records and books of account required to be kept under section 94 by the corporation providing the qualifying work placement. 1996, c. 29, s. 49 (3); 1997, c. 43, Sched. A, s. 18 (3); 2004, c. 16, s. 2 (2).

Minister’s direction and order

(5.1)  If incorrect certifications have been given under subsection (4) or an eligible educational institution has certified a work placement to be a qualifying work placement when it was not, the Minister may direct the educational institution to cease certifying work placements and may order that all or certain of the work placements of the institution be deemed not to be qualifying work placements for the purposes of this section until the Minister revokes the direction and order. 1996, c. 29, s. 49 (3); 1997, c. 43, Sched. A, s. 18 (4); 2004, c. 16, s. 2 (2).

Resumption of certification

(5.2)  If the Minister is satisfied that the educational institution will comply with the Minister’s directions with respect to the accuracy, form and content of certifications to be given under subsection (4), the Minister, subject to any conditions the Minister considers reasonable, may revoke the direction and order given under subsection (5.1), and all work placements that would have otherwise been qualifying work placements while the Minister’s direction and order were in effect shall, to the extent approved by the Minister, be considered to be qualifying work placements for the purposes of this section and may be so certified by the educational institution. 1996, c. 29, s. 49 (3); 1997, c. 43, Sched. A, s. 18 (5); 2004, c. 16, s. 2 (2).

Corporate partner

(6)  If a corporation is a member of a partnership and the partnership would qualify in a particular taxation year of the corporation for a co-operative education tax credit if the partnership were a corporation whose fiscal period was its taxation year, the portion of that co-operative education tax credit that may reasonably be considered to be the corporation’s share of the tax credit may be included in determining the amount of the corporation’s co-operative education tax credit for the corporation’s taxation year. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Limited partner

(7)  Despite subsection (6), a limited partner’s share of a partnership’s tax credit referred to in subsection (6) shall be deemed to be nil. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Deemed tax payment

(8)  A corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount, if any, by which,

(a) the corporation’s co-operative education tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Time of deemed payment

(9)  A corporation shall be deemed to make the payment referred to in subsection (8) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Definitions

(10)  In this section,

“eligible educational institution” means an educational institution that satisfies the conditions prescribed by the Minister; (“établissement d’enseignement autorisé”)

“eligible expenditure” means an amount determined in the manner prescribed by the Minister in respect of an expenditure that satisfies the conditions prescribed by the Minister; (“dépense autorisée”)

“eligible percentage” means, in respect of a repayment of government assistance, the percentage used in determining the amount of the tax credit, if the receipt of the government assistance reduced the amount of a tax credit available under this section; (“pourcentage autorisé”)

“qualifying work placement” has the meaning prescribed by the Minister. (“stage admissible”) 1996, c. 24, s. 27; 1997, c. 43, Sched. A, s. 18 (6, 7); 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 6 (1-3).

Regulations

(11)  The Minister may make regulations,

(a) prescribing the method of calculating the amount of salaries or wages that shall be deemed to be paid by a corporation in a previous taxation year for purposes of subsection (3.1);

(b) prescribing the meaning of “qualified educational program” for the purposes of subsection (4);

(c) prescribing conditions for the purposes of the definition of “eligible educational institution” in subsection (10);

(d) prescribing the manner for determining an amount and prescribing conditions for the purposes of the definition of “eligible expenditure” in subsection (10);

(e) prescribing the meaning of a “qualifying work placement” for the purposes of this section;

(f) prescribing methods of claiming and obtaining the benefit of a co-operative education tax credit, other than as otherwise set out in this section, and the procedures to be followed. 2004, c. 31, Sched. 9, s. 18; 2005, c. 31, Sched. 5, s. 6 (4).

Retroactive

(12)  A regulation made under subsection (11) is, if it so provides, effective with reference to any period after this section came into force. 2004, c. 31, Sched. 9, s. 18.

**Section Amendments with date in force (d/m/y)**

1996, c. 24, s. 27 - 08/05/1996; 1996, c. 29, s. 49 (1-3) - 08/05/1996; 1997, c. 43, Sched. A, s. 18 (1-11) - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 18](http://www.ontario.ca/laws/statute/S04031" \l "sched9s18) - 16/12/2004

[2005, c. 31, Sched. 5, s. 6 (1-4)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s6s1) - 15/12/2005

Ontario film and television tax credit

**43.5** (1)  A corporation that is a qualifying production company for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41, 43, 43.3 and 43.4 for the taxation year, an amount not exceeding the amount of its Ontario film and television tax credit for the taxation year. 1996, c. 24, s. 27; 1996, c. 29, s. 50; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that is a qualifying production company for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV of the Act an amount not exceeding the amount by which its Ontario film and television tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a qualifying production company’s Ontario film and television tax credit for a taxation year is the sum of the company’s eligible credits for the taxation year in respect of eligible Ontario productions. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Eligible credit, first-time production

(4)  A qualifying production company’s eligible credit for a taxation year in respect of a first-time production for which principal photography commences before November 1, 1997 is the lesser of,

(a) the sum of,

(i) 30 per cent of the lesser of,

(A) the amount by which $240,000 exceeds the company’s qualifying labour expenditure, if any, for the production for the previous taxation year, and

(B) the company’s qualifying labour expenditure for the taxation year for the production, and

(ii) the sum of,

(A) 15 per cent of the amount by which the company’s qualifying labour expenditure for the taxation year in respect of the production exceeds the lesser of the amounts determined under sub-subclauses (i) (A) and (B), multiplied by the ratio of the company’s pre-May 7, 1997 Ontario labour expenditure for the taxation year in respect of the production to the company’s Ontario labour expenditure for the taxation year in respect of the production, and

(B) 20 per cent of the amount by which the company’s qualifying labour expenditure for the taxation year in respect of the production exceeds the lesser of the amounts determined under sub-subclauses (i) (A) and (B), multiplied by the ratio of the company’s post-May 6, 1997 Ontario labour expenditure for the taxation year in respect of the production to the company’s Ontario labour expenditure for the taxation year in respect of the production; and

(b) the amount by which,

(i) the amount certified under subsection (9) in respect of the production,

exceeds,

(ii) the sum of all amounts in respect of the production that were deducted from tax under this section for a prior taxation year or were deemed by this section to be paid on account of tax payable under this Act for a prior taxation year. 1996, c. 24, s. 27; 1997, c. 43, Sched. A, s. 19 (1); 1998, c. 5, s. 13 (1, 2); 2004, c. 16, s. 2 (2).

Eligible credit for first-time production

(4.1)  A qualifying production company’s eligible credit for a taxation year in respect of a first-time production for which principal photography commences after October 31, 1997 is the sum of the amounts determined under subsections (4.2), (4.3) and (4.3.1) in respect of the production. 2008, c. 7, Sched. E, s. 5 (1).

Same, expenditures incurred before 2005

(4.2)  The amount determined under this subsection in respect of a first-time production for the purposes of subsection (4.1) is the sum of the amounts determined under the following paragraphs for the portion of the qualifying production company’s qualifying labour expenditure for the production that relates to expenditures incurred before January 1, 2005:

1. 30 per cent of the lesser of,

i. the amount, if any, by which $240,000 exceeds the total of the company’s qualifying labour expenditures for the production for previous taxation years, and

ii. the company’s qualifying labour expenditure for the taxation year for the production.

2. 20 per cent of the amount, if any, by which the company’s qualifying labour expenditure for the taxation year for the production exceeds the lesser of the amounts, if any, determined under subparagraphs 1 i and ii.

3. If the production is a regional Ontario production, 10 per cent of the company’s qualifying labour expenditure for the taxation year for the production incurred after May 2, 2000. 2008, c. 7, Sched. E, s. 5 (2).

Same, expenditures incurred after 2004 and before 2008

(4.3)  The amount determined under this subsection in respect of a first-time production for the purposes of subsection (4.1) is the sum of the amounts determined under the following paragraphs for the portion of the qualifying production company’s qualifying labour expenditure for the production that relates to expenditures incurred after December 31, 2004 and before January 1, 2008:

1. 40 per cent of the lesser of,

i. the amount, if any, by which $240,000 exceeds the sum of,

A. the total of the company’s qualifying labour expenditures for the production for previous taxation years, and

B. the lesser of the amounts, if any, determined under subparagraphs 1 i and ii of subsection (4.2) for the production for the taxation year, and

ii. the company’s qualifying labour expenditure for the taxation year for the production.

2. 30 per cent of the amount, if any, by which the company’s qualifying labour expenditure for the taxation year for the production exceeds the lesser of the amounts, if any, determined under subparagraphs 1 i and ii.

3. If the production is a regional Ontario production, 10 per cent of the company’s qualifying labour expenditure for the taxation year for the production. 2008, c. 7, Sched. E, s. 5 (3).

Same, expenditures incurred after 2007

(4.3.1)  The amount determined under this subsection in respect of a first-time production for the purposes of subsection (4.1) is the sum of the amounts determined under the following paragraphs for the portion of the qualifying production company’s qualifying labour expenditure for the production that relates to expenditures incurred after December 31, 2007 and in a taxation year that ends before January 1, 2009:

1. 40 per cent of the lesser of,

i. the amount, if any, by which $240,000 exceeds the sum of,

A. the total of the company’s qualifying labour expenditures for the production for previous taxation years, and

B. the lesser of the amounts, if any, determined under subparagraphs 1 i and ii of subsection (4.3) for the production for the taxation year, and

ii. the company’s qualifying labour expenditure for the taxation year for the production.

2. 35 per cent of the amount, if any, by which the company’s qualifying labour expenditure for the taxation year for the production exceeds the lesser of the amounts, if any, determined under subparagraphs 1 i and ii.

3. If the production is a regional Ontario production, 10 per cent of the company’s qualifying labour expenditure for the taxation year for the production. 2008, c. 7, Sched. E, s. 5 (4).

Exception, tax credit rate

(4.4)  If a percentage is prescribed by the regulations for the purposes of replacing a percentage set out in paragraph 1, 2 or 3 of subsection (4.3.1), the prescribed percentage and not the percentage that it replaces shall apply in determining an amount under that paragraph. 2005, c. 28, Sched. D, s. 10 (1); 2008, c. 7, Sched. E, s. 5 (5).

Exception, first-time production

(5)  Subject to subsection (5.1), if the total amount of the qualifying labour expenditures for a first-time production is $50,000 or less, the total amount of all eligible credits in respect of the production is the lesser of the total amount of the qualifying labour expenditures for the production and $15,000. 2000, c. 42, s. 16 (2); 2004, c. 16, s. 2 (2).

Same, regional Ontario production

(5.1)  If the total amount of the qualifying labour expenditures for a first-time production that is a regional Ontario production is $50,000 or less, the total amount of all eligible credits in respect of the production for a taxation year ending after May 2, 2000 is the lesser of,

(a) the total amount of the qualifying labour expenditures for the production; and

(b) the amount calculated under subsection (5.2). 2000, c. 42, s. 16 (2); 2004, c. 16, s. 2 (2).

Same

(5.2)  The amount referred to in clause (5.1) (b) is the amount calculated using the formula,

[ $20,000 × ( A / B ) ] + [ $15,000 × ( C / B ) ]

in which,

“A” is that portion of the company’s expenditures, if any, incurred in the taxation year and after May 2, 2000 that are included in the amount of the company’s Ontario labour expenditure for the taxation year in respect of the production,

“B” is the company’s total Ontario labour expenditure for the taxation year, and

“C” is that portion of the company’s expenditures, if any, incurred in the taxation year and before May 3, 2000 that are included in the amount of the company’s Ontario labour expenditure for the taxation year in respect of the production.

2000, c. 42, s. 16 (2); 2004, c. 16, s. 2 (2).

Eligible credit, other productions

(6)  A qualifying production company’s eligible credit for a taxation year in respect of an eligible Ontario production for which principal photography commences before November 1, 1997 is, if the production is not a first-time production, the lesser of,

(a) the sum of,

(i) 15 per cent of the amount determined by multiplying the company’s qualifying labour expenditure for the taxation year in respect of the production by the ratio of the company’s pre-May 7, 1997 Ontario labour expenditure for the taxation year in respect of the production to the company’s total Ontario labour expenditure for the taxation year in respect of the production, and

(ii) 20 per cent of the amount determined by multiplying the company’s qualifying labour expenditure for the taxation year in respect of the production by the ratio of the company’s post-May 6, 1997 Ontario labour expenditure for the taxation year in respect of the production to the company’s total Ontario labour expenditure for the taxation year in respect of the production;

(b) the amount by which,

(i) the amount certified under subsection (9) in respect of the production,

exceeds,

(ii) the sum of all amounts in respect of the production that were deducted from tax under this section for a prior taxation year or were deemed by this section to be paid on account of tax payable under this Act for a prior taxation year. 1996, c. 24, s. 27; 1997, c. 43, Sched. A, s. 19 (3); 1998, c. 5, s. 13 (4); 2004, c. 16, s. 2 (2).

Productions commenced after October 31, 1997 other than first‑time productions

(6.1)  Subject to subsection (6.1.1), the eligible credit of a qualifying production company for a taxation year in respect of an eligible Ontario production that is not a first-time production and for which principal photography commences after October 31, 1997 is the sum of,

(a) 20 per cent of the company’s qualifying labour expenditure for the year in respect of the production, as determined in relation to expenditures that are incurred before January 1, 2005 and included in the Ontario labour expenditure for the year in respect of the production;

(b) 30 per cent of the company’s qualifying labour expenditure for the year in respect of the production, as determined in relation to expenditures incurred after December 31, 2004 and before January 1, 2008 that are included in the Ontario labour expenditure for the year in respect of the production; and

(c) 35 per cent of the company’s qualifying labour expenditure for the year in respect of the production, as determined in relation to expenditures incurred after December 31, 2007 and in a year that ends before January 1, 2009 that are included in the Ontario labour expenditure for the year in respect of the production. 2008, c. 7, Sched. E, s. 5 (6).

Same, regional Ontario production

(6.1.1)  The eligible credit of a qualifying production company for a taxation year that ends after May 2, 2000 in respect of an eligible Ontario production that is a regional Ontario production but is not a first-time production is the sum of,

(a) 30 per cent of the company’s qualifying labour expenditure for the year for the production, as determined in relation to expenditures incurred after May 2, 2000 and before January 1, 2005 that are included in the Ontario labour expenditure for the year in respect of the production;

(b) 40 per cent of the company’s qualifying labour expenditure for the year for the production, as determined in relation to expenditures incurred after December 31, 2004 and before January 1, 2008 that are included in the Ontario labour expenditure for the taxation year in respect of the production; and

(c) 45 per cent of the company’s qualifying labour expenditure for the year for the production, as determined in relation to expenditures incurred after December 31, 2007 and in a year that ends before January 1, 2009 that are included in the Ontario labour expenditure for the year in respect of the production. 2008, c. 7, Sched. E, s. 5 (6).

Exception

(6.1.2)  If a percentage is prescribed by the regulations for the purposes of replacing a percentage set out in subsection (6.1) or (6.1.1), the prescribed percentage and not the percentage that it replaces shall apply in determining an amount under that subsection in respect of the period to which the prescribed percentage applies. 2005, c. 28, Sched. D, s. 10 (2).

Exception

(6.2)  Despite subsections (4) to (6.1.1), a qualifying production company’s eligible credit for a taxation year in respect of an eligible Ontario production is nil if the company claims a tax credit for any taxation year under section 43.10 in respect of the production. 1998, c. 5, s. 13 (5); 2000, c. 42, s. 16 (4); 2004, c. 16, s. 2 (2).

Application for certificate

(7)  In order to be eligible to deduct or claim an amount in respect of an Ontario film and television tax credit under this section with respect to a particular production, a qualifying production company shall apply to the Ontario Media Development Corporation, or to another person designated by the Minister of Culture, for certification that the production is an eligible Ontario production for the purposes of this section. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 10 (3).

Same

(8)  A qualifying production company that applies for certification shall provide the information specified for the purposes of this section by the Ontario Media Development Corporation or the person designated by the Minister of Culture to the person who specified that it be provided. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 10 (3).

Certificate

(9)  If the particular production is an eligible Ontario production for the purposes of this section, the Ontario Media Development Corporation or the person designated by the Minister of Culture shall issue to the qualifying production company a certificate and any amended certificates, with each certificate,

(a) certifying that the particular production is an eligible Ontario production for the purposes of this section;

(b) certifying the estimated amount of the corporation’s eligible credit for the production, for the purposes of this section; and

(c) if principal photography for the production commences before November 1, 1997, certifying the amount of the company’s Ontario film and television tax credit limit to be allocated to the particular production. 1998, c. 5, s. 13 (6); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 10 (3).

Same

(10)  In order to deduct or claim an amount under this section for a taxation year in respect of a particular production, a qualifying production company must deliver to the Minister with its return for the taxation year the certificate most recently issued in respect of the production or a certified copy of it. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Tax credit limit

(11)  The Ontario film and television tax credit limit of a qualifying production company and all corporations associated with the company in respect of eligible Ontario productions for which principal photography commences in a production year and before November 1, 1997 is the amount determined under the following rules:

1. The Ontario film and television tax credit limit in respect of all eligible Ontario productions for which principal photography is commenced by the company or a corporation associated with the company in the 1996 production year is $2,000,000.

2. The Ontario film and television tax credit limit in respect of all eligible Ontario productions for which the principal photography is commenced by the company or a corporation associated with the company in the 1997 production year and before November 1, 1997 is $2,666,667. 1998, c. 5, s. 13 (7); 2004, c. 16, s. 2 (2).

Same

(12)  No person shall issue certificates under subsection (9) in respect of productions for which principal photography commences before November 1, 1997, in which the total of the amounts certified in respect of eligible Ontario productions commenced in the same production year and before November 1, 1997 by the qualifying production company and all corporations associated with the company in the year would exceed the amount of the Ontario film and television tax credit limit applicable to that production year. 1998, c. 5, s. 13 (8); 2004, c. 16, s. 2 (2).

Maximum certified amount

(13)  The amount that may be certified under subsection (9) and allocated to a particular eligible Ontario production for which principal photography commences before November 1, 1997 shall not exceed,

(a) if the production is an eligible television series production, the lesser of,

(i) $1,500,000, and

(ii) the amount by which the Ontario film and television tax credit limit applicable to the production year in which the production commenced exceeds the sum of all amounts previously certified under subsection (9) in respect of eligible Ontario productions commenced in the same production year by the qualifying production company or a corporation associated with the company; or

(b) if the production is not an eligible television series production, the lesser of,

(i) $500,000, and

(ii) the amount by which the Ontario film and television tax credit limit applicable to the production year in which the production commenced exceeds the sum of all amounts previously certified under subsection (9) in respect of eligible Ontario productions commenced in the same production year by the qualifying production company or a corporation associated with the company. 1996, c. 24, s. 27; 1997, c. 43, Sched. A, s. 19 (6, 7); 1998, c. 5, s. 13 (9); 2004, c. 16, s. 2 (2).

Deemed tax payment

(14)  A qualifying production company shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the company not exceeding the amount, if any, by which,

(a) the company’s Ontario film and television tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the company under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Time of deemed payment

(15)  A qualifying production company shall be deemed to make the payment referred to in subsection (14) and the Minister shall be deemed to apply the deemed payment on the day on or before which the company would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Revocation of certificate

(16)  A certificate or amended certificate issued under subsection (9) may be revoked,

(a) if an omission or incorrect statement was made for the purpose of obtaining the certificate;

(b) if the production is not an eligible Ontario production;

(c) if the corporation to which the certificate is issued is not a qualifying production company; or

(d) if the corporation is issued a certificate in respect of the production under subsection 43.10 (8). 1998, c. 5, s. 13 (10); 2004, c. 16, s. 2 (2).

Same

(17)  A certificate that is revoked shall be deemed never to have been issued. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Amount of last certificate

(18)  If the last issued certificate in respect of a production certifies an amount less than the amount certified in a previously issued certificate in respect of the production, every amount that may be deducted or claimed under this section for a taxation year by a qualifying production company in respect of the production shall be deemed to be the amount that would have been determined if the last certificate issued had been the only certificate issued. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Definitions

(19)  In this section,

“eligible Ontario production” means a film or television production that satisfies the conditions prescribed by the regulations; (“production ontarienne admissible”)

“eligible television series production” means an eligible Ontario production that satisfies the conditions prescribed by the regulations; (“production admissible d’une série télévisée”)

“film studio” means,

(a) a building in which sets are used for the purpose of making film or television productions and sound, light and human access are controlled, or

(b) a building in which activities are carried out directly in support of animation if the production is an animated production or contains animated segments; (“studio”)

“first-time production” means an eligible Ontario production that is a first-time production under the rules prescribed by the regulations; (“première production”)

“Greater Toronto Area” means the geographic area composed of the City of Toronto and the regional municipalities of Durham, Halton, Peel and York; (“Grand Toronto”)

“location day” means, in respect of an eligible Ontario production, a day on which principal photography for the production is done in Ontario outside a film studio; (“jour de tournage en extérieur”)

“Ontario labour expenditure” means the amount determined under the rules prescribed by the regulations in respect of labour expenditures incurred after June 30, 1996 in respect of a production for which principal photography or key animation commenced after May 7, 1996; (“dépense de main-d’oeuvre en Ontario”)

“production year” means the twelve-month period prescribed by the regulations; (“année de production”)

“qualifying labour expenditure” means the amount determined under the rules prescribed by the regulations in respect of labour expenditures incurred after June 30, 1996 in respect of a production in which the principal photography or key animation commenced after May 7, 1996; (“dépense de main-d’oeuvre admissible”)

“qualifying production company” means a corporation that satisfies the conditions prescribed by the regulations; (“société de production admissible”)

“regional Ontario production” means an eligible Ontario production,

(a) for which the principal photography in Ontario is done entirely outside the Greater Toronto Area,

(b) for which the principal photography in Ontario is done in whole or in part outside a film studio, but only if,

(i) the number of Toronto location days for the production does not exceed 15 per cent of the total number of location days in respect of the production, and

(ii) the number of location days for the production is at least five or, in the case of a production that is a television series, is at least equal to the number of episodes in the production, or

(c) for which the principal photography in Ontario consists entirely of animation, but only if no more than 15 per cent of the principal photography in Ontario is done in the Greater Toronto Area; (“production régionale ontarienne”)

“Toronto location day” means, in respect of an eligible Ontario production, a day on which principal photography for the production is done outside a film studio and within the Greater Toronto Area. (“jour de tournage en extérieur à Toronto”) 1996, c. 24, s. 27; 1997, c. 43, Sched. A, s. 19 (8); 2000, c. 42, s. 16 (5); 2004, c. 16, s. 2 (2); 2009, c. 34, Sched. G, s. 1.

Pre-May 7, 1997 Ontario labour expenditure

(20)  The pre-May 7, 1997 Ontario labour expenditure of a qualifying production company for a taxation year in respect of an eligible Ontario production is the total of all expenditures incurred in the taxation year and before May 7, 1997 in respect of the production that are included in the amount of the company’s Ontario labour expenditure for the taxation year in respect of the production. 1997, c. 43, Sched. A, s. 19 (9); 2004, c. 16, s. 2 (2).

Post-May 6, 1997 Ontario labour expenditure

(21)  The post-May 6, 1997 Ontario labour expenditure of a qualifying production company for a taxation year in respect of an eligible Ontario production is the total of all expenditures incurred in the taxation year and after May 6, 1997 in respect of the production that are included in the amount of the company’s Ontario labour expenditure for the taxation year in respect of the production. 1997, c. 43, Sched. A, s. 19 (9); 2004, c. 16, s. 2 (2).

Regulations

(22)  The Lieutenant Governor in Council may make regulations,

(a) prescribing a percentage for the purposes of paragraph 1, 2 or 3 of subsection (4.3.1) for 2008 or any period of time in 2008;

(b) prescribing a percentage for the purposes of clause (6.1) (c) for 2008 or any period of time in 2008;

(c) prescribing a percentage for the purposes of clause (6.1.1) (c) for 2008 or any period of time in 2008. 2008, c. 7, Sched. E, s. 5 (7).

Same

(23)  A regulation under subsection (22) may prescribe different percentages in respect of different time periods in which expenditures are incurred. 2005, c. 28, Sched. D, s. 10 (4).

**Section Amendments with date in force (d/m/y)**

1996, c. 24, s. 27 - 08/05/1996; 1996, c. 29, s. 50 - 08/05/1996; 1997, c. 43, Sched. A, s. 19 (1, 3-9) - 07/05/1997; 1997, c. 43, Sched. A, s. 19 (2) - 08/05/1996; 1998, c. 5, s. 13 (1, 3-10) - 01/11/1997; 1998, c. 5, s. 13 (2) - 08/05/1996

[2000, c. 42, s. 16 (1-5)](http://www.ontario.ca/laws/statute/S00042" \l "s16s1) - 03/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 10 (1-4)](http://www.ontario.ca/laws/statute/S05028" \l "schedds10s1) - 11/05/2005

[2008, c. 7, Sched. E, s. 5 (1, 4, 5)](http://www.ontario.ca/laws/statute/S08007" \l "schedes5s1) - 01/01/2008; [2008, c. 7, Sched. E, s. 5 (2, 3)](http://www.ontario.ca/laws/statute/S08007" \l "schedes5s2) - 11/05/2005; [2008, c. 7, Sched. E, s. 5 (6, 7)](http://www.ontario.ca/laws/statute/S08007" \l "schedes5s6) - 14/05/2008

[2009, c. 34, Sched. G, s. 1 (1, 2)](http://www.ontario.ca/laws/statute/S09034" \l "schedgs1s1) - 03/05/2003

Graduate transitions tax credit

**43.6** (1)  A corporation that complies with the requirements of this section may deduct from its tax otherwise payable under this Part for a taxation year, after making all the deductions for the taxation year claimed under sections 39, 40, 41, 43 and 43.2 to 43.5, an amount not exceeding the amount of its graduate transitions tax credit for the taxation year. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its graduate transitions tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a corporation’s graduate transitions tax credit for a taxation year is the sum of,

(a) all amounts each of which is in respect of a qualifying employment that commenced not less than 12 months before the end of the taxation year or terminated before the end of the taxation year, equal to the lesser of the corporation’s eligible amount for the taxation year in respect of the qualifying employment determined under subsection (4) and $4,000; and

(b) the total of all amounts, each of which is an amount determined by multiplying the eligible percentage by the amount of a repayment, if any, made by the corporation during the taxation year, of government assistance in respect of the qualifying employment of an employee, to the extent the repayment does not exceed the amount of the assistance in respect of the qualifying employment that,

(i) has not been repaid in a prior taxation year, and

(ii) can reasonably be considered to have reduced the amount of a graduate transitions tax credit that would otherwise have been allowed to the corporation under this Act in respect of the qualifying employment. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Eligible amount

(4)  A corporation’s eligible amount for a taxation year in respect of a qualifying employment is the amount determined under the following rules:

1. If the qualifying employment commenced before January 1, 1998, the amount is 10 per cent of the total of all eligible expenditures made by the corporation in respect of the qualifying employment.

2. If the qualifying employment commenced after December 31, 1997 and the total of all salaries or wages paid by the corporation in the previous taxation year is equal to or greater than $600,000, the amount is 10 per cent of the total of all eligible expenditures made by the corporation in respect of the qualifying employment.

3. If the qualifying employment commenced after December 31, 1997 and the total of all salaries or wages paid by the corporation in the previous taxation year is not greater than $400,000, the amount is 15 per cent of the total of all eligible expenditures made by the corporation in respect of the qualifying employment.

4. If the qualifying employment commenced after December 31, 1997 and the total of all salaries or wages paid by the corporation in the previous taxation year is greater than $400,000 but less than $600,000, the amount is the amount determined in accordance with the following formula:

A = (10% × B) + [(5% × B) × 1 – C/$200,000)]

where,

“A” is the corporation’s eligible amount for the taxation year in respect of the qualifying employment,

“B” is the amount of all eligible expenditures made by the corporation in respect of the qualifying employment, and

“C” is the amount by which the total of all salaries or wages paid by the corporation in the previous taxation year exceeds $400,000.

1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Number of tax credits

(5)  Except for a tax credit in respect of the repayment of government assistance, a tax credit under this section may be claimed only once in respect of each qualifying employment. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Deemed employment by one corporation

(6)  Consecutive periods of employment by two or more associated corporations shall be deemed to be one continuous period of employment by only one of the corporations, as designated by the corporations. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Same

(7)  If consecutive periods of employment are deemed under subsection (6) to be one period of employment by only one of two or more associated corporations and that period of employment would otherwise be a qualifying employment under this section,

(a) all amounts referred to in subsection (11) that were paid by any of the associated corporations shall be deemed to have been paid by the corporation designated under subsection (6) and not by any other corporation; and

(b) government assistance received by any of the associated corporations in respect of the qualifying employment shall be deemed to have been received by the corporation designated under subsection (6) and not by any other corporation. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Corporate partner

(8)  If a corporation is a member of a partnership and the partnership would qualify in a particular taxation year of the corporation for a graduate transitions tax credit if the partnership were a corporation whose fiscal period was its taxation year, the portion of that graduate transitions tax credit that may reasonably be considered to be the corporation’s share of the tax credit may be included in determining the amount of the corporation’s graduate transitions tax credit for the corporation’s taxation year. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Limited partner

(9)  Despite subsection (8), a limited partner’s share of a partnership’s tax credit referred to in subsection (8) shall be deemed to be nil. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Qualifying employment

(10)  The employment of an employee by a corporation is a qualifying employment if,

(a) the employment commenced after May 6, 1997 but before July 6, 2004 and continued for at least six consecutive months;

(a.1) during the six-month period referred to in clause (a), the employee was required to work an average of more than 24 hours a week; and

(b) the employee,

(i) was not related to the corporation at the time the employment commenced,

(ii) had not been employed by any person more than 15 hours per week during 16 of the 32 weeks immediately before the first day of the employment,

(iii) had not had a source of income from a business for at least 16 of the 32 weeks immediately preceding the first day of the employment,

(iv) completed all requirements to qualify for graduation from a prescribed program of study within three years before the first day of the employment, and

(v) carried out his or her employment duties at or through a permanent establishment of the corporation in Ontario. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 19 (1).

Eligible expenditures

(11)  A corporation’s eligible expenditures in respect of a qualifying employment are the amounts that are paid or payable before January 1, 2005 to the employee as salary or wages during the 12-month period commencing on the first day of the qualifying employment and that,

(a) would be considered for the purposes of Part III of Regulation 183 of the Revised Regulations of Ontario, 1990 to be included in the amount of salary or wages paid to employees of a permanent establishment of the corporation in Ontario; and

(b) are required by subdivision a of Division B of Part I of the Income Tax Act (Canada) to be included in the income from employment of the employee in respect of the qualifying employment. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 19 (2).

Same

(12)  The total of all eligible expenditures made by a corporation in respect of a qualifying employment shall be the amount otherwise determined less the amount of all government assistance, if any, in respect of the eligible expenditures that, at the time the corporation is required to deliver a return under subsection 75 (1) for the taxation year for which the tax credit is claimed, the corporation has received, is entitled to receive or can reasonably be expected to be entitled to receive. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Exception

(13)  Despite subsections (11) and (12), an expenditure made by a corporation in respect of a qualifying employment is not an eligible expenditure in respect of the employment,

(a) to the extent that the amount of the expenditure would not be considered to be reasonable in the circumstances by persons dealing with each other at arm’s length; or

(b) if the qualifying employment is with a person other than the corporation. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Definitions

(14)  In this section,

“eligible percentage” means, in respect of a repayment of government assistance, the percentage used in determining the amount of the tax credit, if the receipt of the government assistance reduced the amount of a tax credit available under this section; (“pourcentage autorisé”)

“government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and investment allowance, but does not include the following:

1. An Ontario innovation tax credit under section 43.3.

2. An Ontario film and television tax credit under section 43.5.

3. A graduate transitions tax credit under this section.

4. An Ontario book publishing tax credit under section 43.7.

5. An Ontario computer animation and special effects tax credit under section 43.8.

6. An Ontario business-research institute tax credit under section 43.9.

6.1 An Ontario production services tax credit under section 43.10.

6.2 An Ontario interactive digital media tax credit under section 43.11.

6.3 An Ontario sound recording tax credit under section 43.12.

7. A Canadian film or video production tax credit under section 125.4 of the Income Tax Act (Canada).

8. An investment tax credit under section 127 of the Income Tax Act (Canada); (“aide gouvernementale”)

“prescribed program of study” means a program of study that satisfies the rules prescribed by the regulations. (“programme d’études prescrit”) 1997, c. 43, Sched. A, s. 20; 1998, c. 5, s. 14; 1998, c. 34, s. 40; 2004, c. 16, s. 2 (2).

Deemed tax payment

(15)  A corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount, if any, by which,

(a) the corporation’s graduate transitions tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Time of deemed payment

(16)  A corporation shall be deemed to make the payment referred to in subsection (15) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

Regulations

(17)  The Lieutenant Governor in Council may make regulations prescribing the method of calculating the amount of salaries or wages that will be deemed to be paid by a corporation in a taxation year for the purposes of subsection (4). 1997, c. 43, Sched. A, s. 20; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 20 - 07/05/1997; 1998, c. 5, s. 14 - 01/11/1997; 1998, c. 34, s. 40 (1) - 01/07/1998; 1998, c. 34, s. 40 (2) - 01/01/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 19 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s19s1) - 16/12/2004

Ontario book publishing tax credit

**43.7** (1)  A corporation that is an Ontario book publishing company for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for a taxation year, after making all the deductions for the taxation year claimed under sections 39, 40, 41, 43 and 43.3 to 43.6, an amount not exceeding the amount of its Ontario book publishing tax credit for the taxation year. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation referred to in subsection (1) that complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its Ontario book publishing tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a corporation’s Ontario book publishing tax credit for a taxation year is the sum of all amounts each of which is the amount of the available credit for the taxation year in respect of the publication of an eligible literary work, as determined using the formula,

A + B

in which,

“A” is the amount that is the lesser of,

(a) 30 per cent of the qualifying expenditures made by the corporation after May 6, 1997 and before May 3, 2000 in respect of the publication of the literary work, to the extent that the expenditures were not included in determining the available credit relating to the publication of the literary work that was included in an Ontario book publishing tax credit claimed by the corporation for a prior taxation year, and

(b) $10,000 less the total of all amounts, if any, each of which is the available credit relating to the publication of the same literary work that was included in an Ontario book publishing tax credit claimed by the corporation for a prior taxation year; and

“B” is the amount that is the lesser of,

(a) 30 per cent of the qualifying expenditures made by the corporation after May 2, 2000 and before the end of the taxation year in respect of the publication of the literary work, to the extent that the expenditures were not included in determining the available credit relating to the publication of the literary work that was included in an Ontario book publishing tax credit claimed by the corporation for a prior taxation year, and

(b) $30,000 less the sum of the amount of “A” for the taxation year in respect of the eligible literary work and the total of all amounts, if any, each of which is the available credit relating to the publication of that literary work that was included in an Ontario book publishing tax credit claimed by the corporation for a prior taxation year.

2000, c. 42, s. 17 (1); 2004, c. 16, s. 2 (2).

Same, book containing more than one literary work

(4)  A book that contains more than one literary work shall be deemed to be one literary work for the purposes of subsection (3), and the amount of a corporation’s Ontario book publishing tax credit for a taxation year in respect of the book shall not exceed the amount determined under subsection (3). 2000, c. 42, s. 17 (2); 2004, c. 16, s. 2 (2).

Corporate partner

(5)  If a corporation is a member of a partnership and the partnership would qualify in a particular taxation year of the corporation for an Ontario book publishing tax credit if the partnership were a corporation whose fiscal period was its taxation year, the portion of the Ontario book publishing tax credit to which the partnership would be entitled if it were a corporation that may reasonably be considered to be the corporation’s share may be included in determining the amount of the corporation’s Ontario book publishing tax credit for the corporation’s taxation year. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Limited partner

(6)  Despite subsection (5), a limited partner’s share of an Ontario book publishing tax credit to which a partnership would be entitled if it were a corporation shall be deemed to be nil. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Ontario book publishing company

(7)  A corporation is an Ontario book publishing company for a taxation year if it is a Canadian-controlled corporation throughout the taxation year and is a book publishing company that carries out its business primarily through a permanent establishment of the corporation in Ontario. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Application for certificate

(8)  In order to be eligible to deduct or claim an amount in respect of an Ontario book publishing tax credit under this section with respect to a particular literary work, an Ontario book publishing company shall apply to the Ontario Media Development Corporation or a person designated by the Minister of Culture for certification that the work is an eligible literary work for the purposes of this section. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 7 (1).

Same

(9)  An Ontario book publishing company that applies for certification shall provide to the designated person the information he or she specifies for the purposes of this section. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Certificate

(10)  If the particular literary work is an eligible literary work for the purposes of this section, the designated person shall issue to the Ontario book publishing company a certificate certifying that the work is an eligible literary work for the purposes of this section. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Same

(11)  In order to deduct or claim an amount under this section for a taxation year in respect of a particular literary work, an Ontario book publishing company must deliver to the Minister with its return for the taxation year the certificate issued in respect of the work, or a certified copy of the certificate. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Revocation of certificate

(11.1)  A certificate issued under subsection (10) may be revoked if an omission or incorrect statement was made for the purpose of obtaining the certificate, if the corporation is not an Ontario book publishing company, or if the literary work is not an eligible literary work for the purposes of this section. 1998, c. 5, s. 15 (2); 2004, c. 16, s. 2 (2).

Same

(11.2)  A certificate that is revoked shall be deemed never to have been issued. 1998, c. 5, s. 15 (2); 2004, c. 16, s. 2 (2).

Eligible literary work

(12)  A literary work is an eligible literary work if it satisfies the following conditions:

1. The literary work is written by an eligible Canadian author or, if it is written by more than one author, all or substantially all of the work is the work of eligible Canadian authors.

2. The literary work belongs to an eligible category of writing.

3. At least 90 per cent of the literary work is new material that has not been previously published.

4. If the literary work contains pictures and is not a children’s book, the ratio of the amount of text to pictures in the literary work is at least 65 per cent.

5. The literary work is suitable for publication as a bound book having not less than 48 printed pages, unless the literary work is a children’s book.

6. The literary work is not an ineligible publication. 1997, c. 43, Sched. A, s. 21; 2000, c. 42, s. 17 (3, 4); 2004, c. 16, s. 2 (2).

Exception

(13)  No tax credit may be claimed by a corporation under this section with respect to the publishing of a literary work if,

(a) the publication date is before May 7, 1997;

(b) the corporation publishes the literary work on consignment or at the expense of another person;

(c) the author of the literary work, a person related to the author or a person who is, or is related to, the subject of the literary work directly or indirectly funds, or guarantees the payment of, any part of the cost of publishing or marketing the literary work;

(d) the corporation is controlled by the author of the literary work, or by a person not dealing at arm’s length with the author;

(e) the corporation publishes the literary work other than as a bound hardback, a paperback or a trade paperback book;

(f) the corporation publishes the literary work in an edition of less than 500 copies;

(g) the published literary work is not assigned an International Standard Book Number;

(h) the corporation does not offer the literary work for sale through an established distributor;

(i) the corporation published fewer than two books during the 12-month period immediately before the taxation year for which the credit under this section is claimed;

(j) the literary work is published in a book that also contains one or more other literary works and less than all or substantially all of the literary works contained in the book are by eligible Canadian authors. 1997, c. 43, Sched. A, s. 21; 2000, c. 42, s. 17 (5); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 20 (1).

Qualifying expenditures

(14)  The following amounts in respect of the publishing of an eligible literary work by an Ontario book publishing company are qualifying expenditures of the company for a taxation year:

1. Expenditures incurred by the company in the taxation year in respect of pre-press costs, including,

i. non-refundable monetary advances to the eligible Canadian author of the literary work, and

ii. amounts in respect of activities that reasonably relate to the publishing of the literary work, if the activities are carried out primarily in Ontario, including,

A. salaries and wages paid to employees involved in editing, design and project management,

B. amounts in respect of fees for freelance editing, design and research, and

C. amounts in respect of the cost of art work, developing prototypes, set-up and typesetting.

2. One-half of the expenditures incurred by the company in the taxation year for the printing, assembling and binding of the literary work, if those activities are carried out primarily in Ontario.

3. Expenditures incurred by the company in the taxation year that reasonably relate to the marketing of copies of the published literary work and are incurred by the company within 12 months after the date of publication of the literary work, including,

i. expenditures in respect of promotional tours by the eligible Canadian author of the literary work, except that only 50 per cent of expenditures for meals and entertainment are qualifying expenditures,

ii. salaries and wages paid to employees of the company engaged in marketing the published literary work, and

iii. amounts expended in respect of promoting and marketing copies of the published literary work. 1997, c. 43, Sched. A, s. 21; 2000, c. 42, s. 17 (6, 7); 2004, c. 16, s. 2 (2).

Exception, second and subsequent literary works

(14.1)  An expenditure incurred before May 3, 2000 is not a qualifying expenditure of an Ontario book publishing company unless the expenditure relates to the first literary work published by an eligible Canadian author in an eligible category of writing. 2000, c. 42, s. 17 (8); 2004, c. 16, s. 2 (2).

Same

(15)  The total of all qualifying expenditures made by a corporation in respect of the publishing of an eligible literary work shall be the amount otherwise determined less the amount of all government assistance, if any, in respect of the qualifying expenditures that, at the time the corporation’s return is required to be delivered under subsection 75 (1) for the taxation year for which the tax credit is claimed, the corporation has received, is entitled to receive or may reasonably be expected to be entitled to receive. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Corporate reorganizations

(15.1)  Subsection (15.2) applies if, after December 31, 2001, one of the following events occurs:

1. An Ontario book publishing company (the “transferor”) transfers all or part of its business to another corporation (the “transferee”) in accordance with subsection 85 (1) of the Income Tax Act (Canada).

2. A corporation (the “transferee”) is formed as the result of an amalgamation of an Ontario book publishing company (the “transferor”) with one or more other corporations in accordance with section 87 of the Income Tax Act (Canada).

3. An Ontario book publishing company (the “transferor”) is wound up in accordance with subsection 88 (1) of the Income Tax Act (Canada) and its assets and liabilities, if any, are transferred to its parent corporation (the “transferee”). 2004, c. 31, Sched. 9, s. 20 (2).

Continuation of corporation

(15.2)  If one of the conditions described in subsection (15.1) is satisfied, the following rules apply:

1. For the purposes of subsections (3), (8) and (14), the transferee shall be deemed to be the same corporation as, and a continuation of, the transferor with respect to an eligible literary work or the right to publish an eligible literary work that is transferred to the transferee under paragraph 1, 2 or 3 of subsection (15.1) and any credit previously claimed under this section by the transferor in a taxation year in respect of the eligible literary work shall be deemed to have been claimed by the transferee in that previous taxation year.

2. For the purposes of subsections (3), (8) and (14), the transferor ceases, immediately after the eligible literary work is transferred under paragraph 1, 2 or 3 of subsection (15.1) to be an Ontario book publishing company in respect of the eligible literary work or the right to publish the eligible literary work.

3. For the purpose of clause (13) (i), any books published by the transferor in the 12-month period immediately preceding the taxation year in which the event described in paragraph 1, 2 or 3 of subsection (15.1) occurs shall be deemed to have been published by the transferor and the transferee. 2004, c. 31, Sched. 9, s. 20 (2).

Definitions

(16)  In this section,

“author” includes, in respect of a literary work that is a children’s book, the illustrator of the literary work; (“auteur”)

“book publishing company” means a corporation whose principal business is selecting, editing and publishing books and that,

(a) enters into contractual agreements with authors and copyright holders for the production of literary works in print form,

(b) offers for sale into the retail market the literary works that it publishes,

(c) owns its own inventory or is related to a Canadian-controlled corporation that owns the inventory, or has a contractual arrangement for inventory repurchase or acceptance of book returns, and

(d) bears the financial risks associated with carrying on the business of publishing, or is related to a Canadian-controlled corporation that bears the financial risks associated with carrying on the business; (“maison d’édition”)

“Canadian-controlled corporation” means a corporation that is determined to be Canadian-controlled under sections 26 to 28 of the Investment Canada Act (Canada) for the purposes of that Act and, in the application of those sections for the purposes of this definition, a reference to the Minister shall be read as a reference to the Minister of Finance; (“société sous contrôle canadien”)

“eligible Canadian author” means, with respect to a literary work, an individual,

(a) who, when the contract is entered into to publish the literary work, is ordinarily resident in Canada and is a Canadian citizen or a permanent resident within the meaning of the Immigration Act (Canada), and

(b) who has not written more than two literary works of the same eligible category of writing that have been previously published, other than a literary work published in an anthology containing two or more literary works by different authors; (“auteur canadien admissible”)

“established distributor” means a person or partnership that has engaged in the business of selling or distributing books to retail stores and educational institutions for more than one year and does not sell directly by retail to an ultimate consumer; (“distributeur établi”)

“government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and investment allowance, but does not include,

(a) an Ontario book publishing tax credit under this section, or

(b) a grant that is not specific to a particular eligible literary work; (“aide gouvernementale”)

“ineligible publication” means a literary work that is an ineligible publication under the rules prescribed by the regulations. (“publication non admissible”) 1997, c. 43, Sched. A, s. 21; 2000, c. 42, s. 17 (9, 10); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 20 (3); 2005, c. 31, Sched. 5, s. 7 (2, 3).

Eligible category of writing

(16.1)  For the purposes of this section, the eligible categories of writing are as follows:

1. If the literary work is published on or before May 11, 2005, each of the following is an eligible category of writing:

i. Fiction.

ii. Nonfiction.

iii. Poetry.

iv. Biography.

v. Children’s books.

2. If the literary work is published after May 11, 2005, each of the following is an eligible category of writing:

i. Fiction.

ii. Nonfiction.

iii. Poetry.

iv. Biography.

v. Children’s fiction.

vi. Children’s nonfiction.

vii. Children’s poetry.

viii. Children’s biography. 2005, c. 31, Sched. 5, s. 7 (4).

Transitional, eligible Canadian author

(16.2)  In determining if an individual is an eligible Canadian author of a literary work published after May 11, 2005 that is children’s fiction, children’s non-fiction, children’s poetry or children’s biography and whether the individual has more than two literary works of the same eligible category of writing that have been previously published, any children’s books of which the individual is the author that were published before May 12, 2005 shall be classified according to the eligible categories of writing that would apply if the books had been published after May 11, 2005. 2005, c. 31, Sched. 5, s. 7 (4).

Deemed tax payment

(17)  A corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount, if any, by which,

(a) the corporation’s Ontario book publishing tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

Time of deemed payment

(18)  A corporation shall be deemed to make the payment referred to in subsection (17) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1997, c. 43, Sched. A, s. 21; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 21 - 07/05/1997; 1998, c. 5, s. 15 (1) - 07/05/1997; 1998, c. 5, s. 15 (2) - 26/06/1998

[2000, c. 42, s. 17 (1-3, 5-10)](http://www.ontario.ca/laws/statute/S00042" \l "s17s1) - 03/05/2000; [2000, c. 42, s. 17 (4)](http://www.ontario.ca/laws/statute/S00042" \l "s17s4) - 21/12/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 20 (1)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s20s1) - 16/12/2004; [2004, c. 31, Sched. 9, s. 20 (2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s20s2) - 01/01/2002; [2004, c. 31, Sched. 9, s. 20 (3)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s20s3) - 07/05/1997

[2005, c. 31, Sched. 5, s. 7 (1)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s7s1) - 15/12/2005; [2005, c. 31, Sched. 5, s. 7 (2)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s7s2) - 03/05/2000; [2005, c. 31, Sched. 5, s. 7 (3, 4)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s7s3) - 11/05/2005

Ontario computer animation and special effects tax credit

**43.8** (1)  A corporation that is a qualifying corporation for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41, 43, 43.3, 43.4, 43.5, 43.6 and 43.7 for the taxation year, an amount not exceeding the amount of its Ontario computer animation and special effects tax credit for the taxation year. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that is a qualifying corporation for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its Ontario computer animation and special effects tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a qualifying corporation’s Ontario computer animation and special effects tax credit for a taxation year is the sum of,

(a) the lesser of,

(i) 20 per cent of that portion, if any, of the corporation’s qualifying labour expenditure for the taxation year in respect of eligible productions that is determined by reference to eligible labour expenditures incurred prior to May 6, 1998 in respect of eligible computer animation and special effects activities, and

(ii) the amount of the corporation’s Ontario computer animation and special effects tax credit limit allocated to eligible computer animation and special effects activities in respect of eligible productions for the taxation year, as certified under subsection (6); and

(b) 20 per cent of that portion, if any, of the corporation’s qualifying labour expenditure for the taxation year in respect of eligible productions that is determined by reference to eligible labour expenditures incurred after May 5, 1998 in respect of eligible computer animation and special effects activities. 1998, c. 34, s. 41 (1); 2004, c. 16, s. 2 (2).

Application for certificate

(4)  In order to be eligible to deduct or claim an amount in respect of an Ontario computer animation and special effects tax credit under this section, a qualifying corporation shall apply to the Ontario Media Development Corporation for a certificate for the purposes of this section. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 11 (1).

Same

(5)  A qualifying corporation that applies for a certificate shall provide to the Ontario Media Development Corporation the information specified by the Ontario Media Development Corporation for the purposes of this section. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 11 (1).

Certificate

(6)  If a qualifying corporation provides the information in accordance with subsection (5) in respect of its eligible computer animation and special effects activities for a taxation year, the Ontario Media Development Corporation shall issue a certificate, and any amended certificate it considers appropriate, to the qualifying corporation with respect to its eligible productions for the taxation year, certifying,

(a) the amount of the qualifying corporation’s Ontario computer animation and special effects tax credit limit to be allocated to eligible computer animation and special effects activities for each eligible production for which eligible labour expenditures are incurred before May 6, 1998; and

(b) the estimated amount of the corporation’s tax credit under this section for the taxation year in respect of each eligible production for which eligible labour expenditures are incurred after May 5, 1998. 1998, c. 34, s. 41 (2); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 11 (1).

Certificate to be delivered with return

(7)  In order to deduct or claim an amount under this section for a taxation year, a qualifying corporation must deliver to the Minister with its return for the taxation year the certificate most recently issued for the taxation year in respect of its eligible computer animation and special effects activities, or a certified copy of it. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Tax credit limit

(8)  The amount of the Ontario computer animation and special effects tax credit limit of a qualifying corporation and all corporations associated with the qualifying corporation in respect of all eligible Ontario computer animation and special effects activities carried out in the same calendar year by the qualifying corporation or a corporation associated with the qualifying corporation is,

(a) $333,000 for the 1997 calendar year; and

(b) $500,000 in respect of eligible computer animation and special effects activities for which eligible labour expenditures are incurred after December 31, 1997 and before May 6, 1998. 1997, c. 43, Sched. A, s. 22; 1998, c. 34, s. 41 (3); 2004, c. 16, s. 2 (2).

Same

(9)  No person shall issue certificates under subsection (6) in which the total of the amounts certified in respect of eligible computer animation and special effects activities carried out by the qualifying corporation and by all corporations associated with the qualifying corporation would exceed,

(a) $333,000 for the 1997 calendar year; and

(b) $500,000 in respect of activities for which eligible labour expenditures are incurred after December 31, 1997 and before May 6, 1998. 1998, c. 34, s. 41 (4); 2004, c. 16, s. 2 (2).

Deemed tax payment

(10)  A qualifying corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation not exceeding the amount, if any, by which,

(a) its Ontario computer animation and special effects tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Time of deemed tax payment

(11)  A qualifying corporation shall be deemed to make the payment referred to in subsection (10) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Revocation of certificate

(12)  A certificate or amended certificate issued under subsection (6) may be revoked if an omission or incorrect statement was made for the purpose of obtaining the certificate, if the corporation is not a qualifying corporation or if the activities are not eligible computer animation and special effects activities for the purposes of this section. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Same

(13)  A certificate that is revoked shall be deemed never to have been issued. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Amount of last certificate

(14)  If the last issued certificate in respect of eligible computer animation and special effects activities for a taxation year certifies an amount less than the amount certified in a previously issued certificate in respect of eligible computer animation and special effects activities for that taxation year, every amount that may be deducted or claimed under this section for that taxation year by a qualifying corporation in respect of eligible computer animation and special effects activities for that taxation year shall be deemed to be the amount that would have been determined if the last certificate issued had been the only certificate issued. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Qualifying labour expenditure for a taxation year

(15)  The qualifying labour expenditure of a qualifying corporation for a taxation year is the total of all amounts each of which is the eligible labour expenditure of the corporation in respect of an eligible production for the taxation year. 1997, c. 43, Sched. A, s. 22; 2004, c. 16, s. 2 (2).

Eligible labour expenditure

(16)  The eligible labour expenditure of a qualifying corporation in respect of an eligible production for a taxation year is the sum of the amounts, if any, determined under the following paragraphs:

1. The amount equal to the lesser of,

i. the portion of the corporation’s Ontario labour expenditure for the taxation year for eligible computer animation and special effects activities in respect of the eligible production that relates to expenditures incurred before May 12, 2005, and

ii. the amount by which 48 per cent of the prescribed cost of eligible computer animation and special effects activities incurred by the corporation in the taxation year and before May 12, 2005 in respect of the eligible production exceeds the amount of all government assistance, if any, in respect of eligible computer animation and special effects activities the cost of which is incurred before May 12, 2005 and included in the cost or capital cost of the eligible production that, at the time the corporation’s return is required to be delivered under subsection 75 (1) for the taxation year for which the tax credit is claimed, the corporation has received, is entitled to receive or may reasonably be expected to be entitled to receive.

2. The amount by which “A” exceeds “B” where,

“A” is the portion of the corporation’s Ontario labour expenditure for the taxation year for eligible computer animation and special effects activities of the eligible production that relates to expenditures incurred after May 11, 2005 and that is determined without reference to any equity investment in the production held by a Canadian government film agency, and

“B” is an amount in respect of assistance relating to expenditures incurred after May 11, 2005 with respect to the eligible production, other than excluded government assistance, that, at the time the qualifying corporation’s return is required to be delivered under subsection 75 (1) for the taxation year, the qualifying corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, equal to the sum of,

(a) the amount of the assistance directly attributable to the portion of the Ontario labour expenditure referred to in the definition of “A”, and

(b) the amount determined by multiplying the amount of the assistance that is not directly attributable to the portion of the Ontario labour expenditure referred to in the definition of “A” by the ratio of the amount of that portion of the Ontario labour expenditure in respect of the production to the amount of the prescribed cost that is incurred after May 11, 2005 of eligible computer animation and special effects activities of the eligible production. 2005, c. 28, Sched. D, s. 11 (2).

Television production

(16.1)  The amount of the corporation’s Ontario labour expenditure for a taxation year for eligible computer animation and special effects activities in respect of an eligible production that is a television production shall not include any amounts incurred before May 6, 1998 unless the production is directed primarily at children or is suitable for initial broadcast in a standard television time slot of at least 30 minutes or, if the production consists of two or more episodes, each episode of the production is suitable for initial broadcast in a standard television time slot of at least 30 minutes. 1998, c. 34, s. 41 (5); 2004, c. 16, s. 2 (2).

Definitions

(17)  In this section,

“assistance” means an amount that would be included under paragraph 12 (1) (x) of the *Income Tax Act* (Canada) in computing a corporation’s income for a taxation year if that paragraph were read without reference to subparagraphs (v) to (vii); (“aide”)

“Canadian government film agency” means a federal or provincial government agency whose mandate relates to the provision of assistance to film productions in Canada; (“organisme cinématographique gouvernemental canadien”)

“eligible computer animation and special effects activities” means activities prescribed by the regulations that are carried out in Ontario directly in support of digital animation or digital visual effects for use in an eligible production; (“activités admissibles liées aux effets spéciaux et à l’animation informatiques”)

“eligible production” means a film or television production that satisfies the following conditions:

1. The production is produced for commercial exploitation.

2. The production is not described in any of subparagraphs (b) (i) to (xi) of the definition of “excluded production” in subsection 1106 (1) of Schedule 1 to Ontario Regulation 322/97 (“Ontario Film and Television Tax Credit”) made under this Act.

3. It is not a production for which, in the opinion of the Minister of Culture, public financial support would be contrary to public policy.

4. If principal photography for the production commences before November 1, 1997, it is not a variety production, educational or instructional production or programming in a magazine format.

5. If the production is a television production for which all amounts included in the corporation’s Ontario labour expenditure for the production are incurred before May 6, 1998, the production is directed primarily at children or is suitable for initial broadcast in a standard television time slot of at least 30 minutes or, if the production consists of two or more episodes, each episode of the production is suitable for initial broadcast in a standard television time slot of at least 30 minutes; (“production admissible”)

“excluded government assistance” means the tax credits listed in clauses (a) to (f) of the definition of “government assistance” in this subsection; (“aide gouvernementale exclue”)

“government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and investment allowance, but not including,

(a) an Ontario film and television tax credit under section 43.5,

(a.1) an Ontario production services tax credit under section 43.10,

(b) a tax credit under this section,

(c) a Canadian film or video production tax credit under section 125.4 of the Income Tax Act (Canada),

(d) a film or video production services tax credit under section 125.5 of the Income Tax Act (Canada),

(e) a co-operative education tax credit under section 43.4 to the extent that it relates to expenditures incurred after May 11, 2005, or

(f) an apprenticeship training tax credit under section 43.13 to the extent that it relates to expenditures incurred after May 11, 2005; (“aide gouvernementale”)

“Ontario labour expenditure”, of a qualifying corporation in respect of an eligible production, means the amount determined under the rules prescribed by the regulations; (“dépense de main-d’oeuvre en Ontario”)

“prescribed cost” means, in respect of an eligible production, the amount determined under the rules prescribed by the regulations; (“coût prescrit”)

“producer” means, in respect of an eligible production, the individual who would be considered to be the producer of the production for the purposes of determining if the production were an eligible Ontario production for the purposes of section 43.5; (“producteur”)

“qualifying corporation” means a Canadian corporation that,

(a) performs, at a permanent establishment in Ontario operated by it, eligible computer animation and special effects activities,

(i) for an eligible production that it undertakes, or

(ii) for an eligible production under contract with the producer of the production,

(b) is not controlled directly or indirectly in any manner by one or more corporations all or part of whose taxable income is exempt from tax under this Part or Part I of the Income Tax Act (Canada), and

(c) is not a corporation that is a prescribed labour-sponsored venture capital corporation under the regulations made under the Income Tax Act (Canada). (“société admissible”) 1997, c. 43, Sched. A, s. 22; 1998, c. 5, s. 16 (2, 3); 1998, c. 34, s. 41 (6, 7); 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 11 (3-6).

Ontario Media Development Corporation

(18)  A reference in this section to the Ontario Media Development Corporation includes a reference to such person as the Minister of Culture may designate to carry out the functions of the Ontario Media Development Corporation for the purposes of this section. 2005, c. 28, Sched. D, s. 11 (7).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 22 - 07/05/1997; 1998, c. 5, s. 16 (1, 2) - 07/05/1997; 1998, c. 5, s. 16 (3) - 01/11/1997; 1998, c. 34, s. 41 (1-6) - 05/05/1998; 1998, c. 34, s. 41 (7) - 01/11/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 11 (1-7)](http://www.ontario.ca/laws/statute/S05028" \l "schedds11s1) - 11/05/2005

Ontario business-research institute tax credit

**43.9** (1)  A corporation that is a qualifying corporation in respect of one or more eligible contracts for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41, 43 and 43.2 to 43.8 for the taxation year, an amount not exceeding the amount of its Ontario business-research institute tax credit for the taxation year in respect of the contracts. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation referred to in subsection (1) that complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its Ontario business-research institute tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  Subject to subsection (20), the amount of a qualifying corporation’s Ontario business-research institute tax credit for a taxation year is the sum of all amounts, each of which is in respect of an eligible contract and is equal to 20 per cent of the amount calculated using the formula,

A × B/C

in which,

“A” is the total of all qualified expenditures incurred during the taxation year and after May 6, 1997 under the contract by the corporation, to the extent that no tax credit has been claimed under this section for a prior taxation year in respect of the qualified expenditures,

“B” is the number of days in the taxation year after May 6, 1997 that the corporation is not connected to the eligible research institute that entered into the eligible contract or to any other eligible research institute that carries out the scientific research and experimental development that is to be performed under the contract, and

“C” is the number of days in the taxation year after May 6, 1997.

2004, c. 31, Sched. 9, s. 21 (1).

Qualifying corporation

(4)  A corporation is a qualifying corporation for a taxation year in respect of an eligible contract with an eligible research institute if,

(a) the corporation carries on business in Ontario in the taxation year through a permanent establishment in Ontario; and

(b) the corporation or a partnership of which it is a member, but not a specified member, entered into the contract with the eligible research institute.

(c) Repealed: 2004, c. 31, Sched. 9, s. 21 (2).

(d) Repealed: 2004, c. 31, Sched. 9, s. 21 (2).

1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 21 (2).

Corporation connected to an eligible research institute

(5)  For the purposes of this section, a corporation is connected to an eligible research institute at any time during a taxation year of the corporation if at that time,

(a) the eligible research institute owned, directly or indirectly in any manner whatever, shares of the capital stock of the corporation that,

(i) carry more than 10 per cent of the voting rights attached to voting securities, within the meaning of the Securities Act, of the corporation, or

(ii) have a fair market value of more than 10 per cent of the fair market value of all of the issued shares of the capital stock of the corporation;

(b) the eligible research institute and the corporation were members of the same partnership or did not deal at arm’s length;

(c) a partnership of which the eligible research institute is a member owned, directly or indirectly in any manner whatever, any of the shares of the corporation; or

(d) the corporation and the eligible research institute are connected under rules prescribed by the regulations. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 21 (3).

Corporate partners

(6)  If a corporation is a member, other than a specified member, of a partnership at the end of a fiscal period of the partnership in which the partnership would qualify for an Ontario business-research institute tax credit if the partnership were a corporation whose fiscal period was its taxation year, and if the corporation would be a qualifying corporation in respect of the eligible contract if it instead of the partnership had entered into the contract,

(a) the portion of the qualified expenditures in respect of which the partnership would calculate the tax credit for the taxation year that may reasonably be considered to be the corporation’s share of the qualified expenditures,

(i) shall be deemed to have been incurred by the corporation and shall be included in determining the total amount of the corporation’s qualified expenditures in respect of the eligible contract for the taxation year in which the partnership’s fiscal period ends, and

(ii) may be included in the determination of the amount of the corporation’s Ontario business-research institute tax credit for the taxation year in which the partnership’s fiscal period ends; and

(b) the corporation’s share of the qualified expenditures shall be the portion of the qualified expenditures that corresponds to the corporation’s share of the income or loss of the partnership for the fiscal period of the partnership ending in the taxation year and, for the purpose of determining the corporation’s share of the tax credit if the partnership has no income or loss for that fiscal period, the partnership’s income for the fiscal period shall be deemed to be $1,000,000. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Eligible contract

(7)  For the purposes of this section, a contract entered into by a corporation or a partnership with an eligible research institute is an eligible contract if,

(a) under the terms of the contract, the eligible research institute agrees to directly perform in Ontario scientific research and experimental development related to a business carried on in Canada by the corporation or partnership, as the case may be, and the corporation or partnership is entitled to exploit the results of the research and development carried out under the agreement; and

(b) the contract is entered into after May 6, 1997 or, if the contract was entered into before May 7, 1997, the terms of the contract as they read on May 7, 1997 provide that the eligible research institute will continue to carry out scientific research and experimental development under the contract until a date after May 6, 1999. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Exception, substituted contract

(8)  Despite subsection (7), a contract entered into after May 6, 1997 that, but for this subsection, would be an eligible contract shall not be an eligible contract for the purposes of this section if the contract may reasonably be considered to require expenditures for scientific research and experimental development that were to be performed under a contract entered into before May 7, 1997 by the corporation or the partnership or by a person related to the corporation or partnership, as the case may be. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Qualified expenditure

(9)  Except as otherwise provided in this section, an expenditure incurred under an eligible contract with an eligible research institute by a corporation that is a qualifying corporation in respect of the contract is a qualified expenditure under the contract to the extent that,

(a) the expenditure, when it is made, is a payment of money made by the corporation to the eligible research institute under the terms of the contract;

(b) the expenditure is incurred by the corporation in respect of scientific research and experimental development carried on in Ontario directly by the eligible research institute; and

(c) it is an expenditure referred to in subparagraph 37 (1) (a) (i), (i.1) or (ii) of the Income Tax Act, (Canada) that would be a qualified expenditure within the meaning of subsection 127 (9) of that Act, other than an expenditure,

(i) that can reasonably be considered to fund the payment of salary or wages to an employee of the eligible research institute who is connected to the corporation making the expenditure, or

(ii) that is prescribed under the rules prescribed by the regulations. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Advance ruling required

(10)  Despite subsection (9), an expenditure that would otherwise be a qualified expenditure of a corporation under this section shall be deemed not to be a qualified expenditure for the purposes of this section unless, before the corporation or partnership incurs the expenditure,

(a) it has applied to the Minister in the manner and form approved by the Minister for a ruling with respect to the contract under which the expenditure is to be made, the proposed expenditures to be made under the contract and the arrangements between the parties to the contract and other persons;

(b) it has provided all information specified by the Minister and any other relevant information and documentation that may be reasonably required by the Minister in connection with the application for the ruling; and

(c) the Minister has given a ruling with respect to the contract, the proposed expenditures and whether the parties to the contract and other persons connected directly or indirectly to the arrangements in respect of the contract are considered to be conducting their business and affairs within the spirit and intent of this section at the time the ruling is given. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Expenditure under more than one contract

(11)  If an expenditure will be applied under more than one contract, a ruling under subsection (10) must be obtained with respect to each of the contracts. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Expenditure before ruling obtained

(12)  If a corporation or partnership incurs an expenditure under a contract before the Minister gives a ruling under subsection (10), and the Minister subsequently gives a favourable ruling, the expenditure shall be deemed, for the purposes of subsection (10) but not subsection (3), to have been made after the ruling was given if the corporation or partnership applies to the Minister for the ruling,

(a) within 90 days after the later of,

(i) the day on which the contract was entered into, and

(ii) the day on which the Tax Credits to Create Jobs Act, 1997 receives Royal Assent; or

(b) no later than three years after the day on which the contract was entered into, and the Minister is satisfied that the corporation or partnership was unable to apply for the ruling at an earlier time through no fault of its own for reasons that were beyond its control. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Minister may dispense with requirement for ruling

(13)  At any time after May 6, 2000, the Minister may give a direction that rulings no longer need to be obtained under this section in respect of contracts entered into after the date of the Minister’s direction, if the Minister is satisfied that corporations, their officers, directors and shareholders, partnerships and their members and eligible research institutes are conducting their business and affairs in a manner that meets the spirit and intent of this section, and, subject to subsection (14), subsections (10) to (12) will not apply to qualified expenditures made under contracts entered into after the date of the Minister’s direction. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Minister may reinstate ruling requirement

(14)  The Minister may, at any time after giving a direction under subsection (13), revoke the direction and give a new direction that subsections (10) to (12) shall apply to qualified expenditures made under contracts entered into after the date of the new direction. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Publication

(15)  The Minister shall publicize directions given under subsections (13) and (14), by bulletin or by any other means of communication that, in the opinion of the Minister, will bring the directions to the attention of those affected. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Reduction in amount of qualified expenditures

(16)  The total of all qualified expenditures incurred by a corporation under an eligible contract shall be reduced by any contribution that the corporation, any shareholder of the corporation, any partnership of which the corporation is a member, any partner in that partnership or any person not dealing at arm’s length with the corporation or a shareholder of the corporation has received, is entitled to receive or can reasonably be expected to receive from the eligible research institute that entered into the eligible contract, a person who performs scientific research and experimental development that is to be carried out under the contract or a person who does not deal at arm’s length with either of them. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Exception

(17)  Despite subsection (16), if under the terms of an eligible contract between an eligible research institute and a corporation or partnership, the eligible research institute directly funds part of the cost of performing the scientific research and experimental development that is to be carried out under the contract, the expenditures made by the institute in performing the scientific research and experimental development shall not be considered to be a contribution if,

(a) the financial obligations of the corporation or partnership under the contract are not reduced by the amount of any expenditures made by the eligible research institute;

(b) the expenditures made by the eligible research institute are not payments made to or at the direction of the corporation or partnership; and

(c) there is an agreement in writing between the eligible research institute and all other persons who are parties to the eligible contract that provides the terms and conditions under which the eligible research institute would be entitled to recover the amount of its expenditures. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Same, transactions in the ordinary course of business

(18)  Subsection (16) does not apply in respect of the provision of goods and services in the ordinary course of a business carried on by the corporation or partnership if,

(a) in the case where the corporation or partnership, or another person who does not deal at arm’s length with the corporation or partnership, acquires the goods or services, the price paid by the corporation, partnership or person for the goods or services is not less than their fair market value; and

(b) in the case where the corporation or partnership, or another person who does not deal at arm’s length with the corporation or partnership, is providing the goods or services,

(i) the price for the goods or services is not greater than their fair market value, and

(ii) the expenditures made to acquire the goods or services do not form part of the expenditures made by the eligible research institute for scientific research and experimental development under the eligible contract. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Repayment of government assistance

(19)  The total of all qualified expenditures made by a corporation for a taxation year under an eligible contract may include an amount that may reasonably be considered to be a repayment of government assistance made by the corporation during the taxation year, to the extent that the amount,

(a) has not been repaid in a prior taxation year; and

(b) can reasonably be considered to have reduced the amount of a Ontario business-research institute tax credit that would otherwise have been allowed to the corporation under this section in respect of the eligible contract. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Limit on amount of qualified expenditures

(20)  The amount of qualified expenditures under an eligible contract with respect to which a corporation may claim a tax credit under this section shall not exceed the amount that may reasonably be considered to be the amount that would have been expended by the corporation if the corporation had carried out the scientific research and experimental development directly in the same circumstances and under the same conditions as the eligible research institute under the eligible contract. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Annual qualified expenditure limit

(21)  No tax credit may be claimed by a corporation under this section for a taxation year in respect of qualified expenditures that exceed the corporation’s qualified expenditure limit for the year as determined under the rules prescribed by the regulations. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Wholly owned and controlled non-profit subsidiaries of eligible research institutes

(22)  An eligible research institute is deemed for the purposes of this section to carry out scientific research and experimental development that is carried out by a corporation that is a wholly-owned and controlled non-profit subsidiary of the eligible research institute, if the scientific research and experimental development activities are required to be carried out under an eligible contract entered into by the eligible research institute. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Subcontracts

(23)  If an eligible research institute that has entered into an eligible contract with a corporation enters into a contract with another institute that is an eligible research institute or a specified person and under that second contract the other institute performs part of the scientific research and experimental development that is to be carried out under the eligible contract or the specified person carries out part of the work required to be carried out under the contract, the scientific research and experimental development carried out directly by the other institute or the work carried out by the specified person is deemed to be carried out directly by the eligible research institute under the eligible contract. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Deemed tax payment

(24)  A corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount, if any, by which,

(a) the corporation’s business research-institute tax credit for the taxation year,

exceeds,

(b) the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Time of deemed tax payment

(25)  A corporation shall be deemed to make the payment referred to in subsection (24) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Same, taxation years ending before March 28, 2003

(25.1)  Subsections (25.2) and (25.3) apply to a corporation that is entitled to a deduction under subsection (1) or (2) for a taxation year ending before March 28, 2003 if,

(a) the corporation was connected to an eligible research institute at any time during the term of the eligible contract and before March 28, 2003; or

(b) an employee of the eligible research institute was connected to the corporation at any time during the preceding taxation year, but was not connected to the corporation at any time during the taxation year. 2004, c. 31, Sched. 9, s. 21 (4).

Same

(25.2)  For the purposes of calculating interest under subsection 79 (1) or (4), 82 (4) or 83 (1), the deduction under subsection (1) or (2) from tax otherwise payable for the taxation year and the payment under subsection (24) on account of tax otherwise payable for the taxation year shall be deemed to have been made on the later of,

(a) March 28, 2003; and

(b) the day the notice of assessment for the taxation year is issued by the Minister allowing the deduction from tax otherwise payable. 2004, c. 31, Sched. 9, s. 21 (4).

Same

(25.3)  In the circumstances described in clause (25.1) (b), subsection (25.2) applies only to the portion of the Ontario business-research institute tax credit that relates to the salary or wages of that employee. 2004, c. 31, Sched. 9, s. 21 (4).

When employee connected to corporation

(26)  For the purposes of this section, if an eligible research institute and a corporation have entered into an eligible contract, an employee of the eligible research institute is connected to the corporation in a taxation year if, at any time in the taxation year of the corporation,

(a) the employee or a person who does not deal at arm’s length with the employee owned, directly or indirectly in any manner whatever, shares of the capital stock of the corporation that,

(i) carry more than 10 per cent of the voting rights attached to voting securities, within the meaning of the Securities Act, of the corporation, or

(ii) have a fair market value of more than 10 per cent of the fair market value of all of the issued shares of the capital stock of the corporation; or

(b) the employee and the corporation are connected under rules prescribed by the regulations. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 21 (5).

Same

(27)  For the purposes of subsections (5) and (26), subsection 256 (1.4) of the Income Tax Act (Canada) applies with necessary modifications to determine the shares of the capital stock of a corporation that are deemed to be issued and outstanding and owned by a person and the person’s relation to control of the corporation. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Interpretation

(28)  For the purposes of determining if an expenditure would be a qualified expenditure within the meaning of subsection 127 (9) of the Income Tax Act (Canada) for the purposes of this section,

(a) a tax credit under this section or under section 43.3 shall be deemed not to be government assistance; and

(b) the reference to “contract payment” in subsection 127 (18) of the Income Tax Act (Canada) shall be deemed for the purposes of paragraph (h) of the definition of “qualified expenditure” in subsection 127 (9) of that Act to exclude payments prescribed by the regulations. 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

Definitions

(29)  In this section,

“contribution” means, in respect of an eligible contract, an amount that is not excluded by the rules prescribed by the regulations and that is,

(a) a payment in money, a transfer of ownership of a property, an assignment of the use of property or of a right to use a property or any other benefit or advantage in any other form or manner, other than a property resulting from scientific research and experimental development undertaken under the eligible contract,

(b) a former, present or future right in the proceeds of disposition of part or all of the intellectual property arising from the scientific research and experimental development undertaken under the eligible contract,

(c) a reimbursement, compensation or guarantee,

(d) a loan or loan guarantee, or

(e) an amount that is of a type prescribed in the regulations; (“contribution”)

“eligible research institute” means,

(a) a university or college of applied arts and technology in Ontario, whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the Government of Ontario,

(b) an Ontario Centre of Excellence or a network of Centres of Excellence,

(c) a non-profit organization that is prescribed by the regulations, is a member of a class of organizations that is prescribed by the regulations or meets the conditions prescribed by the regulations, or

(d) a hospital research institute that meets the conditions prescribed by regulation; (“institut de recherche admissible”)

“government assistance” has the same meaning as in section 127 of the Income Tax Act (Canada), except that a tax credit under this section or section 43.3 shall be deemed not to be government assistance; (“aide gouvernementale”)

“specified person” means, in respect of a contract, a person who is a specified person under the rules prescribed by the regulations. (“personne déterminée”) 1997, c. 43, Sched. A, s. 23; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 23 - 07/05/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 21 (1-3, 5)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s21s1) - 07/05/1997; [2004, c. 31, Sched. 9, s. 21 (4)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s21s4) - 16/12/2004

[CTS 3 NO 14 - 1](http://www.ontario.ca/laws/consolidated-statutes-change-notices)

Ontario production services tax credit

**43.10** (1)  A corporation that is a qualifying corporation for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41, 43 and 43.2 to 43.9 for the taxation year, an amount not exceeding the amount of its Ontario production services tax credit for the taxation year. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that is a qualifying corporation for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV of the Act an amount not exceeding the amount by which its Ontario production services tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a qualifying corporation’s Ontario production services tax credit for a taxation year is the sum of the corporation’s eligible credits for the taxation year in respect of eligible productions. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Eligible credit

(4)  A qualifying corporation’s eligible credit for a taxation year in respect of an eligible production is the total of,

(a) 11 per cent of the portion of its qualifying Ontario labour expenditure in respect of the production for the taxation year that relates to expenditures incurred before January 1, 2005;

(b) 18 per cent of the portion of its qualifying Ontario labour expenditure in respect of the production for the taxation year that relates to expenditures incurred after December 31, 2004 and before January 1, 2008;

(c) 25 per cent of the portion of its qualifying Ontario labour expenditure in respect of the production for the taxation year that relates to expenditures incurred after December 31, 2007 and in a taxation year that ends before January 1, 2009; and

(d) in the case of a regional Ontario production, 3 per cent of the portion of its Ontario labour expenditure in respect of the production for the taxation year, that relates to expenditures incurred after May 2, 2000 and before January 1, 2005. 2005, c. 28, Sched. D, s. 12 (1); 2006, c. 9, Sched. D, s. 1; 2007, c. 7, Sched. 6, s. 3; 2008, c. 7, Sched. E, s. 6 (1).

Exception, tax credit rate

(4.1)  If a percentage is prescribed by the regulations for the purposes of clause (4) (c), the percentage prescribed for the purposes of that clause and not the percentage set out in that clause shall apply in determining an amount under that clause in respect of the period to which the prescribed percentage applies. 2005, c. 28, Sched. D, s. 12 (1); 2008, c. 7, Sched. E, s. 6 (2).

Exception

(5)  Despite subsection (4), a qualifying corporation’s eligible credit for a taxation year in respect of an eligible production is nil if the corporation claims a tax credit for any taxation year under section 43.5 in respect of the production, unless no tax credit under section 43.5 in respect of the production is allowed. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Application for certificate

(6)  In order to be eligible to deduct or claim an amount in respect of an Ontario production services tax credit under this section with respect to a particular production, a qualifying corporation shall apply to the Ontario Media Development Corporation, or to another person designated by the Minister of Culture, for certification that the production is an eligible production for the purposes of this section. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 12 (2).

Same

(7)  A qualifying corporation that applies for certification shall provide the information specified for the purposes of this section by the Ontario Media Development Corporation or the person designated by the Minister of Culture to the person who specified that it be provided. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 12 (2).

Certificate

(8)  The Ontario Media Development Corporation or the person designated by the Minister of Culture shall issue to the qualifying corporation a certificate and any amended certificates,

(a) if the particular production is an eligible production for the purposes of this section; and

(b) if the qualifying corporation,

(i) has not claimed a tax credit in respect of the production under section 43.5, or

(ii) has claimed a tax credit in respect of the production under section 43.5 which was not allowed on assessment or reassessment by the Minister, and the corporation has not objected to the assessment or reassessment on the issue of the disallowance of the tax credit under section 43.5 in respect of the production. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2); 2005, c. 28, Sched. D, s. 12 (2).

Same

(9)  Each certificate issued under subsection (8) must certify that the particular production is an eligible production for the purposes of this section and certify the estimated amount of the corporation’s eligible credit for the production for the purposes of this section. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Certificate to be delivered with return

(10)  In order to deduct or claim an amount under this section for a taxation year in respect of a particular production, a qualifying corporation must deliver to the Minister with its return for the taxation year the certificate most recently issued in respect of the production or a certified copy of the certificate. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Deemed tax payment

(11)  A qualifying corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation not exceeding the amount, if any, by which the corporation’s Ontario production services tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Time of deemed payment

(12)  A qualifying corporation shall be deemed to make the payment referred to in subsection (11) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Revocation of certificate

(13)  A certificate or amended certificate issued under subsection (8) may be revoked,

(a) if an omission or incorrect statement was made for the purpose of obtaining the certificate;

(b) if the production is not an eligible production;

(c) if the corporation to which the certificate is issued is not a qualifying corporation; or

(d) if a certificate in respect of the production is issued to the corporation under subsection 43.5 (9). 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Same

(14)  A certificate that is revoked shall be deemed never to have been issued. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Application

(15)  This section applies with respect to qualifying Ontario labour expenditures incurred after October 31, 1997. 1998, c. 5, s. 17; 2004, c. 16, s. 2 (2).

Regulations

(15.1)  The Lieutenant Governor in Council may make regulations prescribing a percentage for the purposes of clause (4) (c) and the period of time after December 31, 2007 and before January 1, 2009 to which it applies. 2008, c. 7, Sched. E, s. 6 (3).

Same

(15.2)  A regulation under subsection (15.1) may prescribe different percentages in respect of different time periods in which expenditures are incurred. 2005, c. 28, Sched. D, s. 12 (3).

Definitions

(16)  In this section,

“eligible production” means a film or television production that satisfies the conditions prescribed by the regulations; (“production admissible”)

“qualifying corporation” means a corporation that satisfies the conditions prescribed by the regulations; (“société admissible”)

“qualifying Ontario labour expenditure” means the amount determined under the rules prescribed by the regulations; (“dépense de main-d’oeuvre admissible en Ontario”)

“regional Ontario production” has the meaning given to that expression in subsection 43.5 (19) if the reference to “eligible Ontario production” in that definition were read as a reference to an “eligible production”. (“production régionale ontarienne”) 1998, c. 5, s. 17; 2000, c. 42, s. 18 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 5, s. 17 - 01/11/1997

[2000, c. 42, s. 18 (1, 2)](http://www.ontario.ca/laws/statute/S00042" \l "s18s1) - 03/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 28, Sched. D, s. 12 (1-3)](http://www.ontario.ca/laws/statute/S05028" \l "schedds12s1) - 11/05/2005

[2006, c. 9, Sched. D, s. 1](http://www.ontario.ca/laws/statute/S06009" \l "schedds1) - 01/04/2006

[2007, c. 7, Sched. 6, s. 3 (1, 2)](http://www.ontario.ca/laws/statute/S07007" \l "sched6s3s1) - 17/05/2007

[2008, c. 7, Sched. E, s. 6 (1, 2)](http://www.ontario.ca/laws/statute/S08007" \l "schedes6s1) - 01/01/2008; [2008, c. 7, Sched. E, s. 6 (3)](http://www.ontario.ca/laws/statute/S08007" \l "schedes6s3) - 14/05/2008

Ontario interactive digital media tax credit

**43.11** (1)  A corporation that is a qualifying corporation for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for the taxation year, after making all deductions claimed under sections 39, 40, 41, 43 and 43.2 to 43.10 for the taxation year, an amount not exceeding the amount of its Ontario interactive digital media tax credit for the taxation year. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation that is a qualifying corporation for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV of the Act an amount not exceeding the amount by which its Ontario interactive digital media tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a qualifying corporation’s Ontario interactive digital media tax credit for a taxation year is the sum of,

(a) 20 per cent of the amount of the corporation’s qualifying expenditure for the taxation year;

(b) if the corporation is a qualifying small corporation, the sum of,

(i) 10 per cent of the amount that would be determined under subclause (4) (b) (i) for the taxation year if the amounts referred to in that subclause were determined by reference only to expenditures incurred after March 23, 2006 and before January 1, 2009, and

(ii) 5 per cent of the amount that would be determined under clause (4) (a) for the taxation year if the amounts referred to in that clause were determined by reference only to expenditures incurred after March 25, 2008 and before January 1, 2009; and

(c) if the corporation is not a qualifying small corporation, 5 per cent of the amount that would be determined under subsection (4) if the amounts referred to in that subsection were determined by reference only to expenditures incurred after March 25, 2008 and before January 1, 2009. 2006, c. 33, Sched. G, s. 2 (1); 2008, c. 7, Sched. E, s. 7 (1).

Qualifying expenditure

(4)  The qualifying expenditure of a qualifying corporation for a taxation year is the sum of,

(a) the amount, if any, that would be its eligible labour expenditure for the taxation year in respect of eligible products that are specified products if that amount were determined by reference only to expenditures incurred after March 23, 2006 and before January 1, 2009; and

(b) the amount, if any, of,

(i) its eligible labour expenditure and eligible marketing and distribution expenditure for the taxation year in respect of eligible products, other than specified products, if the corporation is a qualifying small corporation for the taxation year, or

(ii) the amount that would be its eligible labour expenditure and the amount that would be its eligible marketing and distribution expenditure for the taxation year in respect of eligible products, other than specified products, if those amounts were determined by reference only to expenditures incurred after March 23, 2006 and before January 1, 2009, if the corporation is not a qualifying small corporation for the taxation year. 2006, c. 33, Sched. G, s. 2 (1); 2008, c. 7, Sched. E, s. 7 (2, 3).

Who claims amount in respect of specified product

(4.1)  For the purposes of subsection (4), if a qualifying corporation develops a specified product under a contract entered into after March 23, 2006, only the qualifying corporation is entitled to claim an amount under this section in respect of the specified product. 2006, c. 33, Sched. G, s. 2 (1).

Eligible labour expenditure

(5)  A qualifying corporation’s eligible labour expenditure for an eligible product for a taxation year is equal to the amount, if any, by which the sum of “A” and “B” exceeds “E” where,

“A” is the Ontario labour expenditure, if any, incurred by the qualifying corporation in the taxation year for the eligible product,

“B” is the amount, if any, by which “C” exceeds “D” where,

“C” is the total of all amounts, if any, each of which is the Ontario labour expenditure incurred for the eligible product by the qualifying corporation in a previous taxation year or by a qualifying predecessor corporation before the disposition, merger or wind-up, as the case may be, to the extent that,

(a) if development of the eligible product is completed before March 26, 2008, the expenditure is incurred in the 25-month period ending at the end of the month in which development of the eligible product is completed, or

(b) if development of the eligible product is completed after March 25, 2008, the expenditure is incurred in the 37-month period ending at the end of the month in which development of the eligible product is completed, and

“D” is the total of all amounts, if any, each of which is the eligible labour expenditure for the eligible product that was included in the determination of the amount of a tax credit claimed under this section for a previous taxation year by the qualifying corporation or by a qualifying predecessor corporation, and

“E” is the total of all government assistance, if any, in respect of the Ontario labour expenditure for the eligible product that, at the time the qualifying corporation’s return is required to be delivered under subsection 75 (1) for the taxation year, the qualifying corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, to the extent that the government assistance has not been repaid pursuant to a legal obligation to do so. 2002, c. 22, s. 47 (1); 2004, c. 16, s. 2 (2); 2006, c. 33, Sched. G, s. 2 (2); 2008, c. 7, Sched. E, s. 7 (4).

Eligible marketing and distribution expenditure

(5.1)  The eligible marketing and distribution expenditure of a qualifying corporation for an eligible product for a taxation year is the amount that is the lesser of “A” and “B” where,

“A” is the amount, if any, by which $100,000 exceeds the total of all amounts, if any, each of which is the corporation’s eligible marketing and distribution expenditure for the eligible product or a qualifying predecessor corporation’s eligible marketing and distribution expenditure incurred for the eligible product prior to the disposal, merger or wind-up, as the case may be, that was included in the determination of the corporation’s tax credit under this section for a prior taxation year, and

“B” is the amount calculated under subsection (5.2). 2000, c. 42, s. 19 (3); 2002, c. 22, s. 47 (2); 2004, c. 16, s. 2 (2).

Same

(5.2)  The variable “B” in subsection (5.1) is the amount calculated using the formula,

C – (D + E + F)

in which,

“C” is the total of all amounts, if any, each of which is a marketing and distribution expenditure in respect of the eligible product incurred by the qualifying corporation in the taxation year or in a previous taxation year or by a qualifying predecessor corporation before the disposition, merger or wind-up, as the case may be, to the extent that it was incurred,

(a) in the month in which development of the eligible product is completed, and

(b) in the period of 24 months before, or in the period of 12 months after, the month in which development of the eligible product is completed,

“D” is the total amount of all government assistance, if any, for the marketing and distribution expenditures described in the definition of “C” for the eligible product that, when the qualifying corporation’s return is required to be delivered under subsection 75 (1) for the taxation year, the qualifying corporation or any other person or partnership has received, is entitled to receive or can reasonably expect to receive, to the extent that the government assistance has not been repaid pursuant to a legal obligation to do so,

“E” is the total of all amounts, if any, each of which is an eligible marketing and distribution expenditure for the eligible product that was included in the determination of a tax credit claimed under this section for a previous taxation year by the qualifying corporation or by a qualifying predecessor corporation, and

“F” is the total of all marketing and distribution expenditures described in the definition of “C” for the eligible product that are Ontario labour expenditures of the qualifying corporation or a qualifying predecessor corporation.

2000, c. 42, s. 19 (3); 2002, c. 22, s. 47 (3); 2004, c. 16, s. 2 (2); 2006, c. 33, Sched. G, s. 2 (3, 4).

Application for certificate

(6)  In order to be eligible to deduct or claim an amount in respect of an Ontario interactive digital media tax credit under this section for a taxation year, a qualifying corporation shall apply to the Ontario Media Development Corporation or a person designated by the Minister of Culture for certification of its eligible products for the purposes of this section. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 8 (1).

Same

(7)  A qualifying corporation that applies for certification shall provide the information specified for the purposes of this section by the Ontario Media Development Corporation or a person designated by the Minister of Culture to the person who specified that it be provided. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 8 (2).

Certificate

(8)  If a qualifying corporation provides the information in accordance with subsection (7) in respect of its eligible products for a taxation year, the Ontario Media Development Corporation or a person designated by the Minister of Culture shall issue a certificate, and any amended certificates it considers appropriate, to the qualifying corporation with respect to its eligible products for the taxation year, certifying in respect of each eligible product,

(a) that the product is an eligible product for the purposes of this section; and

(b) the estimated amount of the corporation’s tax credit under this section applicable to the product. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 8 (3).

Certificate to be delivered with return

(9)  In order to deduct or claim an amount under this section for a taxation year, a qualifying corporation must deliver to the Minister with its return for the taxation year the certificate for the taxation year that is most recently issued under subsection (8), or a certified copy of the certificate. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Deemed tax payment

(10)  A qualifying corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation not exceeding the amount, if any, by which “A” exceeds “B”,

where,

“A” is its Ontario interactive digital media tax credit for the taxation year, and

“B” is the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Time of deemed payment

(11)  A qualifying corporation shall be deemed to make the payment referred to in subsection (10) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Revocation of certificate

(12)  A certificate or amended certificate issued under subsection (8) may be revoked,

(a) if an omission or incorrect statement was made and it is reasonable to believe that, if the omitted information had been disclosed or if the person issuing the certificate had known that the statement was incorrect, he or she would not have issued the certificate;

(b) if none of the products in respect of which the certificate is issued is an eligible product;

(c) if the corporation to which the certificate is issued is not a qualifying corporation; or

(d) if, in determining the amount of its tax credit under this section for a taxation year, the corporation claims another corporation as a qualifying predecessor corporation in respect of an eligible product and the other corporation is not a qualifying predecessor corporation of the corporation before the eligible product becomes the property of, or is disposed of to, the corporation. 1998, c. 34, s. 42; 2002, c. 22, s. 47 (4); 2004, c. 16, s. 2 (2).

Same

(13)  A certificate that is revoked shall be deemed never to have been issued. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Application

(14)  This section applies with respect to expenditures incurred after June 30, 1998 that are included in the Ontario labour expenditure for an eligible product. 1998, c. 34, s. 42; 2004, c. 16, s. 2 (2).

Same, expenditures after May 2, 2000

(14.1)  This section, as it is deemed to have read on May 3, 2000, applies with respect to expenditures incurred after May 2, 2000 that are included in the eligible marketing and distribution expenditure of a qualifying corporation for an eligible product and with respect to expenditures incurred after June 30, 1998 that are included in the Ontario labour expenditure of a qualifying corporation for an eligible product. 2000, c. 42, s. 19 (3); 2002, c. 22, s. 47 (5); 2004, c. 16, s. 2 (2).

Definitions

(15)  In this section,

“eligible product” means, in respect of a qualifying corporation, a product,

(a) that satisfies the conditions prescribed by the regulations or that is a specified product, and

(b) for which public financial support would not be contrary to public policy in the opinion of the Ontario Media Development Corporation or, if another person is designated under subsection (6), in the opinion of that person; (“produit admissible”)

“government assistance” means assistance from a government, municipality or other public authority in any form, including a grant, subsidy, forgivable loan, deduction from tax and investment allowance, but not including a tax credit under this section; (“aide gouvernementale”)

“marketing and distribution expenditure” means the amount determined under the rules prescribed by the regulations; (“dépense de commercialisation et de distribution”)

“Ontario labour expenditure” means the amount determined under the rules prescribed by the regulations; (“dépense de main-d’oeuvre en Ontario”)

“qualifying corporation” means a Canadian corporation,

(a) that satisfies one of the conditions set out in subsection (16),

(b) that is not controlled directly or indirectly in any manner by one or more corporations all or part of whose taxable income is exempt from tax under this Part or Part I of the Income Tax Act (Canada), and

(c) that is not a prescribed labour-sponsored venture capital corporation under the regulations made under the Income Tax Act (Canada); (“société admissible”)

“qualifying predecessor corporation” means, in respect of a qualifying corporation (the “transferee”), a corporation that was a qualifying corporation in respect of an eligible product and that,

(a) disposes of the eligible product to the transferee in accordance with subsection 85 (1) of the Income Tax Act (Canada) if, at the time of the disposition,

(i) the corporation owns all of the issued and outstanding shares of the transferee,

(ii) the transferee owns all of the issued and outstanding shares of the corporation, or

(iii) all of the issued and outstanding shares of the corporation and the transferee are directly or indirectly owned by the same person,

(b) merges with one or more corporations in accordance with section 87 of the Income Tax Act (Canada) to form the transferee, or

(c) is wound up in accordance with subsection 88 (1) of the Income Tax Act (Canada); (“société remplacée admissible”)

“qualifying small corporation” means, subject to subsection (18), a qualifying corporation to which subsection 57.2 (1) would not apply for the immediately preceding taxation year,

(a) if the references to $5 million in clause 57.2 (1) (a) and in subclause 57.2 (1) (c) (i) were read as $10 million, and

(b) if the references to $10 million in clause 57.2 (1) (b) and in subclause 57.2 (1) (c) (ii) were read as $20 million. (“petite société admissible”) 1998, c. 34, s. 42; 2000, c. 42, s. 19 (4); 2002, c. 22, s. 47 (6, 7); 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 8 (4); 2006, c. 33, Sched. G, s. 2 (5-7).

Specified product

(15.1)  A product developed by a qualifying corporation is a specified product for the purposes of this section if the following conditions are satisfied:

1. The product satisfies the conditions prescribed by the regulations.

2. The product is developed by the qualifying corporation under the terms of an agreement between the qualifying corporation and a purchaser that is a corporation that deals at arm’s length with the qualifying corporation.

3. The product is developed under the agreement for the purpose of sale or license by the purchaser to one or more persons, each of whom deals at arm’s length with the purchaser.

4. All or substantially all of the product is developed in Ontario by the qualifying corporation.

5. The development of the product is completed by the qualifying corporation after March 23, 2006. 2006, c. 33, Sched. G, s. 2 (8).

Conditions for qualifying corporations

(16)  The following are the conditions referred to in clause (a) of the definition of “qualifying corporation” in subsection (15):

1. The corporation commences development of an eligible product at a permanent establishment in Ontario operated by the corporation, but does not complete development of the product before it is transferred to or otherwise becomes the property of another corporation in circumstances described in clause (a), (b) or (c) of the definition of “qualifying predecessor corporation” in subsection (15).

2. The corporation completes, at a permanent establishment in Ontario operated by the corporation, the development of an eligible product received from a qualifying predecessor corporation.

3. The corporation develops an eligible product at a permanent establishment in Ontario operated by the corporation. 2002, c. 22, s. 47 (8); 2004, c. 16, s. 2 (2).

Ceasing to be a qualifying corporation

(17)  Despite paragraph 1 of subsection (16), a qualifying predecessor corporation ceases to be a qualifying corporation with respect to an eligible product immediately after the eligible product becomes the property of, or has been disposed of to, the other corporation. 2002, c. 22, s. 47 (8); 2004, c. 16, s. 2 (2).

Amalgamations

(18)  Despite the definition of “qualifying small corporation” in subsection (15), a corporation formed as a result of an amalgamation of two or more predecessor corporations is not a qualifying small corporation for the taxation year commencing at the time of the amalgamation unless each predecessor corporation would be considered, but for this subsection, to be a qualifying small corporation for its last taxation year ending immediately before the amalgamation and, for the purposes of this subsection, each predecessor corporation is deemed to have been associated with every other predecessor corporation during the taxation year ending immediately before the amalgamation. 2006, c. 33, Sched. G, s. 2 (9).

**Section Amendments with date in force (d/m/y)**

1998, c. 34, s. 42 - 01/07/1998

[2000, c. 42, s. 19 (1-4)](http://www.ontario.ca/laws/statute/S00042" \l "s19s1) - 03/05/2000

[2002, c. 22, s. 47 (1, 4, 6-8)](http://www.ontario.ca/laws/statute/S02022" \l "s47s1) - 01/07/1998; [2002, c. 22, s. 47 (2, 3)](http://www.ontario.ca/laws/statute/S02022" \l "s47s2) - 03/05/2000; [2002, c. 22, s. 47 (5)](http://www.ontario.ca/laws/statute/S02022" \l "s47s5) - 02/05/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 8 (1-4)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s8s1) - 15/12/2005

[2006, c. 33, Sched. G, s. 2 (1-9)](http://www.ontario.ca/laws/statute/S06033" \l "schedgs2s1) - 24/03/2006

[2008, c. 7, Sched. E, s. 7 (1-4)](http://www.ontario.ca/laws/statute/S08007" \l "schedes7s1) - 26/03/2008

Ontario sound recording tax credit

**43.12** (1)  A corporation that is an eligible sound recording company for a taxation year and complies with the requirements of this section may deduct from its tax otherwise payable under this Part for a taxation year, after making all the deductions for the taxation year claimed under sections 39, 40, 41, 43 and 43.3 to 43.11, an amount not exceeding the amount of its Ontario sound recording tax credit for the taxation year. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation referred to in subsection (1) that complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its Ontario sound recording tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Amount of tax credit

(3)  The amount of a corporation’s Ontario sound recording tax credit for a taxation year is the sum of all amounts, each of which is in respect of an eligible Canadian sound recording in relation to which the corporation is an eligible sound recording company and each of which is equal to the lesser of “A” and “B”,

where,

“A” is 20 per cent of the qualifying expenditures incurred by the corporation after January 1, 1999 and before the end of the taxation year in respect of the recording to the extent that the expenditures were not included in determining the amount of the corporation’s available tax credit under this section for a prior taxation year, and

“B” is an amount calculated in the manner prescribed by the regulations for the purposes of this subsection. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Corporate partner

(4)  If a corporation is a member of a partnership at the end of a fiscal period of the partnership in which the partnership would qualify for an Ontario sound recording tax credit in respect of one or more eligible Canadian sound recordings if the partnership were a corporation whose fiscal period was its taxation year, and if the corporation would be an eligible sound recording company for the taxation year in relation to the eligible Canadian sound recordings, the portion of the Ontario sound recording tax credit to which the partnership would be entitled if it were a corporation that may reasonably be considered to be the corporation’s share may be included in determining the amount of the corporation’s Ontario sound recording tax credit for the corporation’s taxation year. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Limited partner

(5)  Despite subsection (4), a limited partner’s share of an Ontario sound recording tax credit to which a partnership would be entitled if it were a corporation shall be deemed to be nil. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Application for certificate

(6)  In order to be eligible to deduct or claim an amount in respect of an Ontario sound recording tax credit under this section in respect of a sound recording, a corporation shall apply to the Ontario Media Development Corporation or a person designated by the Minister of Culture for certification that the sound recording is an eligible Canadian sound recording and that the corporation is an eligible sound recording company for the taxation year in relation to the eligible Canadian sound recording for the purposes of this section. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 9.

Same

(7)  A corporation that applies for certification under this section shall provide to the designated person the information the designated person specifies for the purposes of making the determinations required under subsection (6). 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Certificate

(8)  If the particular sound recording is an eligible Canadian sound recording for the purposes of this section and the corporation is an eligible sound recording company for the taxation year in relation to the recording, the designated person shall issue to the corporation a certificate so certifying. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

No deduction or claim unless certificate delivered

(9)  No amount may be deducted or claimed under this section for a taxation year in respect of a sound recording unless the corporation delivers to the Minister with its return under section 75 for the taxation year the certificate issued under this section in respect of the sound recording, or a certified copy of the certificate. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Revocation of certificate

(10)  A certificate issued under this section may be revoked if,

(a) an omission or incorrect statement was made and it is reasonable to believe that, if the omitted information had been disclosed or if the person designated had known that the statement was incorrect, the designated person would have found that the corporation was not an eligible sound recording company for the purposes of this section or that the recording was not an eligible Canadian sound recording for the purposes of this section;

(b) the corporation is not an eligible sound recording company for the taxation year in relation to the eligible Canadian sound recording; or

(c) the sound recording is not an eligible Canadian sound recording for the purposes of this section. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Same

(11)  A certificate that is revoked under this section shall be deemed never to have been issued. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Definitions

(12)  In this section,

“eligible Canadian sound recording” means a sound recording that satisfies the rules prescribed by the regulations and is by an emerging Canadian artist or group; (“enregistrement sonore canadien admissible”)

“eligible sound recording company” has the meaning prescribed by the regulations; (“société d’enregistrement sonore admissible”)

“emerging Canadian artist or group” means an artist or group that satisfies the rules prescribed by the regulations; (“nouvel artiste ou ensemble canadien”)

“qualifying expenditure” means an amount determined in the manner prescribed by the regulations in respect of an expenditure that satisfies the rules prescribed by the regulations. (“dépense admissible”) 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Deemed tax payment

(13)  A corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount, if any, by which “A” exceeds “B”,

where,

“A” is the corporation’s Ontario sound recording tax credit for the taxation year, and

“B” is the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

Time of deemed payment

(14)  A corporation shall be deemed to make the payment referred to in subsection (13) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 1998, c. 34, s. 43; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 34, s. 43 - 01/01/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 9](http://www.ontario.ca/laws/statute/S05031" \l "sched5s9) - 15/12/2005

Apprenticeship training tax credit

**43.13** (1)  A corporation that complies with the requirements of this section may deduct from its tax otherwise payable under this Part for a taxation year, after making all deductions claimed under sections 39 to 41, 43 and 43.3 to 43.12 for the taxation year, an amount not exceeding the amount of its apprenticeship training tax credit for the taxation year. 2004, c. 31, Sched. 9, s. 22.

Same

(2)  A corporation that complies with the requirements of this section may deduct from its tax otherwise payable for the year under Parts III and IV an amount not exceeding the amount by which its apprenticeship training tax credit for the taxation year exceeds the maximum amount, if any, deductible by the corporation for the year under subsection (1). 2004, c. 31, Sched. 9, s. 22.

Amount of tax credit

(3)  The amount of a corporation’s apprenticeship training tax credit for a taxation year is the total of all amounts each of which is in respect of a qualifying apprenticeship in the taxation year and each of which is the total of “A” and “B” where,

“A” is the lesser of,

(a) the product obtained by multiplying the corporation’s specified percentage for the taxation year by the corporation’s eligible expenditures made during the taxation year in respect of the qualifying apprenticeship, and

(b) the amount calculated using the formula,

$5,000 × C/D

in which,

“C” is the total number of days in the taxation year that the apprentice was employed by the corporation as an apprentice in a qualifying apprenticeship and that were,

(a) after May 18, 2004 and before January 1, 2015, and

(b) during the first 36 months the apprentice was in the apprenticeship program, and

“D” is 365 days or, if the taxation year includes February 29, 366 days, and

“B” is an amount calculated by multiplying the amount of government assistance repaid by the corporation in the taxation year by the corporation’s specified percentage for the taxation year in which the government assistance was received, to the extent that the repayment does not exceed the amount of the government assistance in respect of the qualifying apprenticeship that,

(a) has not been repaid in a prior year, and

(b) can reasonably be considered to have reduced the amount of the apprenticeship training tax credit that would otherwise have been allowed to the corporation under this section in respect of the qualifying apprenticeship.

2004, c. 31, Sched. 9, s. 22; 2005, c. 31, Sched. 5, s. 10 (1); 2007, c. 7, Sched. 6, s. 4 (1).

Specified percentage

(4)  A corporation’s specified percentage for a taxation year is the following:

1. 25 per cent if the total of all salaries or wages paid by the corporation in the previous taxation year is $600,000 or more.

2. The percentage determined under subsection (5) if the total of all salaries or wages paid by the corporation in the previous taxation year is greater than $400,000 but less than $600,000.

3. 30 per cent in any other case. 2004, c. 31, Sched. 9, s. 22.

Same

(5)  The percentage referred to in paragraph 2 of subsection (4) is calculated by adding 25 per cent and the percentage calculated using the formula,

5% × [1 – (E/200,000)]

in which,

“E” is the total amount of salaries and wages paid by the corporation in the previous taxation year that is in excess of $400,000.

2004, c. 31, Sched. 9, s. 22.

Same, amount of salaries and wages

(6)  For the purposes of subsections (4) and (5), the amount of salaries and wages paid by a corporation in a previous taxation year shall be deemed to be the amount that would be calculated,

(a) if the rules set out in subsections 87 (1.2) and (1.4) of the Income Tax Act (Canada) applied; and

(b) if no amount is included in respect of salaries and wages paid by any partnership of which the corporation was a member at any time during the taxation year. 2004, c. 31, Sched. 9, s. 22.

Qualifying apprenticeship

(7)  For the purposes of this section, a qualifying apprenticeship is an apprenticeship in respect of which all of the following conditions and such other conditions as may be prescribed by the Minister are satisfied:

1. The apprentice’s employment as an apprentice in an apprenticeship program with the corporation commenced before January 1, 2012.

2. The apprenticeship is in a qualifying skilled trade in the opinion of the Minister of Training, Colleges and Universities or a person designated by him or her.

3. The corporation, or the corporation acting through a union or a local or joint apprenticeship committee, and the apprentice are participating in an apprenticeship program,

i. in which the training agreement has been registered under the Apprenticeship and Certification Act, 1998 by the Director of Apprenticeship or a person designated by him or her, or

ii. in which the contract of apprenticeship has been registered under the Trades Qualification and Apprenticeship Act by the Minister of Training, Colleges and Universities or a person designated by him or her. 2004, c. 31, Sched. 9, s. 22; 2007, c. 7, Sched. 6, s. 4 (2).

End of apprenticeship

(8)  For the purposes of this section, a qualifying apprenticeship shall be deemed to end on the earlier of the date on which the apprentice is entitled to receive the appropriate certificate under the Apprenticeship and Certification Act, 1998 or the Trades Qualification and Apprenticeship Act or the date, if any, on which the training agreement or contract of apprenticeship is cancelled, suspended or revoked by the Ministry of Training, Colleges and Universities. 2004, c. 31, Sched. 9, s. 22.

Eligible expenditure

(9)  Subject to subsections (12) and (13), each of the following amounts paid by a corporation in respect of a qualifying apprenticeship is an eligible expenditure for the taxation year:

1. An amount paid to an apprentice in a qualifying apprenticeship if,

i. the amount is required, for the purposes of Part III of Regulation 183 of the Revised Regulations of Ontario, 1990 (General) to be included in the amount of salary or wages paid to employees of a permanent establishment of the corporation in Ontario,

ii. the amount is required by subdivision a of Division B of Part I of the Income Tax Act (Canada) to be included in the apprentice’s income from a source that is an office or employment,

iii. the amount is in respect of a qualifying apprenticeship and is paid or payable for services performed by the apprentice for the corporation after May 18, 2004 and before January 1, 2015, and

iv. the amount relates to services provided by the apprentice to the corporation during the first 36 months of the apprenticeship program and does not relate to services performed before the commencement or after the end of the apprenticeship program.

2. A fee paid to an employment agency in consideration for the provision of services performed by the apprentice in the qualifying apprenticeship if,

i. the services are performed by the apprentice primarily at a permanent establishment of the corporation in Ontario,

ii. the fee is paid or payable for services performed by the apprentice for the corporation after May 18, 2004 and before January 1, 2015, and

iii. the fee relates to services performed by the apprentice for the corporation during the first 36 months of the apprenticeship program and does not relate to services performed before the commencement or after the end of the apprenticeship program. 2005, c. 31, Sched. 5, s. 10 (2); 2007, c. 7, Sched. 6, s. 4 (3).

Interpretation

(10)  For the purposes of subparagraphs 1 iv and 2 iii of subsection (9), an apprenticeship program is deemed to commence on the date that the training agreement or contract of apprenticeship is registered with the Ministry of Training, Colleges and Universities. 2004, c. 31, Sched. 9, s. 22; 2006, c. 33, Sched. G, s. 3.

Other eligible expenditures

(11)  Subject to subsections (12) and (13), such other expenditures as may be prescribed are eligible expenditures of a corporation for a taxation year if the prescribed conditions are satisfied. 2004, c. 31, Sched. 9, s. 22.

Exception

(12)  An expenditure made by a corporation in respect of a qualifying apprenticeship is not an eligible expenditure,

(a) if the apprentice serves the apprenticeship with a person other than the corporation; or

(b) to the extent that the amount of the expenditure would not be considered to be reasonable in the circumstances by persons dealing with each other at arm’s length. 2004, c. 31, Sched. 9, s. 22.

Total eligible expenditures

(13)  For the purposes of this section, the total of eligible expenditures made by a corporation in respect of a qualifying apprenticeship in a taxation year is calculated using the formula,

F – G

in which,

“F” is the sum of the amounts determined under subsections (9) and (11), and

“G” is the amount of all government assistance, if any, that the corporation has received, is entitled to receive or may reasonably be expected to be entitled to receive in respect of the eligible expenditures at the time the corporation’s return for the taxation year is required to be delivered under this Act.

2004, c. 31, Sched. 9, s. 22.

Employment agencies

(13.1)  If a corporation pays a fee to an employment agency in respect of a qualifying apprenticeship that is an eligible expenditure of the corporation for a taxation year,

(a) the corporation is deemed to employ the apprentice for the purposes of the definition of “C” in the definition of “A” in subsection (3) and for the purposes of paragraph 1 of subsection (7), and the employment agency is deemed not to employ the apprentice;

(b) the corporation is deemed to be participating in the apprenticeship program for the purposes of paragraph 3 of subsection (7), and the employment agency is deemed not to be participating in the apprenticeship program; and

(c) the apprentice is deemed to serve the apprenticeship with the corporation for the purposes of clause (12) (a), and not with the employment agency. 2005, c. 31, Sched. 5, s. 10 (3).

Limitation

(13.2)  If an amount paid by a corporation is an eligible expenditure under this section and is also an eligible expenditure under section 43.4, the corporation may include the amount in computing a tax credit under this section or in computing a tax credit under section 43.4 and not in computing both tax credits. 2005, c. 31, Sched. 5, s. 10 (4).

Corporate partner

(14)  If a corporation is a member of a partnership and the partnership would qualify in a particular taxation year of the corporation for an apprenticeship training tax credit if the partnership were a corporation whose fiscal period was its taxation year, the portion of that apprenticeship training tax credit that may reasonably be considered to be the corporation’s share of the tax credit may be included in determining the amount of the corporation’s apprenticeship training tax credit for the corporation’s taxation year. 2004, c. 31, Sched. 9, s. 22.

Limited partner

(15)  Despite subsection (14), a limited partner’s share of a partnership’s tax credit referred to in subsection (14) shall be deemed to be nil. 2004, c. 31, Sched. 9, s. 22.

Deemed tax payment

(16)  A corporation shall be deemed to pay on account of its tax payable under this Act for a taxation year an amount claimed by the corporation, not exceeding the amount by which “H” exceeds “J” where,

“H” is the corporation’s apprenticeship training tax credit for the taxation year, and

“J” is the maximum amount, if any, deductible by the corporation under subsections (1) and (2) in determining its tax payable under this Act for the taxation year.

2004, c. 31, Sched. 9, s. 22.

Time of deemed payment

(17)  A corporation shall be deemed to make the payment referred to in subsection (16) and the Minister shall be deemed to apply the deemed payment on the day on or before which the corporation would be required under clause 78 (2) (b) to pay any balance of tax payable for the taxation year. 2004, c. 31, Sched. 9, s. 22.

Books and records

(18)  Unless otherwise directed by the Minister, the apprenticeship contract or training agreement that is registered with the Ministry of Training, Colleges and Universities forms part of the records and books of account required to be kept under section 94 by the corporation providing the qualifying apprenticeship. 2004, c. 31, Sched. 9, s. 22.

Definitions

(19)  In this section,

“government assistance” means assistance in any form from a government, municipality or other public authority, and includes a grant, subsidy, forgivable loan, deduction from tax or investment allowance, but does not include,

(a) a tax credit referred to as a “specified tax credit” in subsection 44.1 (4) of the Act, or

(b) a Canadian film or video production tax credit under section 125.4 of the Income Tax Act (Canada) or an investment tax credit under section 127 of that Act; (“aide gouvernementale”)

“qualifying skilled trade” means an apprenticeship trade designated by the Minister that is regulated under the Apprenticeship and Certification Act, 1998 or the Trades Qualification and Apprenticeship Act. (“métier spécialisé admissible”) 2004, c. 31, Sched. 9, s. 22.

Regulations

(20)  The Minister may make regulations,

(a) prescribing rules for calculating the amount of the apprenticeship training tax credit;

(b) prescribing, for the purposes of subsection (7), conditions to be satisfied for an apprenticeship to be a qualifying apprenticeship;

(c) prescribing, for the purposes of subsection (11), expenditures and prescribing the conditions to be satisfied for a prescribed expenditure to be an eligible expenditure. 2004, c. 31, Sched. 9, s. 22.

**Section Amendments with date in force (d/m/y)**

[2004, c. 31, Sched. 9, s. 22](http://www.ontario.ca/laws/statute/S04031" \l "sched9s22) - 16/12/2004

[2005, c. 31, Sched. 5, s. 10 (1-3)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s10s1) - 16/12/2004; [2005, c. 31, Sched. 5, s. 10 (4)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s10s4) - 15/12/2005

[2006, c. 33, Sched. G, s. 3](http://www.ontario.ca/laws/statute/S06033" \l "schedgs3) - 16/12/2004

[2007, c. 7, Sched. 6, s. 4 (1-3)](http://www.ontario.ca/laws/statute/S07007" \l "sched6s4s1) - 17/05/2007

[2009, c. 22, s. 96 (2-4)](http://www.ontario.ca/laws/statute/S09022" \l "s96s2) - no effect - see [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2019

Tax on tax

**44** Where, under a contract, will or trust, made or created before the 14th day of May, 1953, a person is required to make a payment to a corporation and is required by the terms of the contract, will or trust to pay an additional amount measured by reference to tax payable by such corporation under Part I of the Income Tax Act (Canada) and Part II of this Act by reason of the payment,

(a) the tax payable by the corporation under Part II of this Act for the taxation year in or in respect of which such payment is made or becomes payable is the amount that the tax of the corporation under Part II of this Act would be if no amount under the contract were included in computing its income for the taxation year plus,

(i) the amount by which its tax under Part II of this Act would be increased by including in computing its income,

(A) the payment, and

(B) the amount by which its tax under Part I of the Income Tax Act (Canada) would be increased by including the payment in computing its income, and

(ii) the amount by which the tax of the corporation under Part II of this Act would be further increased by including, in computing its income for the taxation year, the amount fixed by subclause (i) or the additional payment, whichever is the lesser; and

(b) if the person required to make the payment is a corporation and would otherwise be entitled to deduct the amounts payable under such a contract in computing its income for a taxation year, such corporation is not entitled to deduct the amount determined under subclause (a) (ii). R.S.O. 1990, c. C.40, s. 44; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division F — Special Rules Applicable in Certain Circumstances

Rules applicable to specified tax credits

**44.1** (1)  Despite any other provision of this Act, a corporation that is exempt from tax under this Act for a taxation year by virtue of section 57 shall not deduct or claim an amount in respect of a specified tax credit under this Act for the taxation year. 1996, c. 24, s. 27; 2004, c. 16, s. 2 (2).

Same

(2)  A corporation shall be considered not to be entitled to deduct an amount from tax payable under this Part for a taxation year in respect of a specified tax credit, for the purposes of determining an amount referred to in sub-subclause 43.1 (2) (a) (ii) (A), subclause 43.1 (2) (b) (ii) or 43.1 (3) (b) (ii) or clause 43.1 (3.2) (b), 57.3 (2) (b) or 74.1 (1) (b). 1996, c. 24, s. 27; 1996, c. 29, s. 51 (1); 2004, c. 16, s. 2 (2); 2007, c. 7, Sched. 6, s. 5.

Same

(3)  A deduction allowed to a corporation under subsection 43.1 (2) for a taxation year shall not exceed the amount of tax payable by the corporation for the year under this Part after deduction of all specified tax credits deductible for the year. 1996, c. 24, s. 27; 1997, c. 43, Sched. A, s. 24 (1); 2004, c. 16, s. 2 (2).

No deduction for taxation years after 2008

(3.1)  No corporation shall deduct or claim an amount in respect of a specified tax credit under this Act for a taxation year ending after December 31, 2008. 2007, c. 11, Sched. B, s. 2 (8).

Specified tax credit

(4)  The following tax credits are specified tax credits for the purposes of this section:

1. Repealed: 1996, c. 29, s. 51 (2).

2. An Ontario innovation tax credit under section 43.3.

3. A co-operative education tax credit under section 43.4.

4. An Ontario film and television tax credit under section 43.5.

5. A graduate transitions tax credit under section 43.6.

6. An Ontario book publishing tax credit under section 43.7.

7. An Ontario computer animation and special effects tax credit under section 43.8.

8. An Ontario business-research institute tax credit under section 43.9.

9. An Ontario production services tax credit under section 43.10.

10. An Ontario interactive digital media tax credit under section 43.11.

11. An Ontario sound recording tax credit under section 43.12.

12. An apprenticeship training tax credit under section 43.13. 1996, c. 24, s. 27; 1996, c. 29, s. 51 (2); 1997, c. 43, Sched. A, s. 24 (2); 1998, c. 5, s. 18 (1); 1998, c. 34, s. 44 (1, 2); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 23 (1).

When assistance received

(5)  For the purposes of this Act, other than sections 43.3 to 43.13, the following amounts are assistance deemed to be received by a corporation from a government immediately before the end of a taxation year:

1. All amounts that the corporation deducts under sections 43.3 to 43.13 in determining the amount of its tax payable under this Act for the taxation year.

2. All amounts that the corporation is deemed under those sections to have paid on account of its tax payable under this Act for the taxation year. 1998, c. 34, s. 44 (3, 4); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 23 (2, 3).

**Section Amendments with date in force (d/m/y)**

1996, c. 24, s. 27 - 08/05/1996; 1996, c. 29, s. 51 (1, 2) - 08/05/1996; 1997, c. 43, Sched. A, s. 24 (1) - 08/05/1996; 1997, c. 43, Sched. A, s. 24 (2, 3) - 07/05/1997; 1998, c. 5, s. 18 (1, 2) - 01/11/1997; 1998, c. 34, s. 44 (1-3) - 01/07/1998; 1998, c. 34, s. 44 (4) - 01/01/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 23 (1-3)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s23s1) - 16/12/2004

[2007, c. 7, Sched. 6, s. 5](http://www.ontario.ca/laws/statute/S07007" \l "sched6s5) - 17/05/2007; [2007, c. 11, Sched. B, s. 2 (8)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s8) - 04/06/2007

If corporation bankrupt

**45** If a corporation has become bankrupt, the rules provided in section 128 of the Income Tax Act (Canada) apply for the purposes of this Act. 1999, c. 9, s. 82; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1999, c. 9, s. 82 - 27/04/1995

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Application of *Income Tax Act* (Canada), ss. 128.1, 128.2

**45.1** Sections 128.1 and 128.2 of the Income Tax Act (Canada), in so far as they apply to corporations, are applicable for the purposes of this Act. 1996, c. 29, s. 52; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 29, s. 52 - 01/01/1993

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

investment corporations

Application of s. 131, *Income Tax Act* (Canada)

**46** (1)  If a corporation is an investment corporation throughout a taxation year, but is not a mutual fund corporation throughout the year, subsections 131 (1), (2, (3) and (6) of the Income Tax Act (Canada), as made applicable by section 48 of this Act, apply in respect of the corporation for the taxation year as if,

(a) the corporation had been a mutual fund corporation throughout that and all previous taxation years ending after 1971 throughout which it was an investment corporation; and

(b) its capital gains redemption for that and all previous taxation years ending after 1971, throughout which it would, but for the assumption made by clause (a), not have been a mutual fund corporation, were nil. R.S.O. 1990, c. C.40, s. 46 (1); 1998, c. 34, s. 45 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Subsection 48 (6) applies to a corporation to which this section applies. R.S.O. 1990, c. C.40, s. 46 (2); 2004, c. 16, s. 2 (2).

*Income Tax Act* (Canada), s. 130, part applicable

(3)  Paragraphs 130 (3) (a) and (b) and subsection 130 (4) of the Income Tax Act (Canada) apply for the purposes of this Act. 1994, c. 14, s. 18 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 18 (1, 2) - 17/12/1991; 1998, c. 34, s. 45 (1, 2) - 01/01/1991

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

mortgage investment corporations

*Income Tax Act* (Canada), s. 130.1, applicable

**47** Where a corporation was, throughout a taxation year, a mortgage investment corporation, as defined in subsection 130.1 (6) of the Income Tax Act (Canada), the rules provided in the said section 130.1 are applicable in computing its income for the taxation year for the purposes of this Act. R.S.O. 1990, c. C.40, s. 47; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

mutual fund corporations

*Income Tax Act* (Canada), s. 131, applicable

**48** (1)  Except as hereinafter provided, where a corporation is a mutual fund corporation, section 131 of the Income Tax Act (Canada) is applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 48 (1); 2004, c. 16, s. 2 (2).

Not applicable to taxation years after 2008

(1.1)  No corporation is entitled to a refund by reason of this section in respect of a taxation year ending after December 31, 2008. 2007, c. 11, Sched. B, s. 2 (9).

Idem

(2)  In the application of subsection 131 (2) of the said Act for the purposes of this Act,

(a) the reference to “3 years” in the fourth line thereof shall be read as “4 years”;

(b) the percentage referred to in subparagraph (a) (i) thereof shall be read as if it were the amount, expressed as a percentage, calculated using the formula,

Y × Z

in which,

“Y” is the specified basic rate of the corporation for the taxation year as described in subsection 38 (2), and

“Z” is the fraction in paragraph 38 (a) of the Income Tax Act (Canada) that applies to the corporation for the taxation year;

(c) the references in paragraph (b) thereof to “subsection 152 (4)”, “this Part” and “paragraph 152 (4) (a)” shall be read as references to subsection 80 (11), Part II and clause 80 (11) (a) of this Act, respectively. R.S.O. 1990, c. C.40, s. 48 (2); 1998, c. 34, s. 46 (1); 2001, c. 8, s. 24 (1); 2004, c. 16, s. 2 (2).

Idem

(3)  In the application of subsection 131 (3) of the Income Tax Act (Canada) for the purposes of this Act, the reference in that subsection to “this Act” shall be deemed to read “this Act or any other Act administered by the Minister which imposes tax or is prescribed by the regulations”. 1994, c. 14, s. 19 (1); 2004, c. 16, s. 2 (2).

Same

(4)  In the application of the definitions of “capital gains dividend account” and “capital gains redemptions” in subsection 131 (6) of the Income Tax Act (Canada) for taxation years ending after December 31, 1989 and before February 28, 2000, the multiplication factor of “100/21 of” wherever it appears in those definitions shall be read as “8 56/93 times”. 1996, c. 29, s. 53; 2001, c. 8, s. 24 (2); 2004, c. 16, s. 2 (2).

Interpretation, capital gains dividend account

(4.1)  In the application of the definition of “capital gains dividend account” in subsection 131 (6) of the Income Tax Act (Canada) for taxation years ending after February 27, 2000, subparagraph (b) (iii) of the definition shall be applied as if it referred instead to the amount calculated using the formula,

S × 100/(Y × Z)

in which,

“S” is the amount of the corporation’s capital gains refund for any taxation year if it was a mutual fund corporation throughout the year and if the year ended more than 60 days before the time referred to in the definition of “capital gains dividend account” in subsection 131 (6) of the Income Tax Act (Canada) and after December 31, 1989,

“Y” is the specified basic rate of the corporation for the taxation year as described in subsection 38 (2), and

“Z” is the fraction in paragraph 38 (a) of the Income Tax Act (Canada) that applies to the corporation for the taxation year.

2001, c. 8, s. 24 (3); 2004, c. 16, s. 2 (2).

Interpretation, capital gains redemptions

(4.2)  In the application of the definition of “capital gains redemptions” in subsection 131 (6) of the Income Tax Act (Canada) for taxation years ending after February 27, 2000, the fraction referred to in “C” in the formula set out in the definition shall be read as if it were the amount calculated using the formula,

100/(Y × Z)

in which,

“Y” is the specified basic rate of the corporation for the taxation year as described in subsection 38 (2), and

“Z” is the fraction in paragraph 38 (a) of the Income Tax Act (Canada) that applies to the corporation for the taxation year.

2001, c. 8, s. 24 (3); 2004, c. 16, s. 2 (2).

Same

(5)  The following rules apply in the application for the purposes of this Act of the definition of “refundable capital gains tax on hand” in subsection 131 (6) of the Income Tax Act (Canada):

1. The percentage referred to in paragraphs (a) and (b) in the calculation of the amount designated as “A” in the formula in the definition shall be read as the percentage that is the specified basic rate of the corporation, as determined under subsection 38 (2) of this Act, for the taxation year for which the corporation’s refundable capital gains tax on hand is being determined.

2. The reference to “this Part” in paragraph (c) in the calculation of the amount designated as “A” in the formula in the definition shall be read as a reference to Part II of this Act.

3. Paragraph (c) in the calculation of the amount designated as “A” in the formula in the definition shall be read without reference to the words “determined without reference to section 123.2”. 1996, c. 29, s. 53; 2000, c. 10, s. 7 (1); 2004, c. 16, s. 2 (2).

Apportionment of capital gains refund

(6)  If a corporation had a permanent establishment in a jurisdiction outside Ontario during a taxation year and this section applies in respect of that year, the “taxable income” and “taxed capital gains” determined for the purposes of the application of the definition of “refundable capital gains tax on hand” in subsection 131 (6) of the Income Tax Act (Canada), as that definition applies for the purposes of this Act, shall each be reduced by that proportion thereof that,

(a) the taxable income of the corporation that is deemed to have been earned in jurisdictions other than Ontario for the taxation year for the purposes of section 39,

is of,

(b) the corporation’s total taxable income for the year. 1996, c. 29, s. 53; 2004, c. 16, s. 2 (2).

Exceptions

(7)  Subsections 131 (5) and (9) of the Income Tax Act (Canada) are not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 48 (7); 2004, c. 16, s. 2 (2).

Application provision, 2000 Budget

(8)  Paragraph 1 of subsection (5), as it is re-enacted by the Taxpayer Dividend Act, 2000, applies with respect to taxation years ending after May 1, 2000. 2000, c. 10, s. 7 (2); 2004, c. 16, s. 2 (2).

Application provision, 2001 Budget

(9)  Clause (2) (b) and subsections (4.1) and (4.2), as they are enacted or re-enacted, as the case may be, by the Responsible Choices for Growth and Accountability Act (2001 Budget), 2001, apply with respect to taxation years ending after February 27, 2000. 2001, c. 8, s. 24 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 19 (1, 2) - 23/06/1994; 1996, c. 29, s. 53 - 01/03/1994; 1998, c. 34, s. 46 (1, 2) - 01/01/1993

[2000, c. 10, s. 7 (1, 2)](http://www.ontario.ca/laws/statute/S00010" \l "s7s1) - 02/05/2000

[2001, c. 8, s. 24 (1-3)](http://www.ontario.ca/laws/statute/S01008" \l "s24s1) - 28/02/2000

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 11, Sched. B, s. 2 (9)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s9) - 04/06/2007

Application of *Income Tax Act* (Canada), s. 132.2

**48.1** Section 132.2 of the Income Tax Act (Canada) applies for the purposes of this Act in so far as that section applies to corporations and, in the application of that section, the reference in paragraph 132.2 (1) (o) to “Part I.3” shall be read as a reference to Part III of this Act and the reference to “this Part” shall be read as a reference to Part II of this Act. 1996, c. 29, s. 54 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 29, s. 54 (1, 2) - 01/07/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

non-resident-owned investment corporations

Computation of income

**49** (1)  The income of a non-resident-owned investment corporation for a taxation year shall be computed as if its only income for the year was the amount, if any, by which its taxable capital gains for the year exceeds its allowable capital losses for the year, from dispositions of taxable Canadian property or property that would be taxable Canadian property if at no time in the year the corporation had been resident in Canada. R.S.O. 1990, c. C.40, s. 49 (1); 2004, c. 16, s. 2 (2).

Computation of taxable income

(2)  The taxable income of a non-resident-owned investment corporation for a taxation year is its income determined under subsection (1), minus its net capital losses for taxation years preceding and a taxation year following the taxation year, as determined in accordance with section 111 of the Income Tax Act (Canada) as made applicable by section 34 of this Act. R.S.O. 1990, c. C.40, s. 49 (2); 2004, c. 16, s. 2 (2).

*Income Tax Act* (Canada), ss. 134, 134.2 applicable

(3)  Section 134 of the Income Tax Act (Canada) applies for the purposes of this Act and section 134.2 of that Act applies for the purposes of this Act in respect of a corporation that revokes, after February 27, 2000, an election to be taxed as a non-resident-owned investment corporation. 2004, c. 31, Sched. 9, s. 24.

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 24](http://www.ontario.ca/laws/statute/S04031" \l "sched9s24) - 28/02/2000

patronage dividends

*Income Tax Act* (Canada) ss. 135 and 135.1 applicable

**50** (1)  Sections 135 and 135.1 of the Income Tax Act (Canada) apply for the purposes of this Act, to the extent those sections apply to corporations, with respect to,

(a) the deduction from income of payments made pursuant to allocations in proportion to patronage; and

(b) the inclusion in income of payments received pursuant to allocations in proportion to patronage. 2006, c. 33, Sched. G, s. 4.

Exception

(2)  Despite subsection (1), in the application of sections 135 and 135.1 of the Income Tax Act (Canada),

(a) subsections 135 (3) and 135.1 (7) of that Act do not apply for the purposes of this Act; and

(b) paragraph 135.1 (4) (b) of that Act applies only to indebtedness entered into by a corporation after December 31, 2005. 2006, c. 33, Sched. G, s. 4.

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2006, c. 33, Sched. G, s. 4](http://www.ontario.ca/laws/statute/S06033" \l "schedgs4) - 01/01/2006

credit unions

Calculation of tax

**51** (1)  Except as hereinafter provided, section 137 of the Income Tax Act (Canada) is applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 51 (1); 2004, c. 16, s. 2 (2).

Exception

(2)  Subsection 137 (3) of the said Act is not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 51 (2); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada) s. 137 (4.3) (a)

(3)  In the application of paragraph 137 (4.3) (a) of the said Act for the purposes of this Act, the reference therein to “the amount deductible under section 125” is deemed to include an amount deemed by subsection 137 (4) of that Act to be an amount deductible or a deduction under section 125 of that Act. R.S.O. 1990, c. C.40, s. 51 (3); 2004, c. 16, s. 2 (2).

Additional deduction

(4)  There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was a credit union throughout the taxation year the amount, if any, calculated using the formula,

A × (B – C)

in which,

“A” is the designated rate calculated under subsection (4.1) of the corporation for the taxation year,

“B” is the lesser of,

(a) the corporation’s taxable income for the taxation year, and

(b) the amount, if any, by which 4/3 of the corporation’s maximum cumulative reserve at the end of the taxation year exceeds the corporation’s preferred-rate amount at the end of its preceding taxation year, and

“C” is the corporation’s adjusted Ontario small business income for the taxation year as determined under subsection 43 (4).

2000, c. 10, s. 8 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 25.

Designated rate

(4.1)  The designated rate of a corporation for a taxation year is the total of,

(a) 5.5 per cent multiplied by the ratio of the number of days in the taxation year before May 2, 2000 to the total number of days in the taxation year;

(b) 7.5 per cent multiplied by the ratio of the number of days in the taxation year after May 1, 2000 and before October 1, 2001 to the total number of days in the taxation year;

(c) 6.5 per cent multiplied by the ratio of the number of days in the taxation year after September 30, 2001 and before January 1, 2003 to the total number of days in the taxation year;

(d) 7 per cent multiplied by the ratio of the number of days in the taxation year after December 31, 2002 and before January 1, 2004 to the total number of days in the taxation year;

(e) 8.5 per cent multiplied by the ratio of the number of days in the taxation year after December 31, 2003 to the total number of days in the taxation year.

(f) Repealed: 2003, c. 7, s. 6 (1).

(g) Repealed: 2003, c. 7, s. 6 (2).

2000, c. 10, s. 8 (1); 2001, c. 8, s. 25 (1); 2001, c. 23, s. 35 (1-3); 2002, c. 22, s. 48; 2003, c. 7, s. 6; 2004, c. 16, s. 2 (2).

Idem

(5)  For the purposes of subsection (4) and subsection 137 (4.3) of the Income Tax Act (Canada), as made applicable by this section, in the calculation of a corporation’s deduction, if any, under subsection (4) in respect of the first taxation year for which it is entitled to a deduction under subsection (4), its preferred-rate amount at the end of its immediately preceding taxation year is deemed to be its preferred-rate amount at the end of the immediately preceding taxation year as determined for the purposes of subsection 137 (3) of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 51 (5); 2004, c. 16, s. 2 (2).

Application provision, 2000 Budget

(6)  Subsection (4), as it is re-enacted by the Taxpayer Dividend Act, 2000, applies with respect to taxation years ending after May 1, 2000. 2000, c. 10, s. 8 (2); 2004, c. 16, s. 2 (2).

(7)  Repealed: 2001, c. 23, s. 35 (4).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 11 - 25/06/1992; 1997, c. 43, Sched. A, s. 25 - 18/12/1997

[2000, c. 10, s. 8 (1, 2)](http://www.ontario.ca/laws/statute/S00010" \l "s8s1) - 02/05/2000

[2001, c. 8, s. 25 (1)](http://www.ontario.ca/laws/statute/S01008" \l "s25s1) - 01/01/2002; [2001, c. 8, s. 25 (2)](http://www.ontario.ca/laws/statute/S01008" \l "s25s2) - no effect - see [2001, c. 23, s. 35 (4)](http://www.ontario.ca/laws/statute/S01023" \l "s35s4) - 01/10/2001; [2001, c. 23, s. 35 (1-4)](http://www.ontario.ca/laws/statute/S01023" \l "s35s1) - 01/10/2001

[2002, c. 22, s. 48](http://www.ontario.ca/laws/statute/S02022" \l "s48) - 09/12/2002

[2003, c. 7, s. 6 (1, 2)](http://www.ontario.ca/laws/statute/S03007" \l "s6s1) - 01/01/2004

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 25](http://www.ontario.ca/laws/statute/S04031" \l "sched9s25) - 16/12/2004

deposit insurance corporations

*Income Tax Act* (Canada) s. 137.1, applicable

**52** (1)  Except as hereinafter provided, the provisions of section 137.1 of the Income Tax Act (Canada) are applicable in computing the income of deposit insurance corporations and member institutions thereof for the purposes of this Act. R.S.O. 1990, c. C.40, s. 52 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  In the application of subsection 137.1 (1) of the said Act for the purposes of this Act, the reference in paragraph (a) thereof to “this Part” shall be deemed to be a reference to Part II of this Act. R.S.O. 1990, c. C.40, s. 52 (2); 2004, c. 16, s. 2 (2).

Exception

(3)  Subsection 137.1 (9) of the said Act is not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 52 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

insurance corporations and financial institutions

Calculation of taxable income

**53** (1)  Despite any other provision of this Act, except as hereinafter provided, the taxable incomes of insurance corporations that carry on an insurance business in Ontario shall, for the purposes of this Act, be computed in accordance with the rules provided in sections 138, 138.1, 140, 141, 141.1 and 142 of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 53 (1); 2004, c. 16, s. 2 (2).

Interpretation

(2)  In the application of subsection 138 (1) of the said Act for the purposes of this Act, the reference in paragraph (d) thereof to “this Part” shall be deemed to be a reference to Part II of this Act. R.S.O. 1990, c. C.40, s. 53 (2); 2004, c. 16, s. 2 (2).

Federal investment tax not deductible

(3)  Paragraph 138 (3) (g) of the Income Tax Act (Canada) is not applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 53 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Application of rules under *Income Tax Act* (Canada)

**54** The rules provided in section 139 of the Income Tax Act (Canada), with respect to the conversion of a provincially incorporated life insurance corporation into a mutual corporation, are applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 54; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Demutualization of insurance corporations

**54.1** The provisions of sections 139.1 and 139.2 of the Income Tax Act (Canada), to the extent that they apply to corporations, apply for the purposes of this Act in respect of transactions occurring after December 15, 1998 in connection with the demutualization of insurance corporations. 2001, c. 23, s. 36; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 36](http://www.ontario.ca/laws/statute/S01023" \l "s36) - 16/12/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Amounts to be included in computing policyholder’s income

**55** Section 138.1 of the Income Tax Act (Canada) is, in so far as it applies to corporations, applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 55; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Application of *Income Tax Act* (Canada), ss. 142.2 to 142.7

**55.1** (1)  Sections 142.2 to 142.7 of the Income Tax Act (Canada) apply for the purposes of this Act in the same manner and subject to the same exceptions as those sections apply for the purposes of that Act. 1996, c. 29, s. 55; 2001, c. 23, s. 37; 2004, c. 16, s. 2 (2).

Determining losses of entrant bank on winding-up of Canadian affiliate

(2)  If paragraphs 142.7 (12) (a) and (b) of the Income Tax Act (Canada) apply in respect of the winding-up of a Canadian affiliate of an entrant bank (within the meaning of subsection 142.7 (1) of that Act) or in respect of the dissolution of a Canadian affiliate of an entrant bank under a dissolution order (within the meaning of subsection 142.7 (12) of that Act), the rules in paragraphs 142.7 (12) (d) to (g) of that Act apply for the purposes of determining the non-capital loss or net capital loss of the entrant bank under this Act. 2004, c. 31, Sched. 9, s. 26.

Exception

(3)  Subsection (2) does not apply unless,

(a) before the later of the date determined under paragraph 142.7 (11) (b) of the Income Tax Act (Canada) and the day that is 180 days after the day the Budget Measures Act (Fall), 2004 receives Royal Assent,

(i) the entrant bank and the Canadian affiliate jointly elect that subsection (2) applies, if the Canadian affiliate has not been wound up or dissolved before the election is made, or

(ii) the entrant bank elects that subsection (2) applies, if the Canadian affiliate has been wound up or dissolved and ceases to exist before the election is made; or

(b) the entrant bank and the Canadian affiliate have jointly elected under paragraph 142.7 (12) (c) of the Income Tax Act (Canada) to have section 142.7 of that Act apply. 2004, c. 31, Sched. 9, s. 26.

Application of *Income Tax Act* (Canada), s. 142.7 (12) (h)

(4)  If subsection (2) applies in respect of the winding-up of a Canadian affiliate of an entrant bank or in respect of the dissolution of a Canadian affiliate of an entrant bank under a dissolution order, the rules in paragraph 142.7 (12) (h) of the Income Tax Act (Canada) apply in respect of the entrant bank. 2004, c. 31, Sched. 9, s. 26.

Exception

(5)  Subsection (4) does not apply unless, for its particular taxation year referred to in paragraph 142.7 (12) (h) of the Income Tax Act (Canada), the entrant bank,

(a) elects under paragraph 142.7 (12) (h) of that Act to have that paragraph apply; or

(b) elects under this subsection before the date determined under clause (3) (a) that subsection (4) applies. 2004, c. 31, Sched. 9, s. 26.

Application of subs. (2)

(6)  Subsection (2) applies only to taxation years for which an election by the affiliate and bank under paragraph 142.7 (12) (c) of the Income Tax Act (Canada) applies or to which section 142.7 of the Income Tax Act (Canada) would have applied if an election had been made under paragraph 142.7 (12) (c) of that Act. 2004, c. 31, Sched. 9, s. 26.

**Section Amendments with date in force (d/m/y)**

1996, c. 29, s. 55 - 23/02/1994

[2001, c. 23, s. 37](http://www.ontario.ca/laws/statute/S01023" \l "s37) - 28/06/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 26](http://www.ontario.ca/laws/statute/S04031" \l "sched9s26) - 28/06/1999

communal organizations

Application of *Income Tax Act* (Canada) s. 143

**56** Section 143 of the Income Tax Act (Canada) is, in so far as it applies to corporations, applicable for the purposes of this Act. R.S.O. 1990, c. C.40, s. 56; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

tax shelters

General rule, tax shelters and tax shelter investments

**56.1** (1)  Subject to subsections (2) and (3), the following provisions apply for the purposes of this Act in so far as they apply to corporations:

1. Section 143.2 of the Income Tax Act (Canada), except subsection 143.2 (15) of that Act.

2. Subsection 237.1 (1) of the Income Tax Act (Canada). 2005, c. 31, Sched. 5, s. 11.

Information located outside Canada

(2)  If the Minister of National Revenue has initiated a federal assessment action for a taxation year of a corporation and applies subsection 143.2 (13) of the Income Tax Act (Canada), the amount deemed to be a limited-recourse amount in relation to an expenditure under subsection 143.2 (13) of that Act is deemed to be the limited-recourse amount relating to the expenditure under this Act. 2005, c. 31, Sched. 5, s. 11.

Information located outside Canada

(3)  If the Minister of National Revenue has initiated a federal assessment action for a taxation year of a corporation and applies subsection 143.2 (14) of the Income Tax Act (Canada), the corporation and such other taxpayers as the Minister of National Revenue determines are not dealing at arm’s length for the purposes of section 143.2 of that Act are deemed not to be dealing with each other at arm’s length for the purposes of this section. 2005, c. 31, Sched. 5, s. 11.

Deductions and claims disallowed

(4)  No amount may be deducted or claimed by a corporation for the purposes of this Act in respect of a tax shelter unless the corporation has filed with the Minister of National Revenue the form and information required under section 237.1 of the Income Tax Act (Canada). 2005, c. 31, Sched. 5, s. 11.

Deductions and claims disallowed

(5)  No amount may be deducted or claimed by a corporation for the purposes of this Act for any taxation year in respect of a tax shelter of the corporation if any person is liable to a penalty under subsection 237.1 (7.4) of the Income Tax Act (Canada) in respect of the tax shelter or interest on the penalty and,

(a) the penalty or interest has not been paid; or

(b) the penalty and interest have been paid, but an amount on account of the penalty or interest has been repaid under subsection 164 (1.1) of the Income Tax Act (Canada) or applied under subsection 164 (2) of that Act. 2005, c. 31, Sched. 5, s. 11; 2006, c. 33, Sched. G, s. 5.

Application

(6)  Subject to subsection (7), subsections (1) to (5) apply to property acquired and to outlays and expenses made or incurred by a corporation after November 30, 1994, other than property acquired and outlays or expenses made or incurred by the corporation in a taxation year ending on or before the day the Budget Measures Act, 2005 (No. 2) received first reading if, before that day, the corporation filed its return for the year or a notice of objection for the year in a manner which reflects the position that sections 143.2 and 237.1 of the Income Tax Act (Canada) do not apply for the purposes of this Act. 2005, c. 31, Sched. 5, s. 11.

Same

(7)  Any provision of section 143.2 of the Income Tax Act (Canada), as it applies for the purposes of this Act, does not apply to the extent that the application of that provision for the purposes of the Income Tax Act (Canada) is limited because of the application of subsection 168 (2) of the Income Tax Amendments Act, 1997 (Canada). 2005, c. 31, Sched. 5, s. 11.

**Section Amendments with date in force (d/m/y)**

[2005, c. 31, Sched. 5, s. 11](http://www.ontario.ca/laws/statute/S05031" \l "sched5s11) - 15/12/2005

[2006, c. 33, Sched. G, s. 5](http://www.ontario.ca/laws/statute/S06033" \l "schedgs5) - 20/12/2006

Division G — Exemptions

Exemptions

**57** (1)  Except as hereinafter provided, no tax is payable under this Part upon the taxable income of a corporation for a period when that corporation was,

Charities and other corporations

(a) a corporation referred to in any of paragraphs 149 (1) (c), (d), (d.1), (d.2), (d.3), (d.4), (d.5), (d.6), (e), (f), (h.1), (i), (j), (k), (m), (n), (o.1), (o.2), (o.3) and (t) of the Income Tax Act (Canada); or

Non-profit organizations

(b) a club, society or association that, in the opinion of the Minister, was not a charity within the meaning given to that expression by subsection 149.1 (1) of the Income Tax Act (Canada) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, which has not in the taxation year or in any previous taxation year distributed any part of its income to any proprietor, member or shareholder thereof, or appropriated any of its funds or property in any manner whatever to or for the benefit of any proprietor, member or shareholder thereof, unless the proprietor, member or shareholder was a club, society or association, the primary purpose and function of which was the promotion of amateur athletics in Canada. R.S.O. 1990, c. C.40, s. 57 (1); 1994, c. 14, s. 20 (1); 1998, c. 34, s. 47 (1); 1999, c. 9, s. 83 (1); 2004, c. 16, s. 2 (2).

Tax payable where distribution made to members or shareholders

(2)  Where a corporation described in clause (1) (b),

(a) has in the taxation year distributed any part of its income or distributed or otherwise appropriated any of its funds or property in any manner whatever to or for the benefit of any proprietor, member or shareholder thereof, such corporation shall be liable to the taxes imposed under this Act for the taxation year in which the distribution is made and for subsequent taxation years, and in computing its income for the taxation year in which the distribution is made, it shall include the aggregate of its income of all previous taxation years; or

(b) has distributed any of its income or distributed or otherwise appropriated any of its funds or property in any manner whatever to or for the benefit of any proprietor, member or shareholder thereof on the winding up or discontinuance of its business, the corporation shall be deemed to have received income in that taxation year equal to the amount, if any, by which the amount of the funds and the value of the property distributed or appropriated, as the case may be, exceeds the aggregate of,

(i) amounts paid in by proprietors, members or shareholders on account of capital, and

(ii) that part of the corporation’s surplus that is attributed to income that was exempt under this section other than taxable capital gains,

and the corporation shall be liable for the taxes imposed under this Act for the taxation year in which the distribution is made. R.S.O. 1990, c. C.40, s. 57 (2); 2004, c. 16, s. 2 (2).

Income not to include taxable capital gains

(3)  For the purposes of clause (1) (b), in computing the part, if any, of any income that was distributed or otherwise appropriated for the benefit of any person, the amount of such income shall be deemed to be the amount thereof otherwise determined less the amount of any taxable capital gains included therein. R.S.O. 1990, c. C.40, s. 57 (3); 2004, c. 16, s. 2 (2).

Application of rules in *Income Tax Act* (Canada), s. 149

(4)  The rules in subsections 149 (1.1), (1.2), (1.3), (2), (3), (4), (4.1), (4.2), (4.3), (6), (8), (9), (10) and (11) of the Income Tax Act (Canada) apply for the purposes of this section. 1998, c. 34, s. 47 (2); 2004, c. 16, s. 2 (2).

Idem

(5)  In the application of paragraph 149 (1) (t) and subsection 149 (4.1) of the Income Tax Act (Canada), references to the Superintendent of Financial Institutions shall be read as references to the Superintendent of Financial Institutions for Canada. R.S.O. 1990, c. C.40, s. 57 (5); 2004, c. 16, s. 2 (2).

Idem

(6)  In the application of subsection 149 (2) of the Income Tax Act (Canada) for the purposes of this Act, the said subsection shall be read without the reference therein to paragraph (l). R.S.O. 1990, c. C.40, s. 57 (6); 2004, c. 16, s. 2 (2).

Idem

(6.1)  In the application of subsection 149 (4.3) of the Income Tax Act (Canada) for the purposes of this Act, the reference to “this Part” shall be read as a reference to Part II of this Act and the reference to paragraph 20 (1) (a) of that Act shall be read as a reference to clause 11 (10) (a) of this Act. 1994, c. 14, s. 20 (3); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada), subs. 149 (10)

(7)  In the application of subsection 149 (10) of the Income Tax Act (Canada) for the purposes of this Act, the reference to “this Part” shall be read as a reference to Part II of this Act. 1998, c. 34, s. 47 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 20 (1-4) - 17/12/1991; 1998, c. 34, s. 47 (1, 2, 4) - 01/01/1998; 1998, c. 34, s. 47 (3, 5) - 27/04/1995; 1999, c. 9, s. 83 (1, 2) - 01/01/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

PART II.1  
CORPORATE MINIMUM TAX

Interpretation

**57.1** (1)  In this Part,

“amalgamated corporation” means a corporation that is a “new corporation” for the purposes of section 87 of the Income Tax Act (Canada); (“société issue de la fusion”)

“associated corporation”, of another corporation for a taxation year, means a corporation that is associated at any time in the taxation year with the other corporation, whether or not either of them is subject to tax under this Act; (“société associée”)

“excluded mark-to-market property” means, in respect of a corporation, property, other than specified mark-to-market property, held by the corporation and in respect of which,

(a) any mark-to-market changes recognized under generally accepted accounting principles from the beginning to the end of a taxation year of the corporation would be reflected in the calculation of the corporation’s income for the taxation year for the purposes of Part II if the property were held by the corporation throughout the taxation year, or

(b) if the property is denominated in a foreign currency, any change under generally accepted accounting principles in the value of that currency relative to Canadian currency from the beginning to the end of a taxation year of the corporation would be reflected in the calculation of the corporation’s income for the taxation year for the purposes of Part II if the property were held by the corporation throughout the taxation year; (“bien évalué à la valeur du marché qui est exclu”)

“fair value” means, in respect of property of a corporation, the amount determined in accordance with generally accepted accounting principles that is the fair value of the property to the corporation, expressed in Canadian currency; (“juste valeur”)

“mark-to-market changes” means, with respect to a specified mark-to-market property or excluded mark-to-market property held by a corporation, changes in the fair value of the property that occur after the corporation acquires the property and before the corporation disposes of the property; (“variation de l’évaluation à la valeur du marché”)

“parent corporation” means a corporation that is a “parent” under subsection 88 (1) of the Income Tax Act (Canada); (“société mère”)

“pre-1994 loss”, of a corporation, is the amount by which the total of the corporation’s adjusted net losses, if any, for its last three taxation years ending before its first taxation year commencing after 1993 exceed the total of its adjusted net incomes, if any, for the same years; (“perte antérieure à 1994”)

“predecessor corporation” means a corporation that is a predecessor corporation referred to in section 87 of the Income Tax Act (Canada) and includes a corporation that was a predecessor corporation of a predecessor corporation; (“société remplacée”)

“specified mark-to-market property” means, in respect of a corporation, property, other than excluded mark-to-market property, held by the corporation and in respect of which,

(a) any mark-to-market changes recognized under generally accepted accounting principles from the beginning to the end of a taxation year of the corporation would be reflected in the calculation of the corporation’s net income for the taxation year for the purposes of this Part if the property were held by the corporation throughout the taxation year, or

(b) if the property is denominated in a foreign currency, any change under generally accepted accounting principles in the value of that currency relative to Canadian currency from the beginning to the end of a taxation year of the corporation would be reflected in the calculation of the corporation’s net income for the taxation year for the purposes of this Part if the property were held by the corporation throughout the taxation year; (“bien évalué à la valeur du marché qui est déterminé”)

“subsidiary corporation” means a corporation that is a “subsidiary” under subsection 88 (1) of the Income Tax Act (Canada); (“filiale”)

“total assets” means, subject to subsection (1.1), the amount that would be shown on a corporation’s balance sheet at the end of a taxation year as the corporation’s total assets if the balance sheet were prepared in accordance with generally accepted accounting principles, except that the consolidation and equity methods of accounting are not to be used; (“actif total”)

“total revenue”, of a corporation for a taxation year, means the amount that would be its gross revenue for the taxation year as determined in accordance with generally accepted accounting principles, except that the consolidation and equity methods of accounting shall not be used. (“recettes totales”) 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 8 (1, 2).

Adjustment to total assets re: specified mark-to-market property

(1.1)  The amount in respect of a specified mark-to-market property to be included in the total assets of a corporation for a taxation year for the purposes of this Part is determined without reference to mark-to-market changes with respect to the specified mark-to-market property if,

(a) the taxation year ends after March 22, 2007; or

(b) the taxation year begins after June 30, 2004 and ends before March 23, 2007, and the corporation made an election before February 26, 2008 to have section 1 of Ontario Regulation 509/07 (Corporate Minimum Tax) made under this Act apply to all of the corporation’s taxation years beginning after June 30, 2004 and ending before March 23, 2007. 2008, c. 7, Sched. E, s. 8 (3).

Net income or net loss

(2)  The net income or net loss of a corporation for a taxation year is,

(a) in the case of a corporation to which subsection 2 (1) applies, other than a life insurance corporation or a bank, the amount that would be its net income or net loss, before any income taxes, for the fiscal period coinciding with the taxation year, as determined in accordance with generally accepted accounting principles, except that the consolidation and equity methods of accounting shall not be used;

(b) in the case of a corporation to which subsection 2 (2) applies, other than a life insurance corporation or a bank, the amount that would be its net income or net loss before any income taxes for the fiscal period coinciding with the taxation year, as determined in accordance with generally accepted accounting principles, except that the consolidation and equity methods of accounting shall not be used, from,

(i) carrying on a business in Canada, and

(ii) property situated in Canada or used in carrying on a business in Canada, including any gains or losses from a disposition of the property or an interest in it;

(c) in the case of a life insurance corporation resident in Canada during the taxation year that carries on business both in and outside Canada during the taxation year, the amount determined according to the following formula:

A = B/C × D

where:

“A” is the amount of the life insurance corporation’s net income or net loss for the taxation year,

“B” is the amount of the life insurance corporation’s Canadian reserve liabilities as at the end of the taxation year, as determined under subsection 2405 (3) of the regulations made under the Income Tax Act (Canada),

“C” is the amount of the life insurance corporation’s total reserve liabilities as at the end of the taxation year, as determined under subsection 2405 (3) of the regulations made under the Income Tax Act (Canada), and

“D” is the amount of the life insurance corporation’s net income or net loss for the fiscal period coinciding with the taxation year, before the deduction of any income taxes and any tax payable under section 74.1, as reported in its annual report accepted by the relevant authority, as defined in section 138 of the Income Tax Act (Canada), or where the fiscal period does not coincide with the taxation year, a report prepared for the taxation year in accordance with the principles required by the relevant authority, adjusted if necessary so that the consolidation and equity methods of accounting are not used;

(d) in the case of a life insurance corporation other than a corporation referred to in clause (c), the amount of the life insurance corporation’s net income or net loss for the fiscal period coinciding with the taxation year, before the deduction of any income taxes and any tax payable under section 74.1, as reported in its annual report accepted by the relevant authority, as defined in section 138 of the Income Tax Act (Canada), or where the fiscal period does not coincide with the taxation year, a report prepared for the taxation year in accordance with the principles required by the relevant authority, adjusted if necessary so that the consolidation and equity methods of accounting are not used; or

(e) in the case of a bank, the amount of its net income or net loss for the fiscal period coinciding with the taxation year, before any income taxes, as reported in its annual report accepted by the Superintendent of Financial Institutions under the Bank Act (Canada), or where the fiscal period does not coincide with the taxation year, a report prepared for the taxation year in accordance with the principles required by the Superintendent of Financial Institutions, adjusted if necessary so that the consolidation and equity methods of accounting are not used. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Total revenue of corporate partner

(3)  If a corporation is a member of a partnership during a taxation year, the corporation’s total revenue for the taxation year includes the same proportion of the total revenue of the partnership for each fiscal period of the partnership ending in the taxation year as the proportion of the income or loss of the partnership to which the corporation is entitled as a partner of the partnership. 1994, c. 14, s. 21 (1); 2001, c. 23, s. 38; 2004, c. 16, s. 2 (2).

Total assets of corporate partner

(4)  If a corporation is a member of a partnership at the end of a taxation year, the amount of its total assets at the end of the taxation year includes, in lieu of the amount of its investment in the partnership, the same proportion of the total assets of the partnership at the end of the partnership’s last fiscal period ending in the taxation year, as the proportion of the income or loss of the partnership to which the corporation is entitled as a partner in the partnership. 1994, c. 14, s. 21 (1); 2001, c. 23, s. 38; 2004, c. 16, s. 2 (2).

Partnership

(5)  Subject to subsection (5.1), a partnership’s net income or net loss and its total assets and total revenue shall be determined in accordance with generally accepted accounting principles, except that the consolidation and equity methods of accounting shall not be used. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 8 (4).

Exception for total assets

(5.1)  The amount in respect of a specified mark-to-market property to be included in the total assets of a partnership for a fiscal period for the purposes of applying subsection (4) to a corporation for a taxation year is determined without reference to any mark-to-market change with respect to the specified mark-to-market property if,

(a) the taxation year of the corporation ends after March 22, 2007; or

(b) the taxation year of the corporation begins after June 30, 2004 and ends before March 23, 2007 and the corporation made an election before February 26, 2008 to have section 1 of Ontario Regulation 509/07 (Corporate Minimum Tax) made under this Act apply to all of the corporation’s taxation years beginning after June 30, 2004 and ending before March 23, 2007. 2008, c. 7, Sched. E, s. 8 (5).

Same

(5.2)  For the purposes of subsection (5.1), any mark-to-market changes with respect to property of a partnership are determined as if the partnership were a corporation and its fiscal period were a taxation year. 2008, c. 7, Sched. E, s. 8 (5).

Deemed partner

(6)  For the purposes of this Part, a corporation which is a member, or is deemed by this subsection to be a member, of a partnership that is a member of another partnership shall be deemed to be a member of the other partnership. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2001, c. 23, s. 38](http://www.ontario.ca/laws/statute/S01023" \l "s38) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2008, c. 7, Sched. E, s. 8 (1-5)](http://www.ontario.ca/laws/statute/S08007" \l "schedes8s1) - 30/06/2004

Corporate minimum tax liability

**57.2** (1)  Except as provided in section 57.11, every corporation subject to tax under Part II for a taxation year is liable to pay to the Crown in right of Ontario a corporate minimum tax for the taxation year as determined under this Part if,

(a) the corporation’s total assets at the end of the taxation year exceed $5,000,000;

(b) the corporation’s total revenue for the taxation year exceeds $10,000,000; or

(c) the corporation has one or more associated corporations during the taxation year and,

(i) the aggregate of the total assets of the corporation at the end of the taxation year and of each associated corporation at the end of the associated corporation’s last taxation year ending in the corporation’s taxation year exceeds $5,000,000, or

(ii) the aggregate of the total revenue of the corporation for the taxation year and of each associated corporation for the last taxation year of the associated corporation ending in the corporation’s taxation year exceeds $10,000,000. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Same

(2)  The following rules apply in determining whether a corporation is subject to tax under this Part for a taxation year:

1. If the taxation year of the corporation is less than fifty-one weeks, the total revenue of the corporation for the taxation year, before any inclusion in respect of the total revenue of any partnership of which it is a member, shall be deemed to be the amount otherwise determined, multiplied by the ratio of 365 to the number of days in the taxation year.

2. If the taxation year of an associated corporation referred to in subsection (1) is less than fifty-one weeks and is the only taxation year of the associated corporation ending in the corporation’s taxation year, the total revenue of the associated corporation for that taxation year, before any inclusion in respect of the total revenue of any partnership of which it is a member, shall be deemed to be the amount of its total revenue as otherwise determined, multiplied by the ratio of 365 to the number of days in the taxation year.

3. If a fiscal period of a partnership of which a corporation is a member is less than fifty-one weeks and is the only fiscal period of the partnership ending in the taxation year of the corporation, the total revenue of the partnership for that fiscal period shall be deemed to be the amount of its total revenue as otherwise determined, multiplied by the ratio of 365 to the number of days in the fiscal period.

4. If an associated corporation referred to in subsection (1) has two or more taxation years ending in the corporation’s taxation year, the total revenue of the associated corporation for the last taxation year ending on or before the last day of the corporation’s taxation year shall be deemed to be the total of all amounts each of which is the total revenue of the associated corporation for a taxation year which ended in the corporation’s taxation year and during which the associated corporation was associated with the corporation, multiplied by the ratio of 365 to the total number of days in all of those taxation years.

5. If a partnership of which the corporation is a member during the taxation year has two or more fiscal periods ending in the corporation’s taxation year, the total revenue of the partnership for the corporation’s taxation year shall be deemed to be the total of all amounts each of which is the total revenue of the partnership for a fiscal period which ended in the corporation’s taxation year and during which the corporation was a partner in the partnership, multiplied by the ratio of 365 to the total number of days in all of those fiscal periods.

6. If the corporation is associated with the same associated corporation during the taxation year and during the taxation year immediately before the taxation year, but no taxation year of the associated corporation ends in the corporation’s taxation year, references in this section to the associated corporation’s last taxation year ending in the taxation year of the corporation shall be deemed to be references to the last taxation year of the associated corporation ending before the commencement of the corporation’s taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Calculation of corporate minimum tax

**57.3** (1)  The corporate minimum tax payable by a corporation for a taxation year under this Part shall be the amount determined according to the following formula:

CMT = (I – L1 – L2) × A × R

where:

“CMT” is the amount of the corporation’s corporate minimum tax for the taxation year;

“I” is the amount of the corporation’s adjusted net income, if any, for the taxation year;

“L1” is the amount of the corporation’s pre-1994 loss, if any, to be deducted for the taxation year;

“L2” is the amount of the corporation’s eligible losses, if any, for the taxation year;

“A” is the corporation’s Ontario allocation factor for the taxation year; and

“R” is the rate of corporate minimum tax payable by the corporation for the taxation year.

1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Deductions from tax

(2)  A corporation may deduct from the corporate minimum tax otherwise payable by it under this Part for a taxation year,

(a) the amount of the corporation’s foreign tax credit, if any, for the taxation year, as determined under this Part, if the corporation is not a life insurance corporation; and

(b) the amount of tax payable by the corporation under Part II for the taxation year, after all deductions from tax to which the corporation is entitled for the year under Part II, other than a deduction permitted under section 43.1. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Adjusted net income or loss

**57.4** (1)  In this Part, a corporation’s adjusted net income for a taxation year is the amount, if any, by which, “A” exceeds “B” and its adjusted net loss for a taxation year is the amount, if any, by which “B” exceeds “A”, where,

“A” is the sum of,

(a) the amount of the corporation’s net income, if any, for the taxation year,

(b) if the corporation would have been entitled to exclude a gain from its taxable income earned in Canada under subsection 37 (2) in respect of the disposition of taxable Canadian property, the amount of any loss in respect of the disposition to the extent the loss has been taken into consideration in the calculation of the corporation’s net income or net loss, as the case may be, for the taxation year,

(c) all amounts included in the computation of the corporation’s income for the purposes of Part II by reason of section 135 of the Income Tax Act (Canada), as made applicable by Part II, to the extent the amounts have not been taken into consideration in the calculation of the corporation’s net income or net loss, as the case may be, for the taxation year or a prior taxation year, and

(d) such other amounts as may be determined in accordance with the regulations, and

“B” is the sum of,

(a) the amount of the corporation’s net loss, if any, for the taxation year,

(b) the total amount of the payments made pursuant to allocations in proportion to patronage to the extent that the amount is deductible under section 135 of the Income Tax Act (Canada) in computing the corporation’s income for the taxation year for the purposes of that Act, and has not been deducted in computing the corporation’s net income or net loss, as the case may be, for the taxation year,

(c) each of the following amounts to the extent it has been included in the computation of the corporation’s net income or net loss, as the case may be, for the year:

(i) an amount received or receivable by the corporation during the taxation year that is deductible as an amount in respect of a dividend under section 112 or 113 or subsection 138 (6) of the Income Tax Act (Canada), as made applicable under Part II, in determining the corporation’s taxable income for the taxation year in which the amount is received by the corporation,

(ii) an amount in respect of a dividend received or receivable by the corporation during the taxation year that is excluded under subsection 83 (2) of the Income Tax Act (Canada) in the computation of the income of the corporation for the purposes of Part I of that Act,

(iii) if the corporation is entitled to exclude an amount from its taxable income earned in Canada under subsection 37 (2) in respect of the disposition of taxable Canadian property, the amount of any gain in respect of the disposition,

(iv) the amount, if any, of the corporation’s income for the taxation year described in paragraph 81 (1) (c) of the Income Tax Act (Canada),

(v) the amount of any gain in respect of the disposition of property by the corporation after May 1, 2006, if the disposition is described in subparagraph 38 (a.1) (i) or (a.2) (i) of the Income Tax Act (Canada), and

(vi) the amount of any gain in respect of a disposition of property by the corporation that is described in subparagraph 38 (a.1) (iii) or paragraph 38 (a.3) of the Income Tax Act (Canada) if the gift to a qualified donee for the purposes of that provision occurs on or after February 26, 2008,

(d) an amount equal to 9/4 of the amount of tax payable by the corporation for the taxation year under subsection 191.1 (1) of the Income Tax Act (Canada) if the taxation year ends before January 1, 2003,

(e) an amount equal to three times the amount of tax payable by the corporation for the taxation year under subsection 191.1 (1) of the Income Tax Act (Canada) if the taxation year ends after December 31, 2002, and

(f) such other amounts as may be determined in accordance with the regulations. 2008, c. 7, Sched. E, s. 9 (1); 2008, c. 19, Sched. C, s. 2.

Dividends

(1.1)  Despite subsection 57.1 (2), no dividend paid or payable by a corporation in a taxation year, other than an amount referred to in subsection 137 (4.1) of the Income Tax Act (Canada), shall be deducted in determining whether the corporation has a net income of nil or more for the taxation year for the purposes of clause (a) of the definition of “A” in subsection (1) or a net loss for the taxation year for the purposes of clause (a) of the definition of “B” in subsection (1). 1997, c. 43, Sched. A, s. 26 (3); 2004, c. 16, s. 2 (2); 2009, c. 33, Sched. 16, s. 3.

Interest

(1.2)  In computing its adjusted net income or adjusted net loss for a taxation year under subsection (1) or (2), a corporation may deduct the amount of any interest paid or payable by the corporation that is included in an amount deducted or deductible by the corporation in the taxation year under paragraph 20 (1) (c) or (d) of the Income Tax Act (Canada), as made applicable for the purposes of this Act, to the extent that the amount of interest has not been deducted in computing the corporation’s net income or net loss under subsection 57.1 (2). 1999, c. 9, s. 84; 2004, c. 16, s. 2 (2).

Same

(1.3)  Subsection (1.2) applies with respect to interest incurred after May 4, 1999. 1999, c. 9, s. 84; 2004, c. 16, s. 2 (2).

(2)  Repealed: 2008, c. 7, Sched. E, s. 9 (2).

Corporate partner

(3)  If a corporation is a member of a partnership during a taxation year, the corporation’s adjusted net income or adjusted net loss for the taxation year includes the same proportion of the partnership’s adjusted net income or adjusted net loss for each fiscal period of the partnership ending in the taxation year as the proportion of the income or loss of the partnership that is allocable to the corporation as a partner in the partnership. 1994, c. 14, s. 21 (1); 2001, c. 23, s. 39; 2004, c. 16, s. 2 (2).

Adjusted net income or loss of partnership

(4)  The adjusted net income or adjusted net loss of a partnership shall be computed for the purposes of this Part under the provisions of this Part, with such modifications as the circumstances require, as if the partnership were a corporation and the taxation year of the partnership were its fiscal period. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Same

(5)  Despite subsection (4), no amount shall be deducted nor included more than once in the calculation of the adjusted net income or adjusted net loss of a corporation that is a member of a partnership. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994; 1997, c. 43, Sched. A, s. 26 (1) - 01/01/1994; 1997, c. 43, Sched. A, s. 26 (2-5) - 06/05/1997; 1999, c. 9, s. 84 - 05/05/1999

[2001, c. 23, s. 39](http://www.ontario.ca/laws/statute/S01023" \l "s39) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2006, c. 33, Sched. G, s. 6](http://www.ontario.ca/laws/statute/S06033" \l "schedgs6) - 01/05/2006

[2008, c. 7, Sched. E, s. 9 (1, 2)](http://www.ontario.ca/laws/statute/S08007" \l "schedes9s1) - 01/01/2003; [2008, c. 19, Sched. C, s. 2](http://www.ontario.ca/laws/statute/S08019" \l "schedcs2) - 26/02/2008

[2009, c. 33, Sched. 16, s. 3 (1, 2)](http://www.ontario.ca/laws/statute/S09033" \l "sched16s3s1) - 15/12/2009

Pre-1994 loss

**57.5** (1)  Except as provided in subsections (3) and (4), the amount of a corporation’s pre-1994 loss that is deducted or deemed to be deducted for a taxation year under this Part is the lesser of,

(a) the amount by which the corporation’s pre-1994 loss exceeds the total of all amounts, each of which is the amount of the corporation’s pre-1994 loss that was deducted or is deemed to have been deducted under this Part for a prior taxation year; or

(b) the corporation’s adjusted net income for the taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Deemed deduction of pre-1994 loss

(2)  For the purposes of determining the amount of a corporation’s pre-1994 loss to be deducted for a particular taxation year, the amount of the pre-1994 loss determined under subsection (1) for a prior taxation year shall be deemed to have been deducted under this Part for the prior taxation year whether or not the corporation was subject to tax imposed under this Part for the prior taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Acquisition of control, pre-1994 loss

(3)  If at any time after 1993 control of a corporation has been acquired by a person or group of persons, the amount of the corporation’s pre-1994 loss to be deducted for a particular taxation year ending after that time shall include only those amounts otherwise included that may reasonably be regarded as a loss of the corporation from carrying on a business before that time,

(a) if the same business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular taxation year; and

(b) to the extent of the aggregate of the portion of the corporation’s adjusted net income for the particular taxation year that is reasonably attributable to that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, to any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Exception

(4)  Despite subsections (1) and (3), the amount of the deduction in respect of a corporation’s pre-1994 loss is nil for all taxation years of the corporation after the corporation’s first ten taxation years commencing after December 31, 1993. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Eligible losses for a taxation year

(5)  Except as provided in subsection (7), the amount of a corporation’s eligible losses for a taxation year that is deducted or deemed to be deducted under this Part for the year is equal to the lesser of “A” and “B” where,

“A” is the amount by which “C” exceeds “D” where,

“C” is the sum of all amounts each of which is,

(a) the corporation’s adjusted net loss for a prior taxation year that commenced after 1993, ended before March 23, 2007 and is not earlier than the tenth taxation year before the taxation year, or

(b) the corporation’s adjusted net loss for a prior taxation year that ends after March 22, 2007 and is not earlier than the twentieth taxation year before the taxation year, and

“D” is the sum of all amounts each of which is an amount included in the amount determined under clause (a) or (b) of the definition of “C” that was deducted or is deemed to have been deducted as an eligible loss under this Part for a prior taxation year, and

“B” is the amount by which the corporation’s adjusted net income for the taxation year exceeds the amount, if any, of its pre-1994 loss that is deducted or deemed to be deducted for the taxation year. 2007, c. 7, Sched. 6, s. 6.

Same

(6)  The following rules apply in determining the amount of a corporation’s eligible losses for a taxation year:

1. The amount of the corporation’s eligible losses for a prior taxation year shall be deemed to have been deducted under this Part for the prior taxation year whether or not the corporation was subject to tax imposed under this Part for the prior taxation year.

2. The corporation’s adjusted net loss for a particular taxation year that is otherwise included in the corporation’s eligible losses for the taxation year shall be deducted or deemed to be deducted under this Part before any amount in respect of the adjusted net loss of the corporation for a subsequent taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Acquisition of control, eligible losses

(7)  If at any time control of a corporation has been acquired by a person or group of persons, the amount of the corporation’s eligible losses for a particular taxation year ending after that time shall include only those amounts otherwise included that may reasonably be regarded as the corporation’s losses from carrying on a business before that time,

(a) if that business was carried on by the corporation for profit or with a reasonable expectation of profit throughout the particular taxation year; and

(b) to the extent of the aggregate of the portion of the corporation’s adjusted net income for the particular taxation year that is reasonably attributable to that business and, where properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, to any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services, less the amount, if any, of the corporation’s pre-1994 loss that is deducted or deemed to be deducted for the particular taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Amalgamation

(8)  If there has been an amalgamation of corporations to which section 87 of the Income Tax Act (Canada) applies, the amalgamated corporation shall be deemed to be the same corporation as and a continuation of each predecessor corporation for the purposes of determining the amount of the amalgamated corporation’s,

(a) pre-1994 loss;

(b) pre-1994 loss that was deducted or is deemed to have been deducted under this Part for a prior taxation year;

(c) eligible losses for a taxation year after the amalgamation; and

(d) eligible losses for a taxation year that were deducted or are deemed to have been deducted under this Part for a prior taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Exception

(8.1)  If an amalgamation of two or more predecessor corporations occurs after March 21, 2007, subsection (8) does not apply in determining for the purposes of the amalgamated corporation an amount in respect of one of the predecessor corporations if that predecessor corporation was controlled at any time before the amalgamation by any of the other predecessor corporations. 2008, c. 7, Sched. E, s. 10 (1).

Winding-up

(9)  If the rules in subsection 88 (1) of the Income Tax Act (Canada) apply to the winding-up of a subsidiary corporation that was completed before March 22, 2007, the parent corporation is deemed to be the same corporation as and a continuation of the subsidiary corporation for the purposes of determining the amount of the parent corporation’s,

(a) pre-1994 loss;

(b) pre-1994 loss that was deducted or is deemed to have been deducted under this Part for a prior taxation year;

(c) eligible losses for a taxation year after the winding-up; and

(d) eligible losses for a taxation year that were deducted or are deemed to have been deducted under this Part for a prior taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 10 (2).

Winding-up or dissolution of a Canadian affiliate of an entrant bank

(10)  If the events described in paragraphs 142.7 (12) (a) and (b) of the Income Tax Act (Canada) have occurred with respect to the winding-up of a Canadian affiliate of an entrant bank (within the meaning of subsection 142.7 (1) of that Act) or in respect of the dissolution of a Canadian affiliate of an entrant bank under a dissolution order (within the meaning of subsection 142.7 (12) of that Act), the entrant bank shall be deemed to be the same corporation as, and a continuation of, the Canadian affiliate for the purposes of determining the amount of the following losses of the entrant bank:

1. The pre-1994 loss.

2. The pre-1994 loss that was deducted or is deemed to have been deducted under this Part for a prior taxation year.

3. Eligible losses for a taxation year after the winding-up or dissolution.

4. Eligible losses for a taxation year that were deducted or are deemed to have been deducted under this Part for a prior taxation year. 2002, c. 22, s. 49; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 27 (1).

Exception

(11)  Subsection (10) does not apply unless,

(a) before the later of the date determined under paragraph 142.7 (11) (b) of the Income Tax Act (Canada) and the day that is 180 days after the day the Budget Measures Act (Fall), 2004 receives Royal Assent,

(i) the entrant bank and the Canadian affiliate jointly elect that subsection (10) applies, if the Canadian affiliate has not been wound up or dissolved before the election is made, or

(ii) the entrant bank elects that subsection (10) applies, if the Canadian affiliate has been wound up or dissolved and ceases to exist before the election is made; or

(b) the entrant bank and the Canadian affiliate have jointly elected under paragraph 142.7 (12) (c) of the Income Tax Act (Canada) to have section 142.7 of that Act apply. 2004, c. 31, Sched. 9, s. 27 (2).

Application of subs. (10)

(12)  Subsection (10) applies only to,

(a) taxation years for which an election by the affiliate and bank under paragraph 142.7 (12) (c) of the Income Tax Act (Canada) applies or to which section 142.7 of the Income Tax Act (Canada) would have applied if an election had been made under paragraph 142.7 (12) (c) of that Act; and

(b) preceding taxation years in which a loss for the purposes of this section was incurred. 2004, c. 31, Sched. 9, s. 27 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2002, c. 22, s. 49](http://www.ontario.ca/laws/statute/S02022" \l "s49) - 28/06/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 27 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s27s1) - 28/06/1999

[2007, c. 7, Sched. 6, s. 6](http://www.ontario.ca/laws/statute/S07007" \l "sched6s6) - 17/05/2007

[2008, c. 7, Sched. E, s. 10 (1, 2)](http://www.ontario.ca/laws/statute/S08007" \l "schedes10s1) - 21/03/2007

Ontario allocation factor

**57.6** A corporation’s Ontario allocation factor for a taxation year for the purposes of this Part is the fraction equal to “A/B” where,

(a) “A” equals the amount of taxable income of the corporation for the taxation year, or the taxable income of the corporation earned in Canada for the taxation year if the corporation is a corporation to which subsection 2 (2) applies, that would not be considered for the purposes of section 39 to have been earned in jurisdictions other than Ontario, except that the taxable income or the taxable income earned in Canada shall be deemed to be $1 if there would otherwise be no taxable income or taxable income earned in Canada for the year; and

(b) “B” equals the amount of taxable income of the corporation for the taxation year, or the taxable income of the corporation earned in Canada for the taxation year if the corporation is a corporation to which subsection 2 (2) applies, except that the taxable income or the taxable income earned in Canada shall be deemed to be $1 if there would otherwise be no taxable income or taxable income earned in Canada for the year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Tax rate

**57.7** The rate of corporate minimum tax payable by a corporation for a taxation year under this Part is the total of,

(a) 2 per cent multiplied by the ratio of the number of days in the taxation year that are in 1994 to the total number of days in the taxation year;

(b) 3 per cent multiplied by the ratio of the number of days in the taxation year that are in 1995 to the total number of days in the taxation year; and

(c) 4 per cent multiplied by the ratio of the number of days in the taxation year that are in 1996 or any subsequent year to the total number of days in the taxation year. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Foreign tax credit

**57.8** For the purposes of this Part, a corporation’s foreign tax credit for a taxation year is the amount that would be determined for the taxation year under section 40 if the reference in subsection 40 (1) to the tax otherwise payable by the corporation under Part II for the taxation year were read as a reference to the amount of the corporation’s corporate minimum tax for the taxation year determined under this Part before any deduction permitted under subsection 57.3 (2). 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Election on transfer of property

**57.9** (1)  If during a taxation year a corporation has disposed of property to another corporation or acquired property from another corporation and both corporations have jointly elected under section 85 of the Income Tax Act (Canada) to have the rules in that section apply, or if section 85.1 of that Act applies to the disposition, both corporations may jointly elect in the form approved by the Minister to have the rules prescribed by regulation apply for the purposes of this Part. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Same

(2)  If during a taxation year a corporation has disposed of property to a partnership or acquired property from a partnership and the corporation and all of the members of the partnership have jointly elected under section 85 or 97, as the case may be, of the Income Tax Act (Canada) to have the rules of that section apply, the corporation and all of the members of the partnership may jointly elect in the form approved by the Minister to have the rules prescribed by regulation apply for the purposes of this Part. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Application

(3)  This section applies in respect of dispositions and acquisitions of property by a corporation at any time during or after the last three taxation years of the corporation ending before the corporation’s first taxation year commencing after 1993. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Time of election

(4)  An election under subsection (1) or (2) must be made on or before the day that is the earliest of the days on or before which any corporation making the election is required to file a return under this Act for the taxation year in which the disposition or acquisition occurred. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Exception

(5)  If no corporation making the election is liable to pay tax under this Part for the taxation year in which the transaction occurred, the election may be made on or before the day that is the earliest of the days on or before which any corporation making the election is required to file a return under this Act for the first taxation year ending after the transaction for which the corporation is liable to pay tax under this Part. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Election on disposition of property to an entrant bank

**57.9.1** (1)  In this section,

“Canadian affiliate” has the same meaning as in subsection 142.7 (1) of the Income Tax Act (Canada); (“filiale canadienne”)

“entrant bank” has the same meaning as in subsection 142.7 (1) of the Income Tax Act (Canada). (“banque entrante”) 2002, c. 22, s. 50; 2004, c. 16, s. 2 (2).

Joint election

(2)  If during a taxation year a Canadian affiliate has disposed of property to an entrant bank and both corporations have jointly elected under subsection 142.7 (3) of the Income Tax Act (Canada) to have the rules in that subsection apply, the Canadian affiliate and the entrant bank may jointly elect in the form approved by the Minister to have the rules prescribed by regulation apply for the purposes of this Part. 2002, c. 22, s. 50; 2004, c. 16, s. 2 (2).

Application

(3)  This section applies in respect of dispositions made after June 27, 1999. 2002, c. 22, s. 50; 2004, c. 16, s. 2 (2).

Time of election

(4)  An election under subsection (2) must be made on or before the day that is the later of,

(a) December 31, 2005; and

(b) the earliest of the days on or before which the Canadian affiliate or the entrant bank is required to file a return under this Act for the taxation year in which the disposition occurred. 2002, c. 22, s. 50; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 12 (1).

Exception

(5)  If neither the Canadian affiliate nor the entrant bank is liable to pay tax under this Part for the taxation year in which the disposition occurred, the election may be made on or before the day that is the later of,

(a) December 31, 2005; and

(b) the earliest of the days on or before which the entrant bank or Canadian affiliate is required to file a return under this Act for the first taxation year ending after the disposition for which the entrant bank or Canadian affiliate is liable to pay tax under this Part. 2002, c. 22, s. 50; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 12 (2).

**Section Amendments with date in force (d/m/y)**

[2002, c. 22, s. 50](http://www.ontario.ca/laws/statute/S02022" \l "s50) - 28/06/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 12 (1, 2)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s12s1) - 15/12/2005

Election on replacement of property

**57.10** (1)  If at any time in a taxation year an amount has become receivable by a corporation as proceeds of disposition of a capital property and the corporation has elected under subsection 13 (4) or 14 (6) or section 44 of the Income Tax Act (Canada) to have the rules in either of those provisions apply, the corporation may elect to have the rules prescribed by regulation apply for the purposes of this Part. 1994, c. 14, s. 21 (1); 1997, c. 43, Sched. A, s. 27; 2004, c. 16, s. 2 (2).

Application

(2)  This section applies in respect of amounts that have become receivable by a corporation as proceeds of disposition of a capital property at any time during or after the last three taxation years of the corporation ending before the corporation’s first taxation year commencing after 1993. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Time of election

(3)  An election under subsection (1) must be made in the corporation’s return under this Act for the year in which it acquired a property which is a replacement property for the purposes of subsection 13 (4) or section 44, as applicable, of the Income Tax Act (Canada). 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

Exception

(4)  If the corporation making the election is not liable to pay tax under this Part for the taxation year in which the replacement property was acquired, the election may be made in the corporation’s return under this Act for the first taxation year ending after the replacement property was acquired for which the corporation is liable to pay tax under this Part. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994; 1997, c. 43, Sched. A, s. 27 - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Exemption

**57.11** No tax is payable under this Part by a corporation for a taxation year if,

(a) no tax under Part II is payable by the corporation for the taxation year by reason of section 57;

(b) the corporation is throughout the taxation year,

(i) an investment corporation referred to in section 46,

(ii) a mortgage investment corporation referred to in section 47,

(iii) a mutual fund corporation referred to in section 48,

(iv) a non-resident-owned investment corporation referred to in section 49,

(v) a congregation or business agency to which section 143 of the Income Tax Act (Canada) applies, or

(vi) a deposit insurance corporation referred to in section 52; or

(c) the corporation is subject to tax under Part II only by virtue of clause 2 (2) (c). 1994, c. 14, s. 21 (1); 1996, c. 1, Sched. B, s. 8 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994; 1996, c. 1, Sched. B, s. 8 (1, 2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Limitation respecting inclusions and deductions

**57.12** (1)  Unless a contrary intention is evident, no provision of this Part shall be read or construed to require the inclusion or to permit the deduction in computing the amount of a corporation’s net income, net loss, adjusted net income, adjusted net loss or pre-1994 loss of any amount to the extent that the amount has been otherwise included or deducted, as the case may be, in computing the amount under this Part. 1994, c. 14, s. 21 (1); 1996, c. 29, s. 56; 2004, c. 16, s. 2 (2).

Same

(2)  In computing the net income, net loss, adjusted net income, adjusted net loss or pre-1994 loss, no deduction shall be made in respect of a reserve, outlay or expense in respect of which any amount is otherwise deductible under this Part, except to the extent the reserve, outlay or expense, as the case may be, was reasonable in the circumstances. 1994, c. 14, s. 21 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 21 (1, 2) - 01/01/1994; 1996, c. 29, s. 56 - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Part II.2  
Ontario Tax Exemption for Commercialization

Definitions and interpretation

Definitions

**57.13** (1)  In this Part,

“advanced health technology business” means a business that is primarily engaged in using technology,

(a) in the development of assistive medical devices, pharmaceutical drugs, regenerative medicine, biologics, medical procedures or surgical procedures, or

(b) in human tissue engineering; (“entreprise de technologie médicale avancée”)

“bioeconomy business” means a business that is primarily engaged in,

(a) the production of biofuel, biogas or bioplastics, or

(b) the development of technology or processes that enable the use of wind, water, a biomass resource, hydrogen, biofuel, biogas, landfill gas, solar energy, geothermal energy, tidal forces or thermal waste as a source of energy; (“entreprise de bioéconomie”)

“biofuel” means a liquid fuel made from a biomass resource and includes the liquid fuels ethanol, methanol and biodiesel; (“biocarburant”)

“biogas” means a gaseous fuel made from a biomass resource; (“biogaz”)

“biomass resource” means,

(a) organic matter that is derived from a plant and available on a renewable basis, including organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops, or

(b) waste organic material from harvesting or processing agricultural products, including animal waste and rendered animal fat, forestry products, including wood waste, and sewage; (“ressource en biomasse”)

“bioplastic” mean a plastic made from a biomass resource; (“bioplastique”)

“computer program” has the meaning assigned by section 2 of theCopyright Act (Canada); (“programme d’ordinateur”)

“eligible commercialization business” means an active business,

(a) that in the opinion of the Minister of Research and Innovation is,

(i) an advanced health technology business,

(ii) a bioeconomy business,

(iii) a telecommunications, computer or digital technologies production business that is primarily engaged in activities described in categories 3341, 3342, 3344 or 5112 of the North American Industry Classification System 2007 – Canada, as published by Statistics Canada, or

(iv) a business that is prescribed by or that satisfies the conditions prescribed by the Minister of Finance,

(b) that in the opinion of the Minister of Research and Innovation has as its sole purpose,

(i) the sale of property that derives more than 50 per cent of its value from eligible intellectual property,

(ii) the sale of property an essential element of which is eligible intellectual property,

(iii) the licensing of computer programs that are eligible intellectual property, or

(iv) such other purpose as may be prescribed by the Minister of Finance, and

(c) that satisfies such other conditions as may be prescribed by the Minister of Finance; (“entreprise de commercialisation admissible”)

“eligible intellectual property” means, in respect of a business carried on by a qualifying corporation, property,

(a) that was developed in the course of employment or academic study at a qualifying institute by one or more individuals, each of whom is an inventor for the purposes of the Patent Act (Canada), an author for the purposes of the Copyright Act (Canada), an individual prescribed by the Minister of Finance or an individual who satisfies conditions prescribed by the Minister of Finance,

(b) that has never been legally or beneficially owned by anyone other than,

(i) the qualifying institute where the research to develop the property was conducted,

(ii) one or more individuals who created the property, each of whom was an employee or a student of the qualifying institute where the research was conducted at the time the intellectual property was created,

(iii) the qualifying corporation, or

(iv) one or more of the persons and entities referred to in subclause (i), (ii) or (iii),

(c) that was disclosed to the qualifying institute where the research was conducted in a timely manner and not later than the required time in accordance with the institute’s official intellectual property disclosure policy,if the institute had such a policy, and

(d) that is,

(i) a patent issued under the Patent Act (Canada),

(ii) intellectual property in respect of which,

(A) an application for a patent was filed under the Patent Act (Canada) by a person described in subclause (b) (i), (ii), (iii) or (iv), and

(B) a patent is issued pursuant to the application no later than the last day of the qualifying corporation’s 10th taxation year ending after incorporation,

(iii) the copyright in a computer program that in the opinion of the Minister of Research and Innovation constitutes a technological advancement at the time the computer program is completed and meets such conditions as may be prescribed by the Minister of Finance, or

(iv) intellectual property that is prescribed by the Minister of Finance or that satisfies such conditions as may be prescribed by the Minister of Finance; (“propriété intellectuelle admissible”)

“qualifying institute” means an entity that is not required to pay tax under Part I of the Income Tax Act (Canada) by reason of section 149 of that Act and that is,

(a) a university in Ontario whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the Government of Ontario,

(b) a college of applied arts and technology in Ontario whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the Government of Ontario,

(c) an entity that is a non-profit organization prescribed by the Minister of Finance, that is a member of a class of non-profit organizations prescribed by the Minister of Finance or that meets the conditions prescribed by the Minister of Finance,

(d) a college or university in Canada but outside Ontario whose enrolment is counted for the purposes of calculating annual operating grants entitlements from the government of a province, other than an elementary or secondary school,

(e) a hospital research institute that meets the conditions prescribed by the Minister of Finance, or

(f) an entity that is prescribed by or that satisfies the conditions prescribed by the Minister of Finance. (“institut admissible”) 2008, c. 24, s. 1.

Qualifying corporation

(2)  A corporation is a qualifying corporation for the purposes of this Part for a taxation year if the corporation satisfies the following conditions:

1. It was incorporated in Canada after March 24, 2008 and before March 25, 2012 and was not formed as a result of an amalgamation or merger of two or more corporations.

2. It carried on one or more eligible commercialization businesses during the taxation year.

3. If its income as computed for the purposes of section 3 of the Income Tax Act(Canada) was greater than zero, all or substantially all of its gross revenue for the year was from one or more eligible commercialization businesses and all or substantially all amounts received or receivable by it on the disposition of capital property were from the disposition of capital property in the ordinary course of an eligible commercialization business.

4. If it was a member of a partnership for any period of time during the taxation year or a previous taxation year, throughout that period of time every other member of the partnership was a qualifying institute.

5. If it was a participant in a joint venture for any period of time during the taxation year or a previous taxation year, throughout that period of time every other member of the joint venture was a qualifying institute.

6. It has never been a beneficiary of a trust.

7. It has never operated all or part of a business that was previously operated by another corporation.

8. It has never operated all or part of a business that was previously operated by a person or entity that is not a corporation unless the business was operated by the person or entity for a period of not more than 90 days before the corporation was incorporated.

9. It satisfies such other conditions as may be prescribed by the Minister of Finance. 2008, c. 24, s. 1.

Tax

(3)  A reference in this Part to tax payable and paid under Part II and II.1 does not include a reference to any interest or penalties payable under this Act. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Ontario tax exemption for commercialization

**57.14** (1)  A corporation that is a qualifying corporation for a taxation year is entitled to a refund under this Part for the year equal to the amount of its Ontario tax exemption for commercialization for the year if the requirements of this Part are satisfied. 2008, c. 24, s. 1.

Amount of the exemption

(2)  Subject to subsection (3), the amount of a corporation’s Ontario tax exemption for commercialization for a taxation year is equal to the sum of,

(a) the amount of tax payable and paid by the corporation under Part II for the year after claiming all deductions to which it is entitled for the year under sections 39 to 41, 43, 43.1 and 43.3 to 43.13; and

(b) the amount of tax payable and paid by the corporation under Part II.1 for the year. 2008, c. 24, s. 1.

Nil exemption

(3)  The amount of a corporation’s Ontario tax exemption for commercialization for a taxation year is nil if,

(a) the corporation has not claimed the maximum amount of all deductions and allowances to which it is entitled under this Act and the Income Tax Act (Canada) in computing its income and taxable income for the taxation year and for each of its previous taxation years;

(b) the corporation is or has been, at any time since it was incorporated, associated with another corporation within the meaning of section 256 of the Income Tax Act (Canada) if paragraphs 256 (1) (c), (d) and (e) of that Act were read without reference to “other than a specified class”;

(c) the corporation is or has been, at any time since it was incorporated, related to another corporation within the meaning of section 251 of the Income Tax Act(Canada);

(d) control of the corporation is acquired directly or indirectly in any manner whatever during the period commencing March 25, 2012 and ending at the end of the corporation’s 10th taxation year after it was incorporated;

(e) the Minister of Research and Innovation notifies the corporation that it is ineligible to receive a certificate of eligibility under this Part or that the Minister of Research and Innovation has revoked the certificate of eligibility issued to the corporation for the year; or

(f) during the taxation year or a previous taxation year, the corporation sold all or substantially all of the property it used in carrying on an eligible commercialization business. 2008, c. 24, s. 1.

Exception re associated corporations

(4)  Clause (3) (b) does not apply if the corporation that was associated with the qualifying corporation was, at all times while it was associated with the qualifying corporation,

(a) a qualifying institute; or

(b) a corporation that is prescribed by the Minister of Finance or that satisfies conditions prescribed by the Minister of Finance. 2008, c. 24, s. 1.

Exception re related corporations

(5)  Clause (3) (c) does not apply if the corporation that was related to the qualifying corporation was, at all times while it was related to the qualifying corporation,

(a) a qualifying institute; or

(b) a corporation that is prescribed by the Minister of Finance or that satisfies conditions prescribed by the Minister of Finance. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Certificate of eligibility

**57.15** (1)  To be eligible to apply for a refund under this Part, a qualifying corporation must apply for, be eligible to receive and receive a certificate of eligibility for the year issued by the Minister of Research and Innovation. 2008, c. 24, s. 1.

Application

(2)  An application for a certificate of eligibility for a taxation year shall be made to the Minister of Research and Innovation after the end of the year to which it relates, in a form approved by the Minister of Research and Innovation. 2008, c. 24, s. 1.

Additional information or records

(3)  A corporation applying for a certificate of eligibility shall provide such additional information and records as the Minister of Research and Innovation may specify in order to evaluate the application. 2008, c. 24, s. 1.

Criteria for issuing certificate of eligibility

(4)  The Minister of Research and Innovation may issue a certificate of eligibility to the corporation for the year if he or she is satisfied that the corporation carried on an eligible commercialization business during the year. 2008, c. 24, s. 1.

Failure to satisfy all criteria

(5)  If, after reviewing the application and all other relevant information and records, the Minister of Research and Innovation is of the opinion that the corporation has failed to satisfy the criteria set out in subsection (4), the Minister of Research and Innovation shall notify the corporation in writing of his or her decision not to issue the certificate and the reasons for the decision. 2008, c. 24, s. 1.

Revocation of certificate

(6)  If, at any time after issuing a certificate of eligibility to a corporation, the Minister of Research and Innovation subsequently determines that the corporation failed to satisfy the criteria set out in subsection (4), the Minister of Research and Innovation may,

(a) revoke the certificate; and

(b) notify the corporation and the Minister of Revenue of the revocation of the certificate and the reasons for the revocation. 2008, c. 24, s. 1.

Decision not to issue or to revoke certificate is final

(7)  The decision of the Minister of Research and Innovation not to issue a certificate of eligibility to a corporation for a taxation year or to revoke a certificate of eligibility previously issued to the corporation for the year is final and conclusive, and Divisions E and F of Part V do not apply in respect of the decision. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Preliminary determination

**57.16** A corporation may request from the Minister of Research and Innovation at any time before the end of its first taxation year after incorporation a preliminary determination of the following matters, but no preliminary determination made under this section is binding on the Minister of Research and Innovation:

1. Whether the proposed business of the corporation would be an eligible commercialization business.

2. Whether property to be owned or used by the corporation in the proposed business is eligible intellectual property.

3. Whether a particular entity is a qualifying institute. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Application for refund

**57.17** (1)  If a certificate of eligibility is issued to a corporation for a taxation year, the corporation may apply to the Minister of Revenue for a refund under this Part by submitting to the Minister of Revenue on or before the end of the third taxation year ending after the year,

(a) an application in a form approved by the Minister of Revenue;

(b) the certificate of eligibility issued to the corporation by the Minister of Research and Innovation for the taxation year;

(c) proof to the satisfaction of the Minister of Revenue that all tax payable by the corporation for the year under Parts II and II.1 has been paid; and

(d) such other information and records as the Minister of Revenue may specify to enable the Minister of Revenue to determine if the corporation is a qualifying corporation for the year. 2008, c. 24, s. 1.

Application after assessment or reassessment

(2)  Despite subsection (1), if the Minister of National Revenue assesses or reassesses a corporation, the corporation may apply to the Minister of Revenue for a refund under this Part by submitting to the Minister of Revenue the certificate, information and records required under subsection (1) within three months of the assessment or reassessment. 2008, c. 24, s. 1.

Notice and payment of refund

(3)  If, after reviewing the application and all other relevant information and records, the Minister of Revenue is of the opinion that the corporation is a qualifying corporation for the year, has paid all tax payable for the year under Parts II and II.1 and is entitled to a refund under this Part for the year, the Minister of Revenue shall,

(a) notify the corporation in writing of the amount of the refund to which the corporation is entitled for the year; and

(b) pay to the corporation the amount of the refund, without interest. 2008, c. 24, s. 1.

If no refund payable

(4)  If, after reviewing the application and all other relevant information and records, the Minister of Revenue is of the opinion that the corporation is not entitled to a refund under this Part for the year, the Minister of Revenue shall send a notice of determination to the corporation setting out his or her determination that the corporation is not entitled to the refund and the reasons for the determination. 2008, c. 24, s. 1.

Amount of the refund

(5)  The Minister of Revenue,

(a) shall initially calculate the amount of any refund payable under this Part to a qualifying corporation for a taxation year by reference to the most recent assessment of tax payable by the corporation for the year under Parts II and II.1;

(b) shall not pay a refund under this Part until the Minister of Revenue is satisfied that all tax payable by the corporation for the year under Parts II and II.1 have been paid; and

(c) shall subsequently make such adjustments to the amount of the refund as may be necessary to reflect any subsequent changes in the amount of tax payable and paid by the corporation for the year under Parts II and II.1. 2008, c. 24, s. 1.

Revised notice of determination

(6)  If the Minister of Revenue makes an adjustment to the amount of a refund paid under this Part for a taxation year or subsequently determines that the corporation was not entitled to a refund previously paid for the year, the Minister of Revenue shall send to the corporation a revised notice of determination setting out the amount of the refund, if any, to which the corporation is entitled for the year and shall,

(a) pay to the corporation any additional refund to which the corporation is entitled under this Part for the year; or

(b) demand from the corporation repayment of the refund or the excess amount of the refund to which the corporation is not entitled for the year. 2008, c. 24, s. 1.

Tax avoidance

(7)  Despite any other provision in this Part, the Minister of Revenue may refuse to pay a refund to a corporation under this Part or may demand repayment of a refund previously paid under this Part if the Minister of Revenue has a reasonable belief,

(a) that one of the principal purposes of a disposition, deemed disposition or series of dispositions of shares of any corporation was to enable the corporation to obtain a refund under this Part to which it would not otherwise be entitled; or

(b) that as a result of a transaction or an event, or a series of transactions or events, property of a business has been transferred, or has been deemed to be transferred, either directly or indirectly, to the corporation or to another corporation, and one of the principal purposes of the transfer or deemed transfer is to enable the corporation to obtain a refund under this Part to which it would not otherwise be entitled. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Recovery of refund

**57.18** (1)  If, after a refund under this Part is paid to a corporation, it is subsequently determined that the corporation received a refund to which it was not entitled or received an amount greater than the amount of the refund to which it is entitled, the corporation shall,

(a) repay the amount or the excess amount, as the case may be, to the Minister of Revenue; and

(b) pay interest to the Minister of Revenue on the amount or excess amount, as the case may be, computed under this Act as if the amount or excess amount were tax payable under Part II or II.1 from the day the amount or excess amount was paid to the corporation to the day it is repaid to the Minister of Revenue. 2008, c. 24, s. 1.

Exception re: interest

(2)  Despite clause (1) (b), interest shall not be payable by a corporation where the amount or excess amount determined under subsection (1) is the result of the corporation claiming a deduction under section 111 of the Income Tax Act(Canada), as made applicable by section 34 of this Act, in respect of a loss for a subsequent taxation year. 2008, c. 24, s. 1.

Collection

(3)  All amounts repayable and payable to the Minister of Revenue under subsection (1) constitute a debt to the Crown and may be recovered by way of deduction or set-off or may be recovered in any court of competent jurisdiction in proceedings commenced at any time. 2008, c. 24, s. 1.

No time limit

(4)  Section 80 does not apply with respect to any amount repayable to the Minister of Revenue under this Part, and an amount repayable to the Minister of Revenue under this Part is deemed to be taxes owing to the Crown for the purposes of clause 16 (1) (i) of the Limitations Act, 2002. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Offence

**57.19** A corporation that applies for a certificate of eligibility or a refund under this Part for a taxation year when it knew or ought to have known that it is not eligible for a refund under this Part for the year is guilty of an offence and is liable on conviction to a fine of up to twice the sum of,

(a) the amount of tax payable by the corporation for the year under Part II; and

(b) the amount of tax payable by the corporation for the year under Part II.1. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Agreement for the administration of this Part

**57.20** (1)  With the approval of the Lieutenant Governor in Council, the Minister of Revenue may, on behalf of the Crown in right of Ontario, enter into an agreement with the Crown in right of Canada under which the Canada Revenue Agency will exercise powers and duties of the Minister of Revenue and the Minister of Research and Innovation for the purposes of this Part. 2008, c. 24, s. 1.

Effect of agreement

(2)  If an agreement under subsection (1) is entered into, the Canada Revenue Agency, on behalf of and as agent of the Minister of Revenue and the Minister of Research and Innovation, is authorized, subject to the provisions of the agreement, to exercise the powers and perform the duties under this Part of the Minister of Revenue and the Minister of Research and Innovation to which the agreement applies. 2008, c. 24, s. 1.

Payment of fees under agreement

(3)  All fees and other amounts payable to the Canada Revenue Agency under an agreement entered into under subsection (1) are a charge on and payable out of the Consolidated Revenue Fund. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

Regulations

**57.21** (1)  The Lieutenant Governor in Council may make regulations defining any word or expression used in this Part that is not already expressly defined in this Act. 2008, c. 24, s. 1.

Same

(2)  The Minister of Finance may make regulations,

(a) prescribing anything referred to in this Part as prescribed by the Minister of Finance;

(b) governing the provision of such information by corporations as may be required for the purpose of administering and enforcing this Part. 2008, c. 24, s. 1.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 1](http://www.ontario.ca/laws/statute/S08024" \l "s1) - 10/12/2008

PART III  
CAPITAL TAX

Division A — Liability for Capital Tax

Liability for capital tax

**58** (1)  Except as otherwise provided in this Part, every corporation referred to in subsection 2 (1) or (2) is liable to pay to the Crown in right of Ontario a tax in respect of its capital for each taxation year as determined under this Part,

(a) in the case of a corporation to which subsection 2 (1) applies, other than a financial institution, calculated by reference to its taxable paid-up capital for each taxation year, determined in accordance with Division B of this Part;

(b) in the case of a corporation to which subsection 2 (1) applies that is a financial institution for a taxation year, calculated by reference to its adjusted taxable paid-up capital for each taxation year that it is a financial institution, determined in accordance with Division B.1 of this Part; and

(c) in the case of a corporation to which clause 2 (2) (a) or (b) applies, calculated by reference to its taxable paid-up capital employed in Canada for each taxation year, determined in accordance with Division C of this Part. 1997, c. 43, Sched. A, s. 28 (1); 2004, c. 16, s. 2 (2).

Financial institution

(2)  A corporation is a financial institution for a taxation year for the purposes of this Part if at any time during the taxation year,

(a) it is a bank;

(b) it is authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public;

(c) it is authorized under the laws of Canada or a province to accept deposits from the public, and carries on the business of lending money on the security of real estate or investing in mortgages on real estate;

(d) it is a registered securities dealer;

(e) it is a mortgage investment corporation;

(f) it is a credit union, other than a central credit union or league prescribed by the regulations; or

(g) it is a corporation prescribed by the regulations. 1997, c. 43, Sched. A, s. 28 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 22 (1, 2) - 01/01/1994; 1997, c. 43, Sched. A, s. 28 (1-3) - 07/05/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Taxable paid-up capital

**59** Except as otherwise provided in this Part, the taxable paid-up capital of a corporation shall be measured as at the close of the taxation year for which the tax imposed by section 58 is levied and is its taxable paid-up capital determined under Division B or B.1 of this Part. R.S.O. 1990, c. C.40, s. 59; 1994, c. 14, s. 23; 1997, c. 43, Sched. A, s. 29; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 23 - 20/05/1993; 1997, c. 43, Sched. A, s. 29 - 07/05/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Taxable paid-up capital employed in Canada

**60** The taxable paid-up capital of a corporation that is liable to the taxes imposed under this Act by virtue of clause 2 (2) (a) or (b), referred to in this Part as “taxable paid-up capital employed in Canada”, shall be measured as at the close of the taxation year for which the tax imposed by section 58 is levied and is its taxable paid-up capital employed in Canada determined under Division C of this Part. R.S.O. 1990, c. C.40, s. 60; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Exception to measurement at close of year

**60.1** (1)  Despite sections 59 and 60, if a corporation has transferred or disposed of, directly or indirectly, one or more of its assets as part of a transaction, event or series of transactions or events to one or more persons or partnerships that did not deal at arm’s length with the corporation immediately after the transfer, and the asset or assets had an aggregate carrying value to the corporation immediately before the transfer that exceeded both $10,000,000 and 25 per cent of the carrying value of the corporation’s total assets immediately before the transfer, the Minister may require the corporation to measure its adjusted taxable paid-up capital, its taxable paid-up capital or its taxable paid-up capital employed in Canada, as the case may be, for a taxation year as of the day immediately before the commencement of the transaction, event or series of transactions or events. 1994, c. 14, s. 24 (1); 1997, c. 43, Sched. A, s. 30; 2004, c. 16, s. 2 (2).

Interpretation

(2)  For the purposes of this section, the carrying value of an asset or group of assets shall be determined in accordance with generally accepted accounting principles. 1994, c. 14, s. 24 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 24 (1, 2) - 20/05/1993; 1997, c. 43, Sched. A, s. 30 - 07/05/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division B — Computation of Taxable Paid-Up Capital

World paid-up capital

**61** (1)  The paid-up capital of a corporation for a taxation year is its paid-up capital as it stood at the end of the day on which it is required to be measured under this Act and includes,

(a) the paid-up capital stock of the corporation or, in the case of a corporation incorporated without share capital, the capital contributed to the corporation by its members;

(b) its earned, capital and any other surplus;

(b.1) for taxation years commencing after September 30, 2006, its accumulated other comprehensive income;

(c) the amount of its reserves for the year, whether created from income or otherwise, except to the extent that they were deducted in computing the corporation’s income for the taxation year under any provision of Part II other than,

(i) paragraph 20 (1) (n) of the Income Tax Act (Canada) as that paragraph applies by virtue of subsections 11 (1) and (11) of this Act, and

(ii) subparagraphs 40 (1) (a) (iii) and 44 (1) (e) (iii) of the Income Tax Act (Canada) as those subparagraphs apply by virtue of subsection 14 (1) of this Act;

(d) for taxation years ending before May 19, 2004, all of its liabilities, whether secured or unsecured, including all deferred credits, deferred taxes and reserve for future tax liabilities, but not its current accounts payable and any amounts prescribed by the regulations;

(e) for taxation years ending after May 18, 2004, all of its liabilities, whether secured or unsecured, including all deferred credits, deferred taxes and reserve for future tax liabilities, but not including,

(i) its current trade accounts payable,

(ii) amounts that represent the employee source deductions, current taxes payable or wages and salaries payable by the corporation, or

(iii) an amount prescribed by the regulations. R.S.O. 1990, c. C.40, s. 61 (1); 1994, c. 14, s. 25 (1, 2); 1997, c. 43, Sched. A, s. 31; 2001, c. 23, s. 40 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 28 (1); 2007, c. 7, Sched. 6, s. 7.

Current accounts payable

(2)  For the purposes of this Part, a corporation’s current accounts payable includes amounts that represent the corporation’s,

(a) employee source deductions;

(b) current income taxes payable;

(c) wages and salaries payable;

(d) cheques issued and outstanding in excess of funds on deposit,

but does not include any amounts that represent,

(e) the current portion of long term indebtedness;

(f) accounts payable to a related corporation that have been outstanding 120 or more days;

(g) accounts payable to a corporation other than a related corporation that have been outstanding 365 or more days; and

(h) for taxation years ending after May 19, 1993, amounts payable in connection with the purchase or trade of shares, bonds, debentures or other types of debt obligations. 1994, c. 14, s. 25 (3); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 28 (2).

Current trade accounts payable

(2.1)  For the purposes of this Part, a corporation’s current trade accounts payable means all accounts payable by the corporation to a supplier on account of the purchase of goods or services from the supplier, other than amounts payable in connection with the purchase or trade of shares, bonds, debentures or other types of debt obligations, if the accounts payable have not been outstanding for,

(a) 120 or more days, if the amount is payable to a related person; or

(b) 365 or more days, if the amount is payable to a person who is not a related person. 2004, c. 31, Sched. 9, s. 28 (3).

Taxable paid-up capital of banks

(3)  Despite subsection (1), the taxable paid-up capital of a bank for a taxation year is its taxable paid-up capital as it stood at the close of the taxation year, and includes,

(a) its paid-up capital stock;

(b) its contributed surplus, its general reserve, and all of its other reserves, whether created from income or otherwise, except any reserve the creation of which is allowed as a charge against income under the provisions of Part II; and

(c) its retained earnings, its capital surplus, and any other surplus not included by virtue of clause (b). R.S.O. 1990, c. C.40, s. 61 (3); 2004, c. 16, s. 2 (2).

Loan and trust corporations, bank mortgage subsidiaries

(4)  Despite subsection (1), the taxable paid-up capital for a taxation year of a corporation registered under the Loan and Trust Corporations Act, or that is a bank mortgage subsidiary as defined in section 1 of that Act, is its taxable paid-up capital as it stood at the close of the taxation year, and includes,

(a) its paid-up capital stock;

(b) its earned, capital and any other surplus; and

(c) all its reserves, whether created from income or otherwise, except any reserve, the creation of which is allowed as a charge against income under the provisions of Part II. R.S.O. 1990, c. C.40, s. 61 (4); 2004, c. 16, s. 2 (2).

Adjustment, bank mortgage subsidiaries

(4.1)  Despite subsection (4), the taxable paid-up capital of a bank mortgage subsidiary, as defined in section 1 of the Loan and Trust Corporations Act, shall exclude the amount of any paid-up capital stock or surplus paid in or contributed by the bank that wholly owns the bank mortgage subsidiary. 1994, c. 14, s. 25 (5); 2004, c. 16, s. 2 (2).

Transitional

(4.2)  Despite subsection (4.1), for a taxation year of a bank mortgage subsidiary that commences before May 1, 1992 and ends after April 30, 1992, the amount to be excluded under subsection (4.1) from the taxable paid-up capital of the bank mortgage subsidiary shall be limited to that proportion of the amount described in subsection (4.1), determined at the end of the taxation year, that the number of days in the taxation year after April 30, 1992 is of the total number of days in the taxation year. 1994, c. 14, s. 25 (5); 2004, c. 16, s. 2 (2).

Interpretation

(5)  For the purpose of subsection (1), the paid-up capital of the corporate partners of a partnership shall, with respect to their interests in the partnership, be determined in accordance with the following rules:

(a) determine the paid-up capital of the partnership as if it were a corporation;

(b) allocate the paid-up capital of the partnership as determined under clause (a) to each partner thereof in the same proportion as the share of the income or loss of the partnership to which the partner is entitled under the partnership agreement;

(c) where a general partner of a limited partnership is a corporation, and where,

(i) an individual who is a limited partner thereof or a member of his or her family is a shareholder of or is related to the general partner, or

(ii) a trust, the beneficiaries of which are related to any person mentioned in subclause (i), is a limited partner thereof,

the amount allocated to such limited partner under clause (b) shall be added to the paid-up capital of the general partner otherwise allocated to it under clause (b); and

(d) if two or more general partners of a limited partnership are corporations and a limited partner referred to in clause (c) is a shareholder of or is related to two or more of the general partners, the amount allocated to the limited partner under clause (b) must be apportioned and added to the paid-up capital of each general partner of which the limited partner is a shareholder or to which the limited partner is related, in the same proportion that the share of the income or loss of the limited partnership of the general partner is to the total share of the income or loss of the limited partnership of all of the general partners of which the limited partner is a shareholder or to which the limited partner is related. R.S.O. 1990, c. C.40, s. 61 (5); 2001, c. 23, s. 40 (2, 3); 2004, c. 16, s. 2 (2).

Computation of bank’s paid-up capital

(6)  In computing its taxable paid-up capital under subsection (3), a bank shall include all dividends, other than stock dividends, received from other corporations and shall exclude its share of all accumulated earnings and losses of other corporations. R.S.O. 1990, c. C.40, s. 61 (6); 2004, c. 16, s. 2 (2).

Computation of paid-up capital of loan and trust corporations, bank mortgage subsidiaries

(7)  In computing its taxable paid-up capital, a corporation referred to in subsection (4) shall include all dividends received from other corporations, other than stock dividends, and shall exclude its share of all accumulated earnings or losses of other corporations. R.S.O. 1990, c. C.40, s. 61 (7); 2004, c. 16, s. 2 (2).

Interpretation, trusts

(8)  For the purposes of this Part, a corporation that is a beneficiary of a trust shall include in the amount determined under clause (1) (d) for a taxation year ending before May 19, 2004 the same proportion of the total liabilities of the trust including any deferred credits, less the current accounts payable of the trust and any amounts prescribed by the regulations, as the corporation’s beneficial interest in the trust. 1994, c. 14, s. 25 (4); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 28 (4).

Trusts, taxation years ending after May 18, 2004

(8.1)  For the purposes of this Part, a corporation that is a beneficiary of a trust shall include in the amount determined under clause (1) (e) for a taxation year ending after May 18, 2004 the same proportion of the total liabilities of the trust including any deferred credits, less any amounts described in subclauses (1) (e) (i), (ii) and (iii) in respect of the trust, as the corporation’s beneficial interest in the trust. 2004, c. 31, Sched. 9, s. 28 (5).

Trust’s current accounts payable or current trade accounts payable

(9)  In determining the amount to be included under subsection (8) or (8.1) in calculating the paid-up capital of a corporation, the current accounts payable or current trade accounts payable of a trust, as the case may be, shall be determined under subsection (2) or (2.1) as if the trust were a corporation and, in the application of subsection (8) or (8.1), references to a related corporation or person shall be deemed to include references to all corporations or persons that are related to the trust or to the corporation in respect of which the amount under subsection (8) or (8.1) is being determined. 2004, c. 31, Sched. 9, s. 28 (6).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 25 (1-4, 6) - 20/05/1993; 1994, c. 14, s. 25 (5, 7) - 01/05/1992; 1997, c. 43, Sched. A, s. 31 - 07/05/1997

[2001, c. 23, s. 40 (1-3)](http://www.ontario.ca/laws/statute/S01023" \l "s40s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 28 (1, 3-6)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s28s1) - 18/05/2004; [2004, c. 31, Sched. 9, s. 28 (2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s28s2) - 20/05/1993

[2007, c. 7, Sched. 6, s. 7](http://www.ontario.ca/laws/statute/S07007" \l "sched6s7) - 17/05/2007

Deductions from paid-up capital

**62** (1)  For the purpose of computing the taxable paid-up capital of a corporation for a taxation year, there may be deducted from its paid-up capital such of the following amounts as are applicable,

Deficit

(a) the amount of any deficit deducted by the corporation in computing its shareholders’ equity;

Discount on shares

(b) the amount of the discount on the issue or sale of the shares of the corporation;

Investments

(c) subject to subsection (1.2), the amount that equals that proportion of the paid-up capital remaining after the deduction of the amounts deductible under clauses (a), (b) and (d) to (i) which the total cost of investments made by the corporation in other corporations bears to the total assets of the corporation remaining after the deduction of the amounts deductible under clauses (a), (b) and (d) to (i);

Deferred Canadian and Ontario mining exploration and development expenses

(d) the amount of Canadian exploration and development expenses, Canadian exploration expenses, Canadian development expenses and Ontario exploration and development expenses incurred by the corporation in searching for minerals in Canada that are deductible under section 18, 19 or 21 of this Act or section 29, 30 or 34 of The Corporations Tax Application Rules, 1972, to the extent that such expenses have not been deducted by the corporation for the taxation year or any prior taxation year;

Renounced Canadian mining exploration and development expenses

(e) the amount of Canadian exploration expenses and Canadian development expenses incurred by the corporation in searching for minerals in Canada that have been renounced by the corporation under section 66 of the Income Tax Act (Canada) to individuals, either directly or through a partnership;

Scientific research and experimental development and Ontario New Technology Tax Incentive

(f) all amounts, except to the extent that they have been deducted by the corporation in computing its income under Part II for the taxation year or any prior taxation year, that are deductible by the corporation,

(i) under subsection 37 (1) of the Income Tax Act (Canada), as made applicable for the purposes of this Act by subsection 11 (1), in respect of scientific research and experimental development, or

(ii) under clause 11 (10) (a) on account of the Ontario New Technology Tax Incentive, as determined under the regulations;

Future tax assets

(g) the amount of the corporation’s deferred tax debit balance or future tax assets;

Unrealized foreign exchange losses

(h) the amount of the corporation’s unrealized foreign exchange losses;

Electricity assets

(i) all amounts, except to the extent that they have been deducted by the corporation in computing its income under Part II for the taxation year or any prior taxation year, that are deductible by the corporation under clause 11 (10) (a) on account of property that is qualifying Ontario electrical generation and conservation property described in section 204 of Regulation 183 of the Revised Regulations of Ontario, 1990 (General) made under this Act. R.S.O. 1990, c. C.40, s. 62 (1); 1994, c. 14, s. 26 (1-5); 1997, c. 19, s. 4 (2); 1997, c. 43, Sched. A, s. 32 (1-8); 1998, c. 5, s. 19; 1998, c. 34, s. 48 (1); 2001, c. 23, s. 41 (1); 2002, c. 23, s. 2 (2); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 29 (1-3).

Interpretation

(1.1)  For the purposes of clause (1) (c) and subsection (1.2), the following are investments in another corporation:

1. An investment by the corporation in shares issued by the other corporation.

2. An investment by the corporation in bonds, lien notes and similar obligations issued by the other corporation.

3. A loan or advance to the other corporation. 1998, c. 34, s. 48 (2); 2004, c. 16, s. 2 (2).

Rules for determining investment allowance

(1.2)  In determining the amount, if any, of a corporation’s deduction for a taxation year under clause (1) (c), the following rules apply:

1. The corporation’s deduction for the taxation year under clause (1) (c) shall not exceed the total cost of the investments in respect of which the deduction is claimed.

2. An amount of cash on deposit with any corporation authorized to accept deposits from the public shall not be included in determining the amount of a deduction under clause (1) (c).

3. A loan or advance to a corporation with its head office outside Canada that is owed to a related corporation that is subject to tax under this Part shall not be included in determining the amount of the related corporation’s deduction under clause (1) (c) unless the amount was outstanding for at least 120 days before the end of the taxation year of the related corporation.

4. No amount shall be included in determining the amount of a deduction under clause (1) (c) in respect of an investment in a corporation that is a financial institution or that would be a financial institution if it carried on business in Canada and had been incorporated in Canada unless,

i. the investment is in long-term debt of the corporation, as defined in subsection 181 (1) of the Income Tax Act (Canada),

ii. the investment is in shares of the corporation, or

iii. the investment is in a banker’s acceptance that was issued for a term of at least 120 days and was held by the corporation for at least 120 days before the end of its taxation year.

5. A loan or advance that was issued for a term of less than 120 days or was held by the corporation for less than 120 days before the end of its taxation year shall not be included in determining the amount of a deduction under clause (1) (c),

i. if the loan or advance is owed by a corporation that does not deal at arm’s length with a corporation described in paragraph 4, and

ii. if the corporation described in paragraph 4 guarantees the amount of the loan or advance or provides security, directly or indirectly, for the repayment of the loan or advance.

6. No amount shall be included in determining the amount of a deduction under clause (1) (c) in respect of an investment in a corporation that is not subject to tax under this Part by reason of subsection 71 (1).

7. Commercial paper issued by a corporation shall not be included in determining the amount of a deduction under clause (1) (c) unless the commercial paper was issued for a term of at least 120 days and was held by the corporation claiming the deduction for at least 120 days before the end of its taxation year or, if the commercial paper was issued without a specified term, it was held by the corporation claiming the deduction for at least 120 days before the end of its taxation year.

8. An account receivable by the corporation shall not be included in determining the amount of a deduction under clause (1) (c) for a taxation year unless it is owed by a corporation and,

i. if the account receivable is owed by a related corporation, it has been outstanding for at least 120 days before the end of the taxation year, or

ii. if the account receivable is owed by a corporation other than a related corporation, it has been outstanding for at least 365 days before the end of the taxation year.

9. An amount paid by a corporation for goods to be delivered, for services to be rendered or for the right to use property after the end of a taxation year of a corporation that ends after October 30, 1998 shall not be included in determining the amount of a deduction under clause (1) (c) for the taxation year unless the amount is included in the determination of the amount of its investment allowance under paragraph 181.2 (4) (b) of the Income Tax Act (Canada), or would be included if the corporation were subject to tax under Part I.3 of that Act.

10. An investment in a related corporation shall not be included in determining the amount of a deduction under clause (1) (c) for the taxation year if,

i. the investment was made less than 120 days before the end of the corporation’s taxation year,

ii. the investment was made after the end of the last taxation year of the related corporation that ended before the end of the corporation’s taxation year, and

iii. the investment is part of a series of investments and repayments or redemptions. 1998, c. 34, s. 48 (2); 1999, c. 9, s. 85 (1); 2001, c. 23, s. 41 (2); 2004, c. 16, s. 2 (2).

Interpretation

(1.3)  For the purposes of paragraph 10 of subsection (1.2), an investment shall be considered to be part of a series of investments and repayments or redemptions if,

(a) the investment is repaid or redeemed by the related corporation before the end of its first taxation year ending after the end of the corporation’s taxation year; and

(b) the Minister is of the opinion that the amount of the investment has not been replaced by new debt or equity capital or by an increase in the related corporation’s surplus. 1998, c. 34, s. 48 (2); 2004, c. 16, s. 2 (2).

Definition, “minerals”

(2)  For the purposes of clauses (1) (d) and (e),

“minerals” does not include petroleum, natural gas or related hydrocarbons, bituminous sands, oil sands or oil shale. R.S.O. 1990, c. C.40, s. 62 (2); 1994, c. 14, s. 26 (6); 2004, c. 16, s. 2 (2).

Definition, “total assets”

(3)  For the purpose of clause (1) (c),

“total assets”, of a corporation, includes the same proportion of the total assets of a partnership of which the corporation is a partner as the share of the income or loss of the partnership to which the corporation is entitled under the partnership agreement, but does not include the amount invested by the corporation in the partnership. R.S.O. 1990, c. C.40, s. 62 (3); 2001, c. 23, s. 41 (3); 2004, c. 16, s. 2 (2).

Definition, “any other surplus”

(4)  For the purpose of this Part,

“any other surplus” includes, in respect of a corporation for a taxation year, in addition to any amount included under subsection (7), any amount required to be included in the corporation’s income for the purposes of Part II for the taxation year or a previous taxation year to the extent that the amount is not included in the corporation’s income as shown on its financial statements, but does not include,

(a) an amount referred to in subsection 11 (5) or (6) or 11.0.1 (3), or

(b) an amount referred to in paragraph 12 (1) (o) or subsection 15 (1) or (2), 17 (1) or 37.1 (3) of the Income Tax Act (Canada), as made applicable by subsection 11 (1). 2007, c. 7, Sched. 6, s. 8 (1).

Idem

(5)  For the purposes of this Part,

“any other surplus” includes, in addition to any other amount included therein by virtue of this section,

(a) all amounts, other than accounts payable referred to in subsection 61 (2) or current trade accounts payable referred to in subsection 61 (2.1), owing by the corporation in respect of expenses deductible by the corporation in the calculation of its income subject to tax under Part II, if the amounts are owing to a person with whom the corporation was not dealing at arm’s length at the time the liability was incurred, and

(b) dividends declared,

which were unpaid at the close of the preceding taxation year and remain unpaid and owing to a person with whom the corporation was not dealing at arm’s length at the close of the taxation year. R.S.O. 1990, c. C.40, s. 62 (5); 1994, c. 14, s. 26 (7, 8); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 29 (5).

(5.1)  Repealed: 1998, c. 34, s. 48 (3).

(5.2)  Repealed: 1998, c. 34, s. 48 (3).

(6)  Repealed: 1997, c. 43, Sched. A, s. 32 (10).

Definitions

(7)  For the purposes of this Part,

“accumulated other comprehensive income”, “any other surplus”, “cost of investments” and “total assets” includes any amount,

(a) by which any asset of a corporation is carried in its books of account or on its balance sheet in excess of the cost thereof,

(b) by which the value of an asset of a corporation has been written down and deducted from its income or undivided profits where such amount is not deductible, or if deductible has not been deducted in computing its income for the year or a previous year, under Part II,

and excludes any amount,

(c) by which the value of an asset of a corporation has been written down and deducted from its income or undivided profits where such amount is deductible and has been deducted in computing its income for the year or a previous year under the provisions of Part II except,

(i) paragraph 20 (1) (n) of the Income Tax Act (Canada) as that paragraph applies by virtue of subsections 11 (1) and (11) of this Act, and

(ii) subparagraphs 40 (1) (a) (iii) and 44 (1) (e) (iii) of the Income Tax Act (Canada) as those subparagraphs apply by virtue of subsection 14 (1) of this Act,

(d) that is an appraisal surplus of a corporation arising where its fixed assets are carried in its books of account at an amount that is in excess of the cost thereof. R.S.O. 1990, c. C.40, s. 62 (7); 2004, c. 16, s. 2 (2); 2007, c. 7, Sched. 6, s. 8 (2).

Idem

(8)  For the purposes of this Part,

“total assets” and “cost of investments” includes any amount included in income for the year or a preceding year under subsection 91 (1) of the Income Tax Act (Canada) as made applicable by subsection 30 (1) of this Act. R.S.O. 1990, c. C.40, s. 62 (8); 2004, c. 16, s. 2 (2).

Exception

(9)  Subsections (1) and (8) do not apply to any corporation to which subsection 61 (3) or (4) applies. R.S.O. 1990, c. C.40, s. 62 (9); 2004, c. 16, s. 2 (2).

Artificial transaction

(10)  In computing taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, no reduction may be made with respect to any transaction that, if permitted, would unduly or artificially reduce the taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be. R.S.O. 1990, c. C.40, s. 62 (10); 2004, c. 16, s. 2 (2).

Limitation respecting inclusions and deductions

(11)  Subsection 181 (4) of the Income Tax Act (Canada) applies with necessary modifications for the purposes of this Division in determining any amount required to determine a corporation’s taxable paid-up capital for a taxation year. 1999, c. 9, s. 85 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 12 - 25/06/1992; 1994, c. 14, s. 26 (1, 2, 7, 10, 11) - 20/05/1993; 1994, c. 14, s. 26 (3, 5, 6) - 01/01/1986; 1994, c. 14, s. 26 (4, 9) - 20/05/1981; 1994, c. 14, s. 26 (8) - 23/06/1994; 1997, c. 19, s. 4 (2) - 10/10/1997; 1997, c. 43, Sched. A, s. 32 (1, 5, 9, 12, 14) - 31/10/1997; 1997, c. 43, Sched. A, s. 32 (2, 7, 11) - 01/01/1998; 1997, c. 43, Sched. A, s. 32 (3, 4, 6, 8, 13) - 07/05/1997; 1997, c. 43, Sched. A, s. 32 (10) - 08/05/1998; 1998, c. 5, s. 19 - 26/06/1998; 1998, c. 34, s. 48 (1-4) - 31/10/1998; 1999, c. 9, s. 85 (1-3) - 14/12/1999

[2001, c. 23, s. 41 (1, 3)](http://www.ontario.ca/laws/statute/S01023" \l "s41s1) - 05/12/2001; [2001, c. 23, s. 41 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s41s2) - 31/10/1998

[2002, c. 23, s. 2 (2)](http://www.ontario.ca/laws/statute/S02023" \l "s2s2) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 29 (1)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s29s1) - 05/12/2001; [2004, c. 31, Sched. 9, s. 29 (2, 3)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s29s2) - 09/12/2002; [2004, c. 31, Sched. 9, s. 29 (4)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s29s4) - 16/12/2004; [2004, c. 31, Sched. 9, s. 29 (5)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s29s5) - 18/05/2004

[2007, c. 7, Sched. 6, s. 8 (1, 2)](http://www.ontario.ca/laws/statute/S07007" \l "sched6s8s1) - 17/05/2007

Division B.1 — Adjusted Taxable Paid-Up capital of Financial Institutions

Calculation

Definitions

**62.1** (1)  In this Division,

“long-term debt” has the meaning assigned by subsection 181 (1) of the Income Tax Act (Canada); (“passif à long terme”)

“related financial institution” means, in respect of a corporation that is a financial institution, a financial institution that is related to the corporation; (“institution financière liée”)

“related insurance corporation” means, in respect of a corporation that is a financial institution, an insurance corporation that is related to the corporation; (“compagnie d’assurance liée”)

“reserves” means, in respect of a financial institution for a taxation year, the amount, as it stood at the end of the day on which the paid-up capital of the financial institution is required to be measured under this Part, of all of the corporation’s reserves, provisions and allowances, including any provision in respect of deferred taxes or future tax liabilities, but excluding allowances in respect of depreciation or depletion. (“réserves”) 1997, c. 43, Sched. A, s. 33; 2001, c. 23, s. 42 (1); 2004, c. 16, s. 2 (2).

Paid-up capital

(2)  The paid-up capital for a taxation year of a financial institution, other than an authorized foreign bank, is the paid-up capital of the financial institution as it stood at the end of the day on which the paid-up capital is required to be measured under this Part and is the amount, if any, by which the total of,

(a) the amount of its long-term debt;

(b) the amount of its capital stock or, in the case of a financial institution incorporated without share capital, the amount of its members’ contributions;

(c) the amount of its retained earnings;

(d) the amount of its contributed surplus and the amount of any other surpluses, subject to subsection (3);

(d.1) for taxation years commencing after September 30, 2006, the amount of its accumulated other comprehensive income; and

(e) the amount of its reserves for the taxation year, except to the extent that they were deducted in computing its income under Part II for the taxation year,

exceeds the total of,

(f) the amount of its deferred tax debit balance or future tax assets;

(g) the amount of any deficit deducted in computing its shareholders’ equity;

(h) any amount deducted under subsection 130.1 (1) or 137 (2) of the Income Tax Act (Canada), as made applicable by sections 47 and 51 of this Act, in computing its income under Part II for the year, to the extent that the amount can reasonably be regarded as being included in an amount determined in respect of the financial institution for the taxation year under any of clauses (a) to (e); and

(i) any amount, except to the extent that it has been deducted by the financial institution in computing its income under Part II for the taxation year or any prior taxation year, deductible by the financial institution,

(i) under subsection 37 (1) of the Income Tax Act (Canada), as made applicable for the purposes of this Act by subsection 11 (1), in respect of scientific research and experimental development, or

(ii) under clause 11 (10) (a) on account of the Ontario New Technology Tax Incentive, as determined under the regulations. 1997, c. 43, Sched. A, s. 33; 2001, c. 23, s. 42 (2, 3); 2004, c. 16, s. 2 (2); 2007, c. 7, Sched. 6, s. 9.

Paid-up capital of authorized foreign bank

(2.1)  The paid-up capital for a taxation year of an authorized foreign bank is the amount determined under paragraph 181.3 (3) (e) of the Income Tax Act (Canada) in respect of the authorized foreign bank for the taxation year. 2001, c. 23, s. 42 (4); 2004, c. 16, s. 2 (2).

Interpretation

(3)  Subsections 62 (4), (5) and (7) do not apply for the purposes of clause (2) (d). 1997, c. 43, Sched. A, s. 33; 2004, c. 16, s. 2 (2).

Taxable paid-up capital

(4)  The taxable paid-up capital for a taxation year of a financial institution, other than an authorized foreign bank, is the amount, if any, by which the financial institution’s paid-up capital for the year exceeds its investment allowance for the year in respect of all investments, each of which is an investment in a share of the capital stock or long-term debt of,

(a) a related financial institution that has a permanent establishment in Ontario and is not exempt from tax under this Part; or

(b) a related insurance corporation that has a permanent establishment in Ontario. 1997, c. 43, Sched. A, s. 33; 1999, c. 9, s. 86 (1); 2001, c. 23, s. 42 (5); 2004, c. 16, s. 2 (2).

Taxable paid-up capital of authorized foreign bank

(4.1)  The taxable paid-up capital for a taxation year of an authorized foreign bank is the amount by which its paid-up capital for the taxation year, as determined under subsection (2.1), exceeds its investment allowance for the taxation year in respect of all amounts each of which is the amount at the end of the taxation year, before the application of risk weights, that the bank would be required to report under the OSFI risk-weighting guidelines, if those guidelines applied and a report is required at that time, of an eligible investment used or held by the bank in the taxation year in the course of carrying on its Canadian banking business. 2001, c. 23, s. 42 (6); 2004, c. 16, s. 2 (2).

Eligible investment of authorized foreign bank

(4.2)  For the purpose of subsection (4.1), an eligible investment of an authorized foreign bank is a share of the capital stock or long-term debt of a financial institution or insurance corporation,

(a) that is related to the bank at the end of the taxation year;

(b) that has a permanent establishment in Ontario; and

(c) that is not exempt from tax under this Part. 2001, c. 23, s. 42 (6); 2004, c. 16, s. 2 (2).

Investment allowance

(5)  The investment allowance for a taxation year of a financial institution, other than an authorized foreign bank, in respect of an investment in a share of the capital stock or long-term debt of a related financial institution or related insurance corporation that has a permanent establishment in Ontario is the amount determined in accordance with the following formula,

A = B × C/D

where,

“A” is the investment allowance of the financial institution for the year in respect of the investment;

“B” is the carrying value of the investment to the financial institution as at the end of the day on which the adjusted taxable paid-up capital of the financial institution is required to be measured under this Part;

“C” is the percentage of the related financial institution’s taxable paid-up capital that is not deemed under the rules prescribed by the regulations to be used by it in its last taxation year ending in the financial institution’s taxation year in a jurisdiction other than Ontario, or the percentage of the related insurance corporation’s taxable income that is not deemed under the rules prescribed by the regulations to have been earned by it in its last taxation year ending in the financial institution’s taxation year in a jurisdiction other than Ontario; and

“D” is the percentage of the financial institution’s taxable paid-up capital that is not deemed under the rules prescribed by the regulations to be used by it in the taxation year in a jurisdiction other than Ontario.

1997, c. 43, Sched. A, s. 33; 1999, c. 9, s. 86 (2); 2001, c. 23, s. 42 (7); 2004, c. 16, s. 2 (2).

Investment allowance, authorized foreign bank

(5.0.1)  The investment allowance for a taxation year of an authorized foreign bank in respect of an eligible investment, as described in subsection (4.2), is the amount calculated using the formula,

A × B/C

in which,

“A” is the amount of the eligible investment as determined under subsection (4.1),

“B” is the percentage of the related financial institution’s taxable paid-up capital that is not deemed under the rules prescribed by the regulations to be used by it in its last taxation year ending in the authorized foreign bank’s taxation year in a jurisdiction other than Ontario, or the percentage of the related insurance corporation’s taxable income that is not deemed under the rules prescribed by the regulation to have been earned by it in its last taxation year ending in the authorized foreign bank’s taxation year in a jurisdiction other than Ontario, and

“C” is the percentage of the authorized foreign bank’s taxable paid-up capital that is not deemed under the rules prescribed by the regulations to be used by it in the taxation year in a jurisdiction other than Ontario.

2001, c. 23, s. 42 (8); 2004, c. 16, s. 2 (2).

Exception

(5.1)  Despite subsections (4) and (5), the taxable paid-up capital for a taxation year of a financial institution, other than an authorized foreign bank, is the amount, if any, by which its paid-up capital for the year exceeds its investment allowance for the year in respect of all investments, each of which is an investment in a share of the capital stock or long-term debt of a related financial institution that has a permanent establishment in Canada and that is not exempt from tax under this Part, or a related insurance corporation that has a permanent establishment in Canada,

(a) if the financial institution is not controlled, directly or indirectly, at any time in the taxation year by,

(i) another financial institution, other than a corporation prescribed by the regulations as a financial institution for the purposes of clause 58 (2) (g),

(ii) an insurance corporation, or

(iii) a corporation that would be considered to be a financial institution if it carried on business in Canada and had been incorporated in Canada; and

(b) if the financial institution is not deemed by the rules prescribed by the regulations to use any of its taxable paid-up capital in the taxation year in a jurisdiction other than Ontario. 1999, c. 9, s. 86 (3); 2001, c. 23, s. 42 (9, 10); 2004, c. 16, s. 2 (2).

Same

(5.2)  If subsection (5.1) applies in determining the taxable paid-up capital of a financial institution for a taxation year, the investment allowance of the financial institution for the taxation year in respect of an investment in a share of the capital stock or long-term debt of a related financial institution or related insurance corporation that has a permanent establishment in Canada is the carrying value of the investment to the financial institution as at the end of the day on which the adjusted taxable paid-up capital of the financial institution is required to be measured under this Part for the taxation year. 1999, c. 9, s. 86 (3); 2004, c. 16, s. 2 (2).

Adjusted taxable paid-up capital

(6)  The adjusted taxable paid-up capital of a financial institution for a taxation year is the amount determined in accordance with the following formula:

A = C + P – D

where,

“A” is the financial institution’s adjusted taxable paid-up capital for the taxation year;

“C” is the financial institution’s taxable paid-up capital for the taxation year;

“P” is the amount determined by multiplying the specified percentage by the amount of the financial institution’s Canadian tangible property for the taxation year; and

“D” is the financial institution’s capital deduction for the taxation year.

1997, c. 43, Sched. A, s. 33; 2004, c. 16, s. 2 (2).

Canadian tangible property

(7)  The Canadian tangible property of a financial institution for a taxation year is one-third of the total of all amounts determined under paragraphs 181.3 (1) (a) and (b) of the Income Tax Act (Canada) in respect of the institution for the taxation year, measured at the end of the day on which the institution’s adjusted taxable paid-up capital is required to be measured for the taxation year. 1997, c. 43, Sched. A, s. 33; 2004, c. 16, s. 2 (2).

Specified percentage

(8)  The specified percentage, in respect of a corporation’s Canadian tangible property for a taxation year, means the fraction, expressed as a percentage, where the numerator is 100 per cent and the denominator is the percentage of the financial institution’s taxable paid-up capital that is not deemed under the rules prescribed by the regulations to be used by it in the taxation year in a jurisdiction other than Canada. 1997, c. 43, Sched. A, s. 33; 2004, c. 16, s. 2 (2).

Determining values and amounts

(9)  The carrying value of an asset as of a particular date or any other amount for the purposes of this Division shall be determined in the same manner as it would be required to be determined for the purposes of Part I.3 of the Income Tax Act (Canada). 1997, c. 43, Sched. A, s. 33; 2004, c. 16, s. 2 (2).

Capital deduction

(10)  The capital deduction of a financial institution for a taxation year is the amount determined under the following rules:

1. If the financial institution is related at any time in the taxation year to another corporation that,

i. is a financial institution,

ii. has a permanent establishment in Canada, and

iii. is not exempt by virtue of subsection 71 (1) from tax under this Part,

the financial institution’s capital deduction for the taxation year is the amount calculated using the formula,

A/B × [($2 million × C/D) + E]

in which,

“A” is the amount that is the financial institution’s taxable capital employed in Canada for the taxation year for the purposes of Part I.3 of the Income Tax Act (Canada),

“B” is the total of the amount of “A” for the taxation year and all amounts each of which is the amount that is the taxable capital employed in Canada for the purposes of Part I.3 of the Income Tax Act (Canada) of a related financial institution for its last taxation year ending before the end of the financial institution’s taxation year, if the related financial institution has a permanent establishment in Canada and is not exempt by virtue of subsection 71 (1) from tax under this Part,

“C” is the number of days in the taxation year before October 1, 2001,

“D” is the number of days in the taxation year, and

“E” is the amount determined under subsection (10.1).

2. In any other case, the financial institution’s capital deduction for the taxation year is the amount calculated using the formula,

($2 million × C/D) + E

in which “C”, “D” and “E” have the same meanings as in paragraph 1.

2004, c. 31, Sched. 9, s. 30.

Determination of “E”

(10.1)  The amount of “E” in subsection (10) for a taxation year is the total of,

(a) $5 million multiplied by the ratio of the number of days in the taxation year that are after September 30, 2001 and before January 1, 2005 to the total number of days in the taxation year;

(b) $7.5 million multiplied by the ratio of the number of days in the taxation year that are after December 31, 2004 and before January 1, 2006 to the total number of days in the taxation year;

(c) $10 million multiplied by the ratio of the number of days in the taxation year that are after December 31, 2005 and before January 1, 2007 to the total number of days in the taxation year;

(d) $12.5 million multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2008 to the total number of days in the taxation year; and

(e) $15 million multiplied by the ratio of the number of days in the taxation year that are after December 31, 2007 to the total number of days in the taxation year. 2004, c. 31, Sched. 9, s. 30.

Limitation

(11)  Subsection 181 (4) of the Income Tax Act (Canada) applies with necessary modifications for the purposes of this Division in determining any amount required to determine a financial institution’s adjusted taxable paid-up capital for a taxation year. 1997, c. 43, Sched. A, s. 33; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 33 - 07/05/1997; 1998, c. 34, s. 49 - 07/05/1997; 1999, c. 9, s. 86 (1, 2) - 14/12/1999; 1999, c. 9, s. 86 (3) - 07/05/1997

[2001, c. 8, s. 26](http://www.ontario.ca/laws/statute/S01008" \l "s26) - no effect - see [2001, c. 23, s. 42 (11, 12)](http://www.ontario.ca/laws/statute/S01023" \l "s42s11) - 01/10/2001; [2001, c. 23, s. 42 (1, 3)](http://www.ontario.ca/laws/statute/S01023" \l "s42s1) - 05/12/2001; [2001, c. 23, s. 42 (2, 4-9)](http://www.ontario.ca/laws/statute/S01023" \l "s42s2) - 28/06/1999; [2001, c. 23, s. 42 (10)](http://www.ontario.ca/laws/statute/S01023" \l "s42s10) - 07/05/1997; [2001, c. 23, s. 42 (11, 12)](http://www.ontario.ca/laws/statute/S01023" \l "s42s11) - 01/10/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 30](http://www.ontario.ca/laws/statute/S04031" \l "sched9s30) - 16/12/2004

[2007, c. 7, Sched. 6, s. 9](http://www.ontario.ca/laws/statute/S07007" \l "sched6s9) - 17/05/2007

Division C — Computation of Taxable Paid-Up Capital Employed in Canada of Non-Resident

Paid-up capital employed in Canada of non-resident

**63** (1)  Despite section 61, the paid-up capital employed in Canada of a corporation that is liable to the taxes imposed under this Act by virtue of clause 2 (2) (a) or (b) shall be deemed to be either,

(a) the amount of which its taxable income earned in Canada determined for the purposes of this Act would be 8 per cent; or

(b) the amount by which the amount of the total assets of the corporation in Canada exceeds,

(i) for taxation years ending before May 19, 2004, the total of the corporation’s current accounts payable relating to its permanent establishments in Canada and any amounts prescribed by the regulations, or

(ii) for taxation years ending after May 18, 2004, any amount described in subclause 61 (1) (e) (i), (ii) or (iii) for the corporation relating to its permanent establishments in Canada,

whichever is greater, and in such case, this section shall apply as though,

(c) the corporation had no permanent establishment outside Canada;

(d) the paid-up capital employed in Canada as so determined were the total paid-up capital of the corporation; and

(e) the taxable paid-up capital employed in Canada were allocated among the provinces and territories of Canada as prescribed by the regulations. R.S.O. 1990, c. C.40, s. 63 (1); 1994, c. 14, s. 27 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 31.

Business wholly in Canada

(2)  Subsection (1) does not apply where the business of the corporation was carried on entirely in Canada, and in any such case, the corporation’s taxable paid-up capital employed in Canada shall be determined in accordance with the provisions of Division B or B.1 of this Part. R.S.O. 1990, c. C.40, s. 63 (2); 1997, c. 43, Sched. A, s. 34; 2004, c. 16, s. 2 (2).

Determination of paid-up capital

(3)  For the purpose of subsection (1), the paid-up capital of the corporate partners of a partnership shall, with respect to their interests in the partnership, be determined in accordance with the rules provided in clauses 61 (5) (a), (b), (c) and (d). R.S.O. 1990, c. C.40, s. 63 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 27 (1, 2) - 20/05/1993; 1997, c. 43, Sched. A, s. 34 - 07/05/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 31](http://www.ontario.ca/laws/statute/S04031" \l "sched9s31) - 18/05/2004

Taxable paid-up capital employed in Canada

**64** The taxable paid-up capital employed in Canada of a corporation to which this Division applies is its paid-up capital employed in Canada determined under section 63 minus the aggregate of such of the deductions permitted under section 62 as may reasonably be considered wholly applicable on the assumption that the only assets of the corporation were assets pertaining exclusively to its permanent establishments in Canada. R.S.O. 1990, c. C.40, s. 64; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Computation of paid-up capital employed in Canada

**65** In computing the paid-up capital employed in Canada of a corporation for the purpose of this Part there shall not be included the amount of the paid-up capital invested in a ship or aircraft operated by such corporation in Canada if such corporation is entitled, in computing its income for a taxation year, to exclude the income for a taxation year earned in Canada from the operation of such ship or aircraft under paragraph 81 (1) (c) of the Income Tax Act (Canada) as that paragraph applies by virtue of section 28 of this Act. R.S.O. 1990, c. C.40, s. 65; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division D — Computation of Capital Tax Payable

Tax on corporations subject to Division B or C

**66** (1)  Except as otherwise provided in this section, the tax payable under this Part by a corporation for a taxation year for which its taxable paid-up capital or its taxable paid-up capital employed in Canada, as the case may be, is determined under Division B or C is the amount calculated using the formula,

A × B

in which,

“A” is the capital tax rate determined under subsection (1.1) for the corporation, and

“B” is the amount of the corporation’s taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, as determined under Division B or C.

2004, c. 31, Sched. 9, s. 32 (1).

Capital tax rate

(1.1)  The capital tax rate for a corporation for a taxation year is the total of,

(a) 0.3 per cent multiplied by the ratio of the number of days in the taxation year that are before January 1, 2007 to the total number of days in the taxation year; and

(a.1) Repealed: 2008, c. 7, Sched. E, s. 11 (1).

(b) 0.225 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year.

(c) Repealed: 2008, c. 7, Sched. E, s. 11 (1).

(d) Repealed: 2007, c. 7, Sched. 6, s. 10 (1).

2004, c. 31, Sched. 9, s. 32 (1); 2006, c. 9, Sched. D, s. 2 (1); 2007, c. 7, Sched. 6, s. 10 (1); 2008, c. 7, Sched. E, s. 11 (1).

No tax payable after December 31, 2008

(1.2)  No tax is payable under this Part by a corporation that is not a financial institution for a taxation year ending after December 31, 2008. 2008, c. 7, Sched. E, s. 11 (2).

Tax on bank subject to Division B

(2)  The tax payable under this Part by a bank for a taxation year for which its taxable paid-up capital is determined under Division B is 1.12 per cent of its taxable paid-up capital plus the amount, if any, payable by the bank for the taxation year under section 66.1. 1997, c. 43, Sched. A, s. 35 (1); 2004, c. 16, s. 2 (2).

Tax on certain corporations subject to Division B

(3)  The tax payable under this Part by a corporation referred to in subsection 61 (4) for a taxation year for which its taxable paid-up capital is determined under Division B is 1 per cent of its taxable paid-up capital. 1997, c. 43, Sched. A, s. 35 (1); 2004, c. 16, s. 2 (2).

Tax payable by a financial institution

(4)  The tax payable under this Part for a taxation year by a financial institution, other than a credit union, is calculated using the formula,

[C × (D + E)] + F

in which,

“C” is the percentage of the taxable paid-up capital of the financial institution that is not deemed, under the prescribed rules, to be used by it in the taxation year in a jurisdiction other than Ontario,

“D” is the amount calculated under subsection (4.1),

“E” is the amount calculated under subsection (4.2) or (4.3), and

“F” is the amount of tax, if any, payable for the taxation year under section 66.1.

2004, c. 31, Sched. 9, s. 32 (2).

Same

(4.1)  The variable “D” in subsection (4) is calculated using the formula,

G × H

in which,

“G” is the sum of,

(a) 0.6 per cent multiplied by the ratio of the number of days in the taxation year that are before January 1, 2007 to the total number of days in the taxation year, and

(b) 0.45 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year, and

“H” is the amount that is the lesser of,

(a) the adjusted taxable paid-up capital of the financial institution for the taxation year, as determined under Division B.1, and

(b) the basic capital amount of the financial institution for the taxation year.

2004, c. 31, Sched. 9, s. 32 (2); 2006, c. 9, Sched. D, s. 2 (2); 2007, c. 7, Sched. 6, s. 10 (3); 2008, c. 7, Sched. E, s. 11 (3).

Same

(4.2)  If the financial institution is a deposit-taking institution, as defined in subsection 66.1 (14), in the taxation year or is related in the taxation year to a deposit-taking institution, the variable “E” in subsection (4) is calculated using the formula,

J × K

in which,

“J” is the sum of,

(a) 0.9 per cent multiplied by the ratio of the number of days in the taxation year that are before January 1, 2007 to the total number of days in the taxation year, and

(b) 0.675 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year, and

“K” is the amount, if any, by which the adjusted taxable paid-up capital of the financial institution for the taxation year exceeds its basic capital amount for the taxation year.

2004, c. 31, Sched. 9, s. 32 (2); 2006, c. 9, Sched. D, s. 2 (3); 2007, c. 7, Sched. 6, s. 10 (4); 2008, c. 7, Sched. E, s. 11 (4).

Same

(4.3)  If the financial institution is not a deposit-taking institution, as defined in subsection 66.1 (14), in the taxation year and is not related in the taxation year to a deposit-taking institution, the variable “E” in subsection (4) is calculated using the formula,

L × K

in which,

“L” is the sum of,

(a) 0.72 per cent multiplied by the ratio of the number of days in the taxation year that are before January 1, 2007 to the total number of days in the taxation year, and

(b) 0.54 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year, and

“K” is the amount, if any, by which the adjusted taxable paid-up capital of the financial institution for the taxation year exceeds its basic capital amount for the taxation year.

2004, c. 31, Sched. 9, s. 32 (2); 2006, c. 9, Sched. D, s. 2 (4); 2007, c. 7, Sched. 6, s. 10 (5); 2008, c. 7, Sched. E, s. 11 (5).

No tax payable after December 31, 2008 by financial institution

(4.4)  No tax is payable under this Part by a financial institution for a taxation year ending after December 31, 2008. 2008, c. 7, Sched. E, s. 11 (6).

Basic capital amount

(5)  A financial institution’s basic capital amount for a taxation year is the amount determined in accordance with the following rules:

1. If the financial institution is not related in the taxation year to another corporation that,

i. is a financial institution, and

ii. has a permanent establishment in Canada,

its basic capital amount for the year is $400,000,000.

2. If the financial institution is related in the taxation year to another corporation that,

i. is a financial institution,

ii. has a permanent establishment in Canada, and

iii. is not exempt by virtue of subsection 71 (1) from tax under this Part,

its basic capital amount for the year is the amount determined by multiplying $400,000,000 by the ratio of the institution’s taxable capital employed in Canada for the taxation year for the purposes of Part I.3 of the Income Tax Act (Canada) to the total of the taxable capital employed in Canada for the purposes of Part I.3 of the Income Tax Act (Canada) of,

iv. the institution for the taxation year, and

v. each such related financial institution for its last taxation year ending before the end of the institution’s taxation year. 1997, c. 43, Sched. A, s. 35 (1); 1998, c. 34, s. 50; 2004, c. 16, s. 2 (2).

Tax payable by credit union

(6)  The amount of tax payable under this Part by a credit union for a taxation year that ends after December 31, 1997 is the total of,

(a) 0.05 per cent of the credit union’s taxable paid-up capital employed in Ontario for the taxation year, as determined under this Division, multiplied by the ratio of the number of days in the taxation year that are after December 31, 1997 and before January 1, 1999 to the total number of days in the taxation year; and

(b) 0.1 per cent of the credit union’s taxable paid-up capital employed in Ontario for the taxation year, as determined under this Division, multiplied by the ratio of the number of days in the taxation year that are after December 31, 1998 and before May 5, 1999 to the total number of days in the taxation year. 1997, c. 43, Sched. A, s. 35 (1); 1999, c. 9, s. 87; 2004, c. 16, s. 2 (2).

Taxable paid-up capital employed in Ontario

(7)  The taxable paid-up capital employed in Ontario for a taxation year of a financial institution that is a credit union is the amount determined by multiplying its adjusted taxable paid-up capital for the taxation year as determined under Division B.1 by the percentage of its taxable paid-up capital that is not deemed under the rules prescribed by the regulations to be used by it in the taxation year in a jurisdiction other than Ontario. 1997, c. 43, Sched. A, s. 35 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 13 - 25/06/1992; 1994, c. 14, s. 28 (1, 2) - 01/05/1992; 1997, c. 43, Sched. A, s. 35 (1-3) - 07/05/1997; 1998, c. 34, s. 50 - 07/05/1997; 1999, c. 9, s. 87 - 05/05/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 32 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s32s1) - 16/12/2004

[2006, c. 9, Sched. D, s. 2 (1-4)](http://www.ontario.ca/laws/statute/S06009" \l "schedds2s1) - 01/04/2007

[2007, c. 7, Sched. 6, s. 10 (1-6)](http://www.ontario.ca/laws/statute/S07007" \l "sched6s10s1) - 17/05/2007

[2008, c. 7, Sched. E, s. 11 (1-6)](http://www.ontario.ca/laws/statute/S08007" \l "schedes11s1) - 01/01/2007

Surcharge on financial institutions

**66.1** (1)  Every bank shall pay a tax under this section for a taxation year equal to the amount, if any, determined according to the following formula:

T = 0.00112 × (A – $400,000,000) × B/C × D/A

where,

“T” is the amount of tax payable by the bank under this section for the taxation year;

“A” is the amount of the bank’s taxable paid-up capital for the taxation year determined under Division B;

“B” is the number of days in the taxation year that are after May 7, 1996 and before May 7, 1997;

“C” is the number of days in the taxation year; and

“D” is the portion of the bank’s taxable paid-up capital for the taxation year determined under Division B that would not be deemed under rules prescribed by the regulations to be used by the bank in the taxation year in a jurisdiction other than Ontario.

1997, c. 43, Sched. A, s. 36 (1); 2004, c. 16, s. 2 (2).

Surcharge on deposit-taking institutions

(1.1)  Every corporation, other than a credit union, that is a deposit-taking institution for a taxation year shall pay a tax under this section for the taxation year equal to the amount, if any, determined according to the following formula:

T = 0.0009 × (A – B) × C/D × E/A

where,

“T” is the amount of tax payable by the corporation under this section for the taxation year;

“A” is the amount of the corporation’s adjusted taxable paid-up capital for the taxation year as determined under Division B.1;

“B” is the corporation’s exempt amount for the taxation year;

“C” is the number of days in the taxation year that are after May 6, 1997 and before November 1, 1998;

“D” is the number of days in the taxation year;

“E” is the amount of the corporation’s adjusted taxable paid-up capital for the taxation year as determined under Division B.1, multiplied by the percentage of the corporation’s taxable paid-up capital for the taxation year that would not be deemed by rules prescribed by the regulations to be used by the corporation in the taxation year in a jurisdiction other than Ontario.

1997, c. 43, Sched. A, s. 36 (1); 2004, c. 16, s. 2 (2).

Deposit-taking institution, exempt amount

(1.2)  For the purposes of this section,

(a) a corporation is a deposit-taking institution for a taxation year if at any time in the taxation year it is,

(i) a corporation referred to in clause (a), (b), (c) or (f) of subsection 58 (2), or

(ii) a corporation all or substantially all of the assets of which are shares or indebtedness of corporations referred to in subclause (i) or this subclause to which the corporation is related;

(b) if the corporation is not related in a taxation year to another corporation that,

(i) is a financial institution,

(ii) has a permanent establishment in Canada, and

(iii) is not exempt by virtue of subsection 71 (1) from tax under this Part,

the corporation’s exempt amount for the taxation year is $400,000,000; and

(c) if the corporation is related in a taxation year to another corporation that,

(i) is a financial institution,

(ii) has a permanent establishment in Canada, and

(iii) is not exempt by virtue of subsection 71 (1) from tax under this Part,

the corporation’s exempt amount for the taxation year is the amount determined by multiplying $400,000,000 by the ratio of the corporation’s taxable capital employed in Canada for the taxation year for the purposes of Part I.3 of the Income Tax Act (Canada) to the total of the taxable capital employed in Canada for the purposes of Part I.3 of the Income Tax Act (Canada) of,

(iv) the corporation for the taxation year, and

(v) each such related financial institution for its last taxation year ending before the end of the corporation’s taxation year. 1997, c. 43, Sched. A, s. 36 (1); 1998, c. 34, s. 51; 2004, c. 16, s. 2 (2).

Small business investment tax credit

(2)  A financial institution may deduct from its tax otherwise payable for a taxation year under this Part a small business investment tax credit in an amount not exceeding the least of,

(a) the amount of its tax earn-back account for the year;

(b) the amount of its small business investment tax credit account for the year or nil, if the amount of its small business investment tax credit account is not greater than zero; and

(c) the amount of the tax payable by the financial institution under this Part for the year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Tax earn-back account

(3)  The amount of a financial institution’s tax earn-back account for a taxation year is the amount, if any, by which,

(a) the total of its eligible tax for the taxation year and, subject to subsection (3.1), the three prior taxation years, plus the total of all small business investment tax credit repayments, if any, required to be paid under subsection (12) for the three prior taxation years,

exceeds,

(b) the total of all small business investment tax credits that were deductible and deducted by the institution under subsection (2) in the three prior taxation years from amounts included by the institution under clause (a) in computing its tax earn-back account for the taxation year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Computation of amount

(3.1)  In computing the amount described in clause (3) (a) for a taxation year, a financial institution may only include an amount in respect of its eligible tax for the third taxation year immediately preceding the taxation year to the extent that,

(a) the institution has included tax credit amounts under clause (4) (a) in computing its small business investment tax credit account for the year in respect of eligible investments made before December 31 of the calendar year ending in the taxation year; and

(b) the tax credit amounts referred to in clause (a) exceed the amount of all small business investment tax credits that were deductible and deducted by the institution under subsection (2) for a preceding taxation year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Eligible tax

(3.2)  The amount of the eligible tax for a taxation year of a financial institution, other than a credit union, is the total of,

(a) the amount of tax, if any, payable by the financial institution under this section for the taxation year; and

(b) the amount calculated for the taxation year using the formula,

(A – B ) × (C × D × 0.2)

in which,

“A” is the amount of the adjusted taxable paid-up capital of the financial institution for the taxation year as determined under Division B.1,

“B” is the exempt amount of the financial institution for the taxation year as determined under clauses (1.2) (b) and (c),

“C” is the percentage of the taxable paid-up capital of the financial institution that is not deemed, under the prescribed rules, to be used by it in the taxation year in a jurisdiction other than Ontario, and

“D” is the sum of,

(a) 0.9 per cent multiplied by the ratio of the number of days in the taxation year that are before January 1, 2007 to the total number of days in the taxation year, and

(b) 0.675 per cent multiplied by the ratio of the number of days in the taxation year that are after December 31, 2006 and before January 1, 2009 to the total number of days in the taxation year.

2004, c. 31, Sched. 9, s. 33; 2006, c. 9, Sched. D, s. 3; 2007, c. 7, Sched. 6, s. 11; 2008, c. 7, Sched. E, s. 12.

Same

(3.3)  The amount of a credit union’s eligible tax for a taxation year is the total amount of tax payable by the credit union under this Part for the taxation year, if the taxation year commences after December 31, 1997 and, if the taxation year commences before January 1, 1998, the amount, if any, of the tax payable for the year that applies to the portion of the taxation year that is after December 31, 1997. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Small business investment tax credit account

(4)  The amount of a financial institution’s small business investment tax credit account for a taxation year is the amount by which the total of,

(a) all amounts each of which is a tax credit amount in respect of an eligible investment made before the end of the taxation year in a qualifying small business corporation, qualifying small business or community small business investment fund corporation by,

(i) the financial institution, if it is a deposit-taking institution,

(ii) a specified corporation related to the financial institution at the time the investment was made, or

(iii) a deposit-taking institution or an insurance corporation related to the financial institution at the time the investment was made; and

(b) the total of all small business investment tax credit repayments required to be paid by the institution under subsection (12) for prior taxation years,

exceeds the total of,

(c) all amounts each of which is an amount, if any, determined under rules prescribed by the regulations in respect of the disposition after May 7, 1996 and before the end of the taxation year of an investment prescribed by the regulations; and

(d) all small business investment tax credits that were deductible and deducted by the institution under subsection (2) for prior taxation years. 1997, c. 43, Sched. A, s. 36 (2); 1998, c. 5, s. 20 (1); 2004, c. 16, s. 2 (2).

Eligible investments made by related financial institution or specified corporation

(4.1)  Where a financial institution includes a tax credit amount under clause (4) (a) in computing its small business investment tax credit account for a taxation year in respect of an eligible investment made by a related deposit-taking institution, a related insurance corporation, or a specified corporation, no tax credit amount in respect of the eligible investment may be included in computing the small business investment tax credit account of any other financial institution for any taxation year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Same

(4.2)  A tax credit amount in respect of an eligible investment made by a specified corporation that is not a financial institution may be included by a financial institution in computing its small business investment tax credit account only in the proportion that the fair market value of the shares of the specified corporation not held by a person unrelated to the financial institution is of the total fair market value of the shares of the specified corporation issued and outstanding at the time that the investment is made. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Tax credit amount – Below-prime loan

(4.3)  A tax credit amount in respect of an eligible investment that is a below-prime loan is included in computing a financial institution’s small business investment tax credit account for each year in which the loan is outstanding, each tax credit amount being equal to 4 per cent of the average outstanding balance of the loan during the taxation year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Same

(4.4)  No tax credit amount in respect of a below-prime loan may be included by a financial institution in computing its small business investment tax credit account for a taxation year if, as a result of including a tax credit amount in respect of that below-prime loan, the total of all tax credit amounts calculated for the year and included in computing the institution’s small business investment tax credit account for the year in respect of below-prime loans outstanding in the year would exceed 75 per cent of the amount of the institution’s tax earn-back account for the year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Tax credit amount – Investment in a community small business investment fund corporation

(4.5)  A tax credit amount in respect of an eligible investment that is an investment made before January 1, 2004 in a community small business investment fund corporation in accordance with the Community Small Business Investment Funds Act, 1992 is the amount equal to 30 per cent of the amount of equity capital paid by the financial institution, specified corporation or insurance corporation to the corporation on the issuance of Class A shares to the financial institution, specified corporation or insurance corporation. 1997, c. 43, Sched. A, s. 36 (2); 1999, c. 9, s. 88; 2002, c. 22, s. 51; 2004, c. 16, s. 2 (2).

Same

(4.6)  Subsection (4.5) applies only if the financial institution claiming a tax credit in respect of the investment has applied for the tax credit, in a form approved by the Minister, and the Minister has allowed the application. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Same

(4.7)  If subsection (4.5) applies, the financial institution may include under clause (4) (a), in computing its small business investment tax credit account for a taxation year, an additional tax credit amount equal to 30 per cent of the amount of equity capital paid by the financial institution, specified corporation or insurance corporation to the corporation on the issuance of Class A shares to the financial institution, specified corporation or insurance corporation, to the extent that the corporation has reinvested the capital in eligible investments under the Community Small Business Investment Funds Act, 1992 in the taxation year. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Tax credit amount – Patient capital investment

(4.8)  A tax credit amount in respect of an eligible investment that is a patient capital investment in a qualifying small business or qualifying small business corporation is the amount determined in accordance with the following rules:

1. In the formulas described in paragraphs 2, 3, 4 and 5 of this subsection, the values represented by “A”, “B”, “C”, “D”, “E” and “F” have the following meanings:

“A” is the tax credit amount in respect of the investment,

“B” is the consideration for which the investment was issued,

“C” is the amount, not exceeding $250,000, by which the amount of the total assets or the amount of the gross revenue, measured immediately before the investment is made, whichever is greater, of the associated group of which the qualifying small business corporation or qualifying small business is a member, is greater than $500,000,

“D” is the amount, not exceeding $4,000,000, by which the amount of the total assets or the amount of the gross revenue, measured immediately before the investment is made, whichever is greater, of the associated group of which the qualifying small business corporation or qualifying small business is a member, is greater than $1,000,000,

“E” is the amount, not exceeding $50,000, of the consideration in excess of $50,000 for which the investment was issued, and

“F” is the amount, not exceeding $750,000, of the consideration in excess of $250,000 for which the investment was issued.

2. Where the investment was issued for consideration not exceeding $100,000, the tax credit amount in respect of the investment is the amount determined in accordance with the following formula:

A = {(B × 20%) + [B × 55% × the greater  
of zero and (1 – C/$250,000 – E /  
$50,000)]} × (1 – D/$4,000,000)

3. Where the investment was issued for consideration greater than $100,000 but not exceeding $1,000,000, the tax credit amount in respect of the investment is the amount determined in accordance with the following formula:

A = {(B × 10%) + [B × 10% × (1 – F/$750,000)]}  
× (1 – D/$4,000,000)

4. Where the investment was issued for consideration greater than $1,000,000, the tax credit amount in respect of the investment is the amount determined in accordance with the following formula:

A = (B × 10%) × (1 – D/$4,000,000)

5. Paragraph 2 shall not apply to determine the tax credit amount in respect of a patient capital investment made by a financial institution in a qualifying small business or qualifying small business corporation for consideration not exceeding $100,000 if the total consideration of all eligible investments issued by the corporation or business to the institution exceeds $100,000. Where this is the case, the tax credit amount in respect of the eligible investment is determined in accordance with the following formula:

A = (B × 20%) × (1 – D/$4,000,000)

1997, c. 43, Sched. A, s. 36 (2); 1998, c. 5, s. 20 (2); 2004, c. 16, s. 2 (2).

Eligible investment

(4.9)  An eligible investment is an investment that is a below-prime loan, a patient capital investment, or a Class A share issued by a corporation registered as a community small business investment fund corporation under the Community Small Business Investment Funds Act, 1992. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Below-prime loans

(4.10)  A below-prime loan is a loan for an aggregate amount not exceeding $50,000 made to a qualifying small business corporation or qualifying small business after May 6, 1997, if the following conditions are satisfied:

1. Where the loan is made at a fixed rate of interest, the rate of interest payable in respect of the loan is less than the average bank prime rate at the time the loan is made.

2. Where the loan is made at a floating rate of interest, the agreement in respect of the loan provides that the rate of interest payable in respect of the loan at any time must be less than the average bank prime rate at that time.

3. The loan is not made to a person carrying on a business prescribed by the regulations.

4. The amount of the total assets or the amount of the gross revenue, measured immediately before the investment is made, whichever is greater, of the associated group of which the qualifying small business corporation or qualifying small business is a member, does not exceed $500,000 at the time the loan is made.

5. The loan is not used for a purpose or in a manner prescribed by the regulations. 1997, c. 43, Sched. A, s. 36 (2); 1998, c. 5, s. 20 (3); 2004, c. 16, s. 2 (2).

Deeming provision

(4.11)  Where a qualifying small business corporation or qualifying small business to which a below-prime loan is made certifies to the financial institution, specified corporation or insurance corporation making the loan that the corporation or business is a qualifying small business corporation or qualifying small business for the purposes of the Act and that the conditions described in paragraphs 3, 4 and 5 of subsection (4.10) are or will be satisfied, the corporation or business will be deemed to be a qualifying small business corporation or qualifying small business for the purposes of the Act and the conditions described in paragraphs 3, 4 and 5 of subsection (4.10) will be deemed to be satisfied. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Penalty

(4.12)  Where a qualifying small business corporation or qualifying small business provides a certification to a financial institution, specified corporation or insurance corporation in accordance with subsection (4.11), the facts stated in the certification are false, and the Minister considers that the individual stating them should reasonably have known that they were false, the corporation or business shall, subject to subsection (4.13), pay a penalty equal to the lesser of,

(a) $2,000; or

(b) the tax credit amount claimed by a financial institution in respect of the below-prime loan to which the certification relates. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Exception

(4.13)  Subsection (4.12) does not apply if the corporation or business provides evidence that satisfies the Minister that the individual stating the facts believed them to be true. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Patient capital investments

(4.14)  A patient capital investment is an investment that is made after May 6, 1997 in a qualifying small business corporation or a qualifying small business if,

(a) the investment is in accordance with the rules prescribed by the regulations; and

(b) the investment is not used by the corporation or business for a purpose or in a manner prescribed by the regulations. 1997, c. 43, Sched. A, s. 36 (2); 2004, c. 16, s. 2 (2).

Qualifying small business corporation

(5)  A corporation is a qualifying small business corporation at a particular time if,

(a) it is a Canadian-controlled private corporation;

(b) it carries on business in Ontario through one or more permanent establishments;

(c) it satisfies the conditions prescribed by the regulations; and

(d) all or substantially all of the fair market value of the corporation’s assets is attributable to assets used principally in an active business carried on by the corporation primarily in Ontario. 1996, c. 18, s. 20; 2004, c. 16, s. 2 (2).

Same

(6)  A corporation is also a qualifying small business corporation at a particular time if it is associated with a corporation referred to in subsection (5) and satisfies the conditions prescribed by the regulations. 1996, c. 18, s. 20; 2004, c. 16, s. 2 (2).

(7)  Repealed: 1997, c. 43, Sched. A, s. 36 (3).

Specified corporation

(8)  A corporation is a specified corporation with respect to a particular investment in a qualifying small business corporation if,

(a) it is either a specialized financing corporation for the purposes of Part IX of the Bank Act (Canada) or a type of corporation prescribed by the regulations; and

(b) it satisfies the requirements prescribed by the regulations. 1996, c. 18, s. 20; 2004, c. 16, s. 2 (2).

(9)  Repealed: 1997, c. 43, Sched. A, s. 36 (4).

(10)  Repealed: 1997, c. 43, Sched. A, s. 36 (5).

Determination of total assets and gross revenue

(11)  For the purposes of this section, the amount of the total assets and the amount of the gross revenue of the associated group of which a qualifying small business or qualifying small business corporation is a member shall be determined in accordance with the following rules:

1. The total assets of the associated group shall include the total assets of all businesses and corporations in the group.

2. The gross revenue of the associated group shall include the gross revenue of all businesses and corporations in the group.

3. The total assets of a business or corporation in the associated group shall include, if the business or corporation is a member of a partnership that is not a member of the associated group, the same proportion of the total assets of the partnership, as recorded in the books and records of the partnership, as the proportion of the balance of the business’s or corporation’s capital account in the partnership to the total of the capital account balances of all partners of the partnership.

4. The gross revenue of a business or corporation in the associated group shall include, if the business or corporation is a member of a partnership that is not a member of the associated group, the same proportion of the gross revenue of the partnership, as recorded in the books and records of the partnership, as the proportion of the income or loss of the partnership to which the business or corporation is entitled as a partner of the partnership.

5. Except as otherwise provided in this subsection and the regulations, the total assets and the gross revenue of a business or corporation in the associated group shall be determined in accordance with generally accepted accounting principles on an unconsolidated basis. 1997, c. 43, Sched. A, s. 36 (6); 2001, c. 23, s. 43; 2004, c. 16, s. 2 (2).

Small business investment tax credit repayment

(12)  If the amount described in clause (a) in respect of a financial institution for a taxation year is greater than zero, the financial institution shall pay to the Minister for the taxation year a small business investment tax credit repayment equal to the lesser of,

(a) the amount by which the sum of the amounts determined under clauses (4) (c) and (d) for the taxation year exceeds the sum of the amounts determined under clauses (4) (a) and (b) for the taxation year; and

(b) the amount by which the total of all small business investment tax credits deductible and deducted by the financial institution under subsection (2) for prior taxation years exceeds the total of all small business investment tax credit repayments required to be paid by the financial institution under this subsection for prior taxation years. 1997, c. 43, Sched. A, s. 36 (7); 2004, c. 16, s. 2 (2).

Deemed tax

(13)  A small business investment tax credit repayment required to be paid by a financial institution for a taxation year shall be deemed to be tax payable by the financial institution under this Part for the taxation year. 1997, c. 43, Sched. A, s. 36 (8); 2004, c. 16, s. 2 (2).

Definitions

(14)  In this section,

“associated group”, in respect of a corporation or qualifying small business, has the meaning prescribed by the regulations; (“groupe”)

“average bank prime rate”, on a particular date, has the meaning prescribed by the regulations; (“taux préférentiel bancaire moyen”)

“deposit-taking institution” means a corporation described in clause (1.2) (a); (“institution de dépôt”)

“qualifying small business” means a business that satisfies the conditions prescribed by the regulations. (“petite entreprise autorisée”) 1996, c. 18, s. 20; 1997, c. 43, Sched. A, s. 36 (9, 10); 2004, c. 16, s. 2 (2).

Regulations

(15)  The Lieutenant Governor in Council may make regulations,

(a) prescribing investments that will be eligible investments for the purposes of determining the amount of a financial institution’s small business investment tax credit under subsection (2) if they satisfy prescribed conditions, and prescribing those conditions;

(b) prescribing rules for determining the tax credit amount for a taxation year in respect of an eligible investment that satisfies the conditions prescribed under clause (a);

(c) prescribing rules for determining the amount of consideration for which an eligible investment is issued;

(d) prescribing rules for determining whether an investment has been made in or issued by a person other than a corporation. 1997, c. 43, Sched. A, s. 36 (11); 2004, c. 16, s. 2 (2).

Same

(16)  A regulation made under subsection (15) may be effective with reference to a period before it is filed. 1996, c. 18, s. 20; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 18, s. 20 - 08/05/1996; 1996, c. 29, s. 57 - 08/05/1996; 1997, c. 43, Sched. A, s. 36 (1-11) - 07/05/1997; 1998, c. 5, s. 20 (1, 2) - 07/05/1997; 1998, c. 5, s. 20 (3) - 26/06/1998; 1998, c. 34, s. 51 - 07/05/1997; 1999, c. 9, s. 88 - 31/12/1998

[2001, c. 23, s. 43](http://www.ontario.ca/laws/statute/S01023" \l "s43) - 05/12/2001

[2002, c. 22, s. 51](http://www.ontario.ca/laws/statute/S02022" \l "s51) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 33](http://www.ontario.ca/laws/statute/S04031" \l "sched9s33) - 16/12/2004

[2006, c. 9, Sched. D, s. 3](http://www.ontario.ca/laws/statute/S06009" \l "schedds3) - 01/04/2007

[2007, c. 7, Sched. 6, s. 11](http://www.ontario.ca/laws/statute/S07007" \l "sched6s11) - 17/05/2007

[2008, c. 7, Sched. E, s. 12](http://www.ontario.ca/laws/statute/S08007" \l "schedes12) - 01/01/2007

[CTS 18 AU 10 - 2](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Tax credit, inter-provincial allocation

**67** Every corporation, other than a financial institution, whose tax under this Part for a taxation year is determined under section 66, and not under section 69, may deduct from the tax otherwise payable by it under section 66 an amount determined in accordance with the following formula:

D = T × A/B

where,

“D” is the amount deductible by the corporation under this section for the taxation year;

“T” is the amount of tax otherwise payable by the corporation for the year under section 66;

“A” is,

(a) the portion of the corporation’s taxable paid-up capital for the taxation year that is deemed under rules prescribed by the regulations to be used by the corporation in the taxation year in a jurisdiction other than Ontario, if the corporation is a corporation referred to in subsection 2 (1), or

(b) the portion of the corporation’s taxable paid-up capital employed in Canada for the taxation year that is deemed under rules prescribed by the regulations to be used by the corporation in the taxation year in a jurisdiction other than Ontario, if the corporation is a corporation referred to in subsection 2 (2); and

“B” is the corporation’s taxable paid-up capital for the taxation year, if the corporation is a corporation referred to in subsection 2 (1), or the corporation’s taxable paid-up capital employed in Canada for the taxation year, if the corporation is a corporation referred to in subsection 2 (2).

1997, c. 43, Sched. A, s. 37 (1); 1999, c. 9, s. 89 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 14 - 25/06/1992; 1994, c. 14, s. 29 (1, 2) - 01/05/1992; 1997, c. 43, Sched. A, s. 37 (1, 2) - 07/05/1997; 1999, c. 9, s. 89 (1, 2) - 05/05/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Small business capital tax exemption

**68** (1)  Despite sections 66 and 67, no tax is payable under this Part for a taxation year by a corporation that is not a financial institution if,

(a) neither the corporation’s total assets at the end of the taxation year nor its gross revenue for the taxation year, as recorded in its books and records, exceeds,

(i) $1 million for a taxation year ending before January 1, 2001,

(ii) $1.5 million for a taxation year ending after December 31, 2000 and commencing before October 1, 2001, or

(iii) $3 million for a taxation year commencing after September 30, 2001; or

(b) the corporation’s taxable paid-up capital as determined under Division B of this Part for the taxation year does not exceed $2 million if the taxation year commences before October 1, 2001. 1999, c. 9, s. 90 (1); 2000, c. 42, s. 20; 2001, c. 23, s. 44 (1, 2); 2004, c. 16, s. 2 (2).

Transition

(2)  Despite subsection (1), if the taxation year of a corporation that is not a financial institution commences before May 5, 1999, the corporation is liable to tax under this Part equal to the amount, if any, that would otherwise be determined for the taxation year if this section and section 69 read as they did on May 4, 1999, multiplied by the ratio of the number of days in the taxation year before May 5, 1999 to the total number of days in the taxation year. 1999, c. 9, s. 90 (1); 2004, c. 16, s. 2 (2).

No exemption

(3)  Subsection (1) does not apply to a corporation for a taxation year if the sum of the following amounts exceeds $2 million if the taxation year commences before October 1, 2001 or $5 million if the taxation year commences after September 30, 2001:

1. The taxable paid-up capital of the corporation for the taxation year.

2. If the corporation is associated with one or more corporations in the taxation year, the total of the taxable paid-up capital of each such associated corporation for the last taxation year of the associated corporation ending during the corporation’s taxation year.

3. If the corporation is a member of a partnership or a connected partnership (as determined under subsection 69 (5)) in the taxation year, the aggregate of the shares of the taxable paid-up capital of the partnership or connected partnership that are allocated under subsection 61 (5) to each person related to the corporation, for the last fiscal period of the partnership or connected partnership ending during the corporation’s taxation year, if those amounts are not already included within the amounts described in paragraphs 1 and 2. 1999, c. 9, s. 90 (1); 2001, c. 23, s. 44 (3, 4); 2004, c. 16, s. 2 (2).

Non-resident corporations

(4)  For the purposes of this section, the taxable paid-up capital of a corporation shall be determined in accordance with the provisions of Division B of this Part, irrespective of whether the corporation is subject to tax under this Act. 1999, c. 9, s. 90 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 38 - 07/05/1997; 1999, c. 9, s. 90 (1, 2) - 05/05/1999

[2000, c. 42, s. 20](http://www.ontario.ca/laws/statute/S00042" \l "s20) - 01/01/2001

[2001, c. 8, s. 27 (1, 2)](http://www.ontario.ca/laws/statute/S01008" \l "s27s1) - no effect - see [2001, c. 23, s. 44 (2)](http://www.ontario.ca/laws/statute/S01023" \l "s44s2) - 01/10/2001; [2001, c. 8, s. 27 (3)](http://www.ontario.ca/laws/statute/S01008" \l "s27s3) - 01/01/2002; [2001, c. 23, s. 44 (1-3)](http://www.ontario.ca/laws/statute/S01023" \l "s44s1) - 01/10/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Capital tax reduction

**69** (1)  Repealed: 2004, c. 31, Sched. 9, s. 34 (1).

Tax reduction

(2)  Despite section 66 and except as provided in subsection 68 (1) and section 71, the tax payable under this Part for a taxation year by a corporation other than a financial institution is the total of the following amounts:

1. The amount that would have been the corporation’s tax payable under this Part for the taxation year if this Part were read as it did on May 4, 1999 multiplied by the ratio of the number of days, if any, in the taxation year that are before May 5, 1999 to the number of days in the taxation year.

2. The amount, if any, determined using the formula,

A × (B – C)

in which,

“A” is the amount described in paragraph 3,

“B” is the amount described in paragraph 4 or 4.1, and

“C” is the amount described in paragraph 5 or 5.1 or the amount determined in accordance with subsection (2.1).

3. For the purposes of paragraph 2, the variable “A” is the corporation’s Ontario allocation factor for the taxation year, as defined in subsection 12 (1).

4. For the purposes of paragraph 2, the variable “B” for a taxation year ending before January 1, 2005 is the amount calculated using the formula,

[(0.003 × D) × E/F] + [(0.003 × DD) × EE/F]

in which,

“D” is the corporation’s taxable paid-up capital for the taxation year,

“DD” is the corporation’s taxable paid up capital or taxable paid-up capital employed in Canada, as the case may be, for the taxation year,

“E” is the number of days in the taxation year that are after May 4, 1999 and before October 1, 2001,

“EE” is the number of days in the taxation year that are after September 30, 2001, and

“F” is the number of days in the taxation year.

4.1 For the purposes of paragraph 2, the variable “B” for a taxation year that ends after December 31, 2004 is the amount calculated using the formula,

D × E

in which,

“D” is the corporation’s taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, for the taxation year, and

“E” is the capital tax rate for the corporation for the taxation year, as determined under subsection 66 (1.1).

5. For the purposes of paragraph 2, the variable “C” for a taxation year that ends before October 1, 2001 is the amount calculated using the formula,

G × D/H

in which,

“D” is the corporation’s taxable paid-up capital for the taxation year,

“G” is the sum of the amounts described in paragraphs 6 to 8, and

“H” is the sum of the corporation’s taxable paid-up capital for the taxation year and the taxable paid-up capital of each corporation, if any, with which it is associated, for the last taxation year of the associated corporation ending during the corporation’s taxation year.

5.1 For the purposes of paragraph 2, the variable “C” for a taxation year that ends after September 30, 2001 is the amount calculated using the formula,

GG × DD/HH

in which,

“DD” is the corporation’s taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, for the taxation year,

“GG” is the sum of the amounts described in paragraphs 7 to 9, and

“HH” is the sum of,

i. the corporation’s taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, for the taxation year, and

ii. the taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, of each corporation, if any, that has a permanent establishment in Canada and with which the corporation is associated, for the last taxation year of the associated corporation ending during the corporation’s taxation year.

6. For the purposes of the variable “G” in paragraph 5, the first amount is calculated using the formula,

(0.015 × J) × K/F

in which,

“F” is the number of days in the taxation year,

“J” is the amount, if any, by which $2.4 million exceeds the amount represented by the variable “Z”, where “Z” is the aggregate of,

i. the corporation’s taxable paid-up capital for the taxation year,

ii. if the corporation is associated with one or more corporations, the taxable paid up capital of each such associated corporation for the last taxation year of the associated corporation ending during the corporation’s taxation year,

iii. if the corporation is a member of a partnership or connected partnership (as determined under subsection 69 (5)), the aggregate of the shares of the taxable paid-up capital of the partnership or connected partnership that are allocated under subsection 61 (5) to each person related to the corporation, for the last fiscal period of the partnership or connected partnership ending during the corporation’s taxation year, if those amounts are not already included within the amounts described in subparagraphs i and ii, and

“K” is the number of days in the taxation year that are after May 4, 1999 and before January 1, 2000.

7. For the purposes of the variable “G” in paragraph 5 and the variable “GG” in paragraph 5.1, the applicable amount under this paragraph is calculated using the formula,

(0.0075 × L) × M/F

in which,

“F” is the number of days in the taxation year,

“L” is the amount, if any, by which $2.8 million exceeds “Z” as defined in paragraph 6, and

“M” is the number of days in the taxation year that are after December 31, 1999 and before January 1, 2001.

8. For the purposes of the variable “G” in paragraph 5 and the variable “GG” in paragraph 5.1, the applicable amount under this paragraph is calculated using the formula,

(0.005 × N) × P/F

in which,

“F” is the number of days in the taxation year,

“N” is the amount, if any, by which $3.2 million exceeds “Z” as defined in paragraph 6, and

“P” is the number of days in the taxation year that are after December 31, 2000 and before October 1, 2001.

9. For the purposes of the variable “GG” in paragraph 5.1, the applicable amount under this paragraph is calculated using the formula,

E × Q

in which,

“E” is the capital tax rate for the corporation for the taxation year, as determined under subsection 66 (1.1), and

“Q” is the lesser of,

(a) the amount determined under subsection 62.1 (10.1) for the taxation year, and

(b) the product of,

(i) the corporation’s taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, for the taxation year or, if the corporation is associated with one or more corporations in the taxation year that have a permanent establishment in Canada, the total of the taxable paid-up capital or taxable paid-up capital employed in Canada, as the case may be, of the corporation for the taxation year and of each such associated corporation for the last taxation year of the associated corporation ending during the corporation’s taxation year, and

(ii) the ratio of the number of days in the taxation year that are after September 30, 2001 to the total number of days in the taxation year.

10. Repealed: 2001, c. 23, s. 45 (5).

1999, c. 9, s. 91 (3); 2001, c. 23, s. 45 (2-6); 2002, c. 22, s. 52 (1-8); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 34 (2-5).

Election for group of associated corporations

(2.1)  A corporation and each corporation with which it is associated in a taxation year and that has a permanent establishment in Canada in the taxation year (the “associated group”) may elect to calculate the amount of the variable “C” in paragraph 2 of subsection (2) for taxation years ending after December 31, 2002 using the formula,

S/A

in which,

“A” is the corporation’s Ontario allocation factor for the taxation year, as defined in subsection 12 (1), and

“S” is the corporation’s portion, for the taxation year, of the associated group’s net deduction for the calendar year in which the taxation year ends, as determined in accordance with subsection (2.6) or (2.7), as the case may be.

2002, c. 22, s. 52 (9); 2004, c. 16, s. 2 (2).

Same

(2.2)  The associated group may make the election under subsection (2.1) if all of the corporations in the associated group enter into a written allocation agreement and if the following conditions are satisfied:

1. The allocation agreement must allocate among the corporations in the associated group the amount of the associated group’s net deduction for the calendar year in which the corporations’ taxation years end.

2. The amount of the associated group’s net deduction for that calendar year must be determined in accordance with subsection (2.3).

3. The total of all amounts allocated to each corporation under the agreement must not exceed the associated group’s net deduction for that calendar year.

4. For the taxation year that ends in the calendar year to which the allocation agreement applies, each corporation in the associated group is required to determine its tax payable under this Part in accordance with the allocation agreement.

5. A copy of the allocation agreement must be delivered to the Minister with the corporation’s tax return for the taxation year in which an amount is claimed under subsection (2.1). 2002, c. 22, s. 52 (9); 2004, c. 16, s. 2 (2).

Associated group’s net deduction

(2.3)  The associated group’s net deduction for a calendar year is the sum of the net deductions of each corporation in the associated group for the last taxation year of each corporation ending in the calendar year, as determined under subsection (2.4). 2002, c. 22, s. 52 (9); 2004, c. 16, s. 2 (2).

Net deduction of a corporation in the associated group

(2.4)  The net deduction of a corporation for a taxation year is the amount calculated using the formula,

A × (E × Z) × T/X

in which,

“A” is the corporation’s Ontario allocation factor, as defined in subsection 12 (1), for the last taxation year ending in the calendar year preceding the calendar year in which the taxation year ends,

“E” is the capital tax rate for the corporation for the taxation year, as determined under subsection 66 (1.1),

“T” is the amount of the total assets of the corporation as recorded in its books and records for the last taxation year ending in the calendar year preceding the calendar year in which the taxation year ends,

“X” is the sum of the total assets of each corporation in the associated group as recorded in its books and records for the last taxation year ending in the calendar year preceding the calendar year in which the taxation year ends, and

“Z” is the amount for the taxation year determined under subsection 62.1 (10.1).

2004, c. 31, Sched. 9, s. 34 (6).

Foreign corporation, taxation years ending on or before May 11, 2005

(2.5)  For the purposes of the definitions of “T” and “X” in subsection (2.4), if a corporation is incorporated under the laws of a jurisdiction outside Canada and its taxation year ends on or before May 11, 2005, its total assets in Canada shall be deemed to constitute its total assets. 2005, c. 28, Sched. D, s. 13.

Non-resident corporation, taxation years ending after May 11, 2005

(2.5.1)  For the purposes of the definitions of “T” and “X” in subsection (2.4), if a corporation is non-resident and its taxation year ends after May 11, 2005, its total assets in Canada shall be deemed to constitute its total assets. 2005, c. 28, Sched. D, s. 13.

Corporation’s portion of net deduction

(2.6)  If the associated group makes the election under subsection (2.1) and if the conditions described in subsection (2.2) are satisfied, the corporation’s portion, for the taxation year, of the associated group’s net deduction for the calendar year in which the taxation years ends is the amount determined in accordance with the written allocation agreement. 2002, c. 22, s. 52 (9); 2004, c. 16, s. 2 (2).

Same, conditions not satisfied

(2.7)  If the associated group purports to make the election under subsection (2.1) but the conditions described in subsection (2.2) are not satisfied, the corporation’s portion, for the taxation year, of the associated group’s net deduction for the calendar year in which the taxation year ends is the amount, if any, that the Minister considers to be reasonable in the circumstances. 2002, c. 22, s. 52 (9); 2004, c. 16, s. 2 (2).

Interpretation

(3)  For the purposes of this section, the taxable paid-up capital or the taxable paid-up capital employed in Canada of a corporation that has no permanent establishment in Ontario shall be determined in accordance with Division B or C of this Part as if the corporation had a permanent establishment in Ontario, whether or not the corporation is subject to tax under this Act. 2002, c. 22, s. 52 (10); 2004, c. 16, s. 2 (2).

Financial institutions and exempt corporations

(4)  For the purposes of this section, the taxable paid-up capital, the taxable paid-up capital employed in Canada and the total assets of a corporation do not include the taxable paid-up capital, the taxable paid-up capital employed in Canada or the total assets of a corporation that is a financial institution or of a corporation that is exempt from tax under this Part. 2002, c. 22, s. 52 (11); 2004, c. 16, s. 2 (2).

Connected partnerships

(5)  For the purposes of this section, a partnership of which a corporation was a member in a taxation year (hereinafter referred to as the “first partnership”) is connected with another partnership (hereinafter referred to as the “second partnership”) if,

(a) more than 50 per cent of the total income or loss, as the case may be, of the first partnership for its fiscal periods ending in or coinciding with the taxation year is included in the determination of the income of a particular person or a particular group of persons; and

(b) more than 50 per cent of the total income or loss, as the case may be, of the second partnership for its fiscal periods ending in or coinciding with the taxation year is included in the determination of the income of,

(i) the particular person,

(ii) the particular group of persons,

(iii) any corporation associated with the particular person or with any member of the particular group of persons,

(iv) any group of corporations each member of which is associated with the particular person or with any member of the particular group of persons, or

(v) any group of persons each member of which is a person or a member of a group of persons described in any of subclauses (i) to (iv). R.S.O. 1990, c. C.40, s. 69 (5); 1999, c. 9, s. 91 (6); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 30 (1, 2) - 21/04/1988; 1996, c. 29, s. 58 - 31/12/1991; 1997, c. 43, Sched. A, s. 39 - 07/05/1997; 1999, c. 9, s. 91 (1-6) - 05/05/1999

[2001, c. 8, s. 28 (1-3)](http://www.ontario.ca/laws/statute/S01008" \l "s28s1) - no effect - see [2001, c. 23, s. 45 (3, 6, 8)](http://www.ontario.ca/laws/statute/S01023" \l "s45s3) - 01/10/2001; [2001, c. 23, s. 45 (1)](http://www.ontario.ca/laws/statute/S01023" \l "s45s1) - 05/12/2001; [2001, c. 23, s. 45 (2-8)](http://www.ontario.ca/laws/statute/S01023" \l "s45s2) - 01/10/2001

[2002, c. 22, s. 52 (1, 2, 4-8, 10, 11)](http://www.ontario.ca/laws/statute/S02022" \l "s52s1) - 01/10/2001; [2002, c. 22, s. 52 (3)](http://www.ontario.ca/laws/statute/S02022" \l "s52s3) - 01/01/2003; [2002, c. 22, s. 52 (9)](http://www.ontario.ca/laws/statute/S02022" \l "s52s9) - 01/01/2003

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 34 (1-6)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s34s1) - 16/12/2004

[2005, c. 28, Sched. D, s. 13](http://www.ontario.ca/laws/statute/S05028" \l "schedds13) - 11/05/2005

Exemptions

**70** The tax imposed by this Part is not payable by any corporation that is liable to a tax under section 74 or by any corporation that is liable to the taxes imposed under this Act by virtue only of clause 2 (2) (c). R.S.O. 1990, c. C.40, s. 70; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Liability for tax under this Part

**71** (1)  Except as provided in subsections (3), 11 (15) and 66 (6), none of the following corporations are required to pay any tax otherwise payable under this Part:

1. A corporation referred to in subsection 57 (1), other than a corporation subject to the rules in subsection 149 (10) of the Income Tax Act (Canada) as made applicable by subsection 57 (7) of this Act.

2. A corporation that is a credit union.

3. A family farm corporation.

4. A family fishing corporation.

5. The Deposit Insurance Corporation of Ontario. 1999, c. 9, s. 92 (1); 2001, c. 23, s. 46 (1); 2004, c. 16, s. 2 (2).

(2)  Repealed: 1999, c. 9, s. 92 (2).

Application of subs. (1)

(3)  Subsection (1) does not apply in the case of a family farm corporation where, pursuant to subsection 31 (2) of the Income Tax Act (Canada) as made applicable by subsection 11 (1) of this Act, the Minister has determined that the chief source of income of the corporation for a taxation year is neither farming nor a combination of farming and some other source of income. R.S.O. 1990, c. C.40, s. 71 (3); 1999, c. 9, s. 92 (3); 2004, c. 16, s. 2 (2).

Transitional, Deposit Insurance Corporation of Ontario

(4) The amount of tax payable under this Part by the Deposit Insurance Corporation of Ontario for a taxation year commencing before May 5, 1999 is the amount calculated by multiplying the amount of tax that it would be required to pay for the year under this Part, but for subsection (1), by the ratio of the number of days in the taxation year that are before May 5, 1999 to the total number of days in the taxation year. 2001, c. 23, s. 46 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 40 - 07/05/1997; 1999, c. 9, s. 92 (1-4) - 05/05/1999

[2001, c. 23, s. 46 (1, 2)](http://www.ontario.ca/laws/statute/S01023" \l "s46s1) - 05/05/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Apportionment of capital tax, short year

**72** Where a corporation has a taxation year of less than 365 days, the amount of tax payable by it under this Part for the year shall be determined by multiplying the amount of tax that would otherwise be determined for the year before the application of section 72.1 by the ratio of the number of days in the taxation year to 365, except that this section does not apply,

(a) Repealed: 1999, c. 9, s. 93.

(b) to any corporation the taxation year of which does not end on the same date each year, but that has been accepted for purposes of assessment under this Act; or

(c) to any corporation in respect of an amount payable under section 66.1. R.S.O. 1990, c. C.40, s. 72; 1996, c. 18, s. 22; 1997, c. 43, Sched. A, s. 41; 1999, c. 9, s. 93; 2004, c. 16, s. 2 (2); 2008, c. 7, Sched. E, s. 13.

**Section Amendments with date in force (d/m/y)**

1996, c. 18, s. 22 - 08/05/1996; 1997, c. 43, Sched. A, s. 41 - 07/05/1997; 1999, c. 9, s. 93 - 05/05/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2008, c. 7, Sched. E, s. 13](http://www.ontario.ca/laws/statute/S08007" \l "schedes13) - 01/01/2007

Capital tax relief for manufacturers

Application

**72.1** (1)  This section applies to a corporation for a taxation year despite any other provision of this Part if,

(a) the taxation year ends after December 31, 2006 and before January 1, 2009;

(b) the corporation would, but for this section, be liable to tax determined under this Part for the year because it is a corporation whose taxable paid-up capital or its taxable paid-up capital employed in Canada, as the case may be, for the year is determined under Division B or C; and

(c) the corporation’s Ontario manufacturing labour cost for the taxation year is more than 20 per cent of its total Ontario labour cost for the year. 2008, c. 7, Sched. E, s. 14.

Capital tax exemption

(2)  If the corporation’s Ontario manufacturing labour cost for the year is at least 50 per cent of its total Ontario labour cost for the year, its total liability for tax under this Part for the year is calculated using the formula:

A × [(B + C)/D]

in which,

“A” is the amount of tax that would, but for this section, be payable by the corporation under this Part for the year,

“B” is the number of days in the taxation year that are before January 1, 2007,

“C” is,

(a) nil if,

(i) the corporation has a permanent establishment in Ontario on March 25, 2008 to which employees of the corporation report, or

(ii) the corporation is a designated corporation with respect to a particular corporation and, on March 25, 2008, the particular corporation has a permanent establishment in Ontario to which employees of the particular corporation report, or

(b) the number of days in the taxation year that are after December 31, 2006 and before January 1, 2008 in any other case, and

“D” is the total number of days in the taxation year.

2008, c. 7, Sched. E, s. 14.

Capital tax reduction

(3)  If the corporation’s Ontario manufacturing labour cost for the year is less than 50 per cent but more than 20 per cent of its total Ontario labour cost for the year, its liability for tax under this Part for the year is reduced by the amount calculated using the formula:

A × [(E – 0.2)/0.3] × [(F + (G × H))/D]

in which,

“A” is the amount of tax that would, but for this section, be payable by the corporation under this Part for the year,

“E” is the percentage that its Ontario manufacturing labour cost for the year is of its total Ontario labour cost for the year, expressed in decimals,

“F” is the number of days in the taxation year that are after December 31, 2007,

“G” is the number of days in the taxation year that are in 2007,

“H” is,

(a) one if,

(i) the corporation has a permanent establishment in Ontario on March 25, 2008 to which employees of the corporation report, or

(ii) the corporation is a designated corporation with respect to a particular corporation and, on March 25, 2008, the particular corporation has a permanent establishment in Ontario to which employees of the particular corporation report, or

(b) nil, in any other case, and

“D” is the total number of days in the taxation year.

2008, c. 7, Sched. E, s. 14.

Designated corporation

(4)  For the purposes of subsections (2) and (3), a corporation is a designated corporation with respect to a particular corporation if it is,

(a) a corporation that amalgamated with one or more other corporations to form the particular corporation, if section 87 of the Income Tax Act (Canada) applies to the amalgamation;

(b) a corporation that wound up into the particular corporation, if subsection 88 (1) of the Income Tax Act (Canada) applies to the winding-up; or

(c) a corporation that is a designated corporation with respect to a corporation that is itself a designated corporation with respect to the particular corporation. 2008, c. 7, Sched. E, s. 14.

Ontario manufacturing labour cost

(5)  For the purposes of this section, a corporation’s Ontario manufacturing labour cost for a taxation year is the amount that would be its cost of manufacturing and processing labour for the year under Part LII (Canadian Manufacturing and Processing Profits) of the regulations made under the Income Tax Act (Canada) if,

(a) the activities described in paragraphs (a), (b), (e), (f), (g) and (l) of the definition of “manufacturing or processing” in subsection 125.1 (3) of that Act were included in determining what constituted qualified activities under Part LII of those regulations;

(b) references in Part LII of those regulations to qualified activities carried out in Canada were read instead as references to qualified activities carried out in Ontario;

(c) section 5203 of those regulations did not apply; and

(d) paragraph (f) of the definition of “cost of labour” in section 5204 of those regulations did not apply. 2008, c. 7, Sched. E, s. 14.

Total Ontario labour cost

(6)  For the purposes of this section, a corporation’s total Ontario labour cost for a taxation year is the amount that would be its cost of labour for the year under Part LII (Canadian Manufacturing and Processing Profits) of the regulations made under the Income Tax Act (Canada) if,

(a) the only salaries and wages taken into account for the purposes of paragraphs (a) and (b) of the definitions of “cost of labour” in sections 5202 and 5204 of those regulations and for the purposes of paragraph (a) of the definitions of “cost of manufacturing and processing labour” in those sections were salaries and wages paid or payable to employees of permanent establishments situated in Ontario;

(b) the reference in paragraph (d) of the definition of “cost of labour” in section 5202 of those regulations to an active business carried on outside Canada were read instead as a reference to an active business carried on outside Ontario; and

(c) the reference in paragraph (e) of the definition of “cost of labour” in section 5204 of those regulations to an active business carried on outside Canada were read instead as a reference to an active business carried on outside Ontario. 2008, c. 7, Sched. E, s. 14.

Employees reporting to permanent establishment in Ontario

(7)  For the purposes of this section, a corporation is deemed to have no employees reporting to a permanent establishment of the corporation in Ontario on March 25, 2008 unless, before that date, the corporation or another corporation that is a designated corporation with respect to the corporation remitted to the Receiver General for Canada amounts deducted or withheld under subsection 153 (1) of the Income Tax Act (Canada) from payments made in February or March of 2008 to its employees of that permanent establishment. 2008, c. 7, Sched. E, s. 14.

**Section Amendments with date in force (d/m/y)**

[2008, c. 7, Sched. E, s. 14](http://www.ontario.ca/laws/statute/S08007" \l "schedes14) - 01/01/2007

[CTS 3 NO 14 - 1](http://www.ontario.ca/laws/consolidated-statutes-change-notices)

Part-year exemption

**73** Where the exemption under section 57 applies to a part of a taxation year only, subsection 71 (1) does not apply, and in any such case the tax otherwise payable under this Part shall be in the proportion thereof that the number of days of the taxation year for which the exemption under subsection 57 (1) does not apply bears to 365. R.S.O. 1990, c. C.40, s. 73; 1999, c. 9, s. 94 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1999, c. 9, s. 94 (1, 2) - 05/05/1999

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

PART IV  
LIABILITY FOR SPECIAL TAXES

Definitions

**73.1** The following terms have the same meaning for the purposes of this Act as they have for the purposes of the Insurance Act:

1. Accident and sickness insurance.

2. Automobile insurance.

3. Fraternal society.

4. Life insurance.

5. Marine insurance.

6. Mutual benefit society.

7. Property insurance. 2004, c. 31, Sched. 9, s. 35.

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 47](http://www.ontario.ca/laws/statute/S01023" \l "s47) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 35](http://www.ontario.ca/laws/statute/S04031" \l "sched9s35) - 30/04/2007

Insurance corporations

**74** (1)  Every insurance corporation shall pay a tax of,

(a) 2 per cent calculated on the gross premiums payable under contracts of accident and sickness insurance, life insurance and, in the case of an association registered under the Prepaid Hospital and Medical Services Act, under contracts with its subscribers or members; and

(b) 3 per cent calculated on the gross premiums payable, under any other contract of insurance,

to the corporation or its agent or agents during the taxation year in respect of business transacted in Ontario (other than premiums in respect of reinsurance ceded to the corporation by other insurance corporations and considerations for annuities), after deducting from such premiums the amount of,

(c) the cash value of dividends credited to policyholders; and

(d) the premiums returned. R.S.O. 1990, c. C.40, s. 74 (1); 1994, c. 14, s. 31 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 36 (1).

Deduction

(2)  In determining the amount of tax payable under subsection (1) in respect of a taxation year ending after the 21st day of June, 1990, there may be deducted 3 per cent of the amount, if any, determined in accordance with the following formula:

(A – B) × C/D

where:

“A” is the total amount of gross premiums referred to in clause (1) (b) for the taxation year in respect of contracts of automobile insurance;

“B” is the total amount of gross premiums included in “A” that are payable in respect of,

(i) an ambulance or funeral vehicle,

(ii) a bus, limousine, taxi or other vehicle that carries passengers for reward or as part of a transportation service,

(iii) a fire department or police vehicle,

(iv) a driver training vehicle,

(v) a vehicle rented for a period of less than thirty days,

(vi) a vehicle used primarily to transport things in connection with the insured’s business or occupation, or

(vii) a vehicle that weighs more than 4,500 kilograms;

“C” is the number of days in the taxation year that are after the 21st day of June, 1990 and before the 30th day of April, 1991; and

“D” is the number of days in the taxation year.

1992, c. 3, s. 15; 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 36 (2).

(3)  Repealed: 2001, c. 23, s. 48.

Interpretation

(4)  In addition to the tax payable under subsection (1), every corporation transacting business as an insurer for property insurance shall pay a tax of one-half of 1 per cent calculated on the gross premiums that become payable to the corporation or its agent or agents during the taxation year in respect of such business transacted in Ontario other than premiums in respect of reinsurance ceded to the corporation by other insurers after deducting from such premiums,

(a) cash value of dividends credited to policyholders; and

(b) premiums returned. R.S.O. 1990, c. C.40, s. 74 (4); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 36 (3).

Definitions

(5)  For the purposes of this Part,

“insurance corporation” and “corporation”, as the case may be, include,

(a) underwriters and syndicates of underwriters operating on the plan known as Lloyds,

(b) a fraternal society, and

(c) associations registered under the Prepaid Hospital and Medical Services Act. 1994, c. 14, s. 31 (2); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 36 (4).

Same

(5.1)  For the purposes of this section, gross premiums payable to an association registered under the Prepaid Hospital and Medical Services Act means all amounts payable to the association after May 19, 1993 by persons who are subscribers or members of the association under contracts with the association that are,

(a) entered into after May 19, 1993;

(b) substantially modified after May 19, 1993; or

(c) renewed after May 19, 1993. 1994, c. 14, s. 31 (2); 2004, c. 16, s. 2 (2).

Premiums in respect of business transacted in Ontario

(6)  In determining the amount of taxes payable under subsections (1) and (4),

(a) every life insurance premium that becomes payable at the time the person insured is a resident of Ontario; and

(b) every other premium that by the terms of the policy or renewal thereof becomes payable in respect of insurance of a person resident or property situate in Ontario at the time such premium becomes payable whether or not,

(i) such premium is earned wholly or partly in Ontario,

(ii) the business in respect of the policy is transacted wholly or partly in Ontario, or

(iii) the payment of such premium is made wholly or partly in Ontario,

shall be deemed to be a premium payable in respect of business transacted in Ontario. R.S.O. 1990, c. C.40, s. 74 (6); 2004, c. 16, s. 2 (2).

Exemptions

(7)  The tax imposed by subsection (1) is not payable,

(a) in respect of premiums payable under a contract of marine insurance;

(b) in respect of premiums payable under contracts of insurance issued on the premium note plan by mutual insurance corporations insuring agricultural and other non-hazardous risks, the sole business of which is carried on in Ontario;

(c) in respect of premiums payable to mutual insurance corporations insuring agricultural and other non-hazardous risks, which are parties to the agreement, made pursuant to section 169 of the Insurance Act, establishing the Fire Mutuals Guarantee Fund;

(d) by a fraternal society with respect to contracts entered into before January 1, 1974;

(e) by a mutual benefit society; or

(f) by pension fund and employees’ mutual benefit societies incorporated under or subject to the Corporations Act. R.S.O. 1990, c. C.40, s. 74 (7); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 36 (5).

(8)  Repealed: 2004, c. 31, Sched. 9, s. 36 (6).

Unfair discrimination

(9)  Where it is established to the satisfaction of the Lieutenant Governor in Council that any jurisdiction discriminates unfairly by imposing taxes, fees and other monetary obligations on any insurance corporation or any particular class of insurance corporations organized under the laws of Canada or of Ontario and having their principal offices in Ontario that in the aggregate are in excess of comparable taxes, fees and monetary obligations imposed on any similar corporation or class of corporations organized under the laws of such jurisdiction, the Lieutenant Governor in Council may direct that any corporation or any class of corporations organized under the laws of such jurisdiction and that transacts business in Ontario shall pay, in addition to the tax otherwise imposed by this section, a tax not exceeding the equivalent of such excess, and such additional tax is recoverable in the same manner as any other tax imposed by this Act. R.S.O. 1990, c. C.40, s. 74 (9); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 15 - 25/06/1992; 1994, c. 14, s. 31 (1-3) - 20/05/1993

[2001, c. 23, s. 48](http://www.ontario.ca/laws/statute/S01023" \l "s48) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 36 (1-6)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s36s1) - 30/04/2007

Special additional tax, life insurance corporation

**74.1** (1)  Every life insurance corporation that carries on business in Ontario at any time in a taxation year shall pay a tax under this section for the taxation year equal to the amount, if any, by which,

(a) 1.25 per cent of that proportion of its taxable paid-up capital for the taxation year determined under this section that the number of days in the taxation year after April 30, 1992 is of 365,

exceeds,

(b) the amount of tax payable by the corporation under Parts II and II.1 for the taxation year, after all deductions from tax to which the corporation is entitled for the year under those Parts. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Taxable paid-up capital

(2)  The taxable paid-up capital for a taxation year of a life insurance corporation that is resident in Canada at any time in the taxation year is the amount, if any, by which the total of,

(a) the proportion of the total of,

(i) its capital for the taxation year as determined under subsection (4), and

(ii) the amount, if any, determined under subsection (6) for the taxation year in respect of the capital of its foreign insurance subsidiaries, if any,

that the corporation’s Canadian reserve liabilities as at the end of the taxation year is of the total of,

(iii) its total reserve liabilities as at the end of the taxation year, and

(iv) the amount, if any, determined under subsection (7) in respect of the total reserve liabilities of its foreign insurance subsidiaries, if any; and

(b) the amount determined for the taxation year in respect of the corporation under subparagraph 190.11 (b) (ii) of the Income Tax Act (Canada),

exceeds the total of,

(c) its capital allowance for the taxation year; and

(d) that proportion of the amount, if any, by which the total of the amounts determined under clauses (a) and (b) for the taxation year exceeds the amount determined under clause (c) for the taxation year that is deemed under the rules prescribed by the regulations to have been used by the corporation in Canada but not in Ontario. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Same

(3)  The taxable paid-up capital for a taxation year of a life insurance corporation that throughout the taxation year is not resident in Canada is the amount, if any, by which,

(a) its capital for the taxation year as determined under subsection (5),

exceeds the total of,

(b) its capital allowance for the taxation year; and

(c) that proportion of the amount, if any, by which its capital for the taxation year exceeds its capital allowance for the taxation year that is deemed under the rules prescribed by the regulations to have been used by the corporation in Canada but not in Ontario. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Capital, resident life insurance corporation

(4)  For the purposes of this section, the capital for a taxation year of a life insurance corporation that is resident in Canada at any time in the taxation year is the amount, if any, by which the total at the end of the taxation year of,

(a) the amount of its long-term debt; and

(b) the amount of its capital stock or, in the case of a corporation incorporated without share capital, the amount of its members’ contributions, plus the amount of its retained earnings, contributed surplus and any other surpluses,

exceeds the total at the end of the year of,

(c) the amount of its deferred tax debit balance or future tax assets; and

(d) the amount of any deficit deducted in computing its shareholders’ equity. 1994, c. 14, s. 32 (1); 2001, c. 23, s. 49 (1); 2004, c. 16, s. 2 (2).

Capital, non-resident life insurance corporation

(5)  For the purposes of this section, the capital for a taxation year of a life insurance corporation that throughout the taxation year is not resident in Canada is the total at the end of the taxation year of,

(a) the amount equal to,

(i) the greater of its surplus funds derived from operations or its attributed surplus for the year if the year commenced before the day subsection 2 (10) of Schedule B to the Strengthening Business through a Simpler Tax System Act, 2007 comes into force, or

(ii) if the year commenced on or after the day described in subclause (a) (i), the greater of,

(A) the amount, if any, by which its surplus funds derived from operations, as of the end of the taxation year, exceeds the total of all amounts each of which is,

(1.) an amount on which it was required or would have been required, but for subsection 219 (5.2) of the Income Tax Act (Canada), to have paid tax under Part XIV of that Act for a previous taxation year, less the portion, if any, of the amount on which tax was payable, or would have been payable, described in subparagraph 219 (4) (a) (i.1) of that Act, or

(2.) an amount on which it was required or would have been required, but for subsection 219 (5.2) of the Income Tax Act (Canada), to have paid tax under subsection 219 (5.1) of that Act for the taxation year because of the transfer of an insurance business to which subsection 138 (11.5) or (11.92) of that Act applied, and

(B) its attributed surplus for the taxation year, as determined under subsection 2400 (1) of the regulations made under the Income Tax Act (Canada);

(b) any other surpluses relating to its insurance businesses carried on in Canada;

(c) the amount of its long-term debt that may reasonably be regarded as relating to its insurance businesses carried on in Canada; and

(d) the amount, if any, by which,

(i) the amount of its reserves for the year, other than its reserves in respect of amounts payable out of segregated funds, that may reasonably be regarded as having been established in respect of its insurance businesses carried on in Canada,

exceeds the total of,

(ii) all amounts each of which is the amount of a reserve, other than a reserve described in subparagraph 138 (3) (a) (i) of the Income Tax Act (Canada), to the extent that it was included in the amount determined under subclause (i) and was deducted in computing its income under Part II for the taxation year,

(iii) all amounts each of which is the amount of a reserve described in subparagraph 138 (3) (a) (i) of the Income Tax Act (Canada), to the extent that it was included in the amount determined under subclause (i) and was deductible under subparagraph 138 (3) (a) (i) of the Income Tax Act (Canada), as that subparagraph applies for the purposes of Part II of this Act, in computing its income under Part II for the taxation year, and

(iv) all amounts each of which is the amount outstanding at the end of the taxation year, including any accrued interest, in respect of a policy loan within the meaning assigned by paragraph 138 (12) (k.1) of the Income Tax Act (Canada) that was made by the corporation, to the extent that it was deducted in computing the amount determined under subclause (iii). 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (10).

Capital, foreign insurance subsidiaries

(6)  The amount determined for a taxation year in respect of the capital of the foreign insurance subsidiaries of a particular life insurance corporation is the total of all amounts each of which is the amount determined in respect of a foreign insurance subsidiary of the particular corporation equal to the amount, if any, by which,

(a) the amount that would be the capital of the subsidiary for its last taxation year ending at or before the end of the particular corporation’s taxation year, if the subsidiary were a life insurance corporation resident in Canada at any time in that year,

exceeds the total of all amounts each of which is,

(b) an amount included under clause (a) in respect of a share of the subsidiary’s capital stock or its long-term debt that was owned by,

(i) the particular corporation,

(ii) a subsidiary of the particular corporation,

(iii) a corporation that is resident in Canada, carried on a life insurance business in Canada at any time in its last taxation year ending at or before the end of the particular corporation’s taxation year and that is,

(A) a corporation of which the particular corporation is a subsidiary, or

(B) a subsidiary of a corporation described in sub-subclause (A), or

(iv) a subsidiary of a corporation described in subclause (iii); or

(c) an amount included under clause (a) in respect of any surplus of the subsidiary contributed by a corporation described in any of subclauses (b) (i) to (iv), other than an amount included under clause (b). 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Total reserve liabilities, foreign insurance subsidiary

(7)  The amount determined for a taxation year in respect of the total reserve liabilities of the foreign insurance subsidiaries of a particular life insurance corporation is the total of all amounts each of which would be the total reserve liabilities, within the meaning assigned by subsection 2405 (3) of the Regulations made under the Income Tax Act (Canada), of a foreign insurance subsidiary of the particular corporation as at the end of the subsidiary’s last taxation year ending at or before the end of the particular corporation’s taxation year, if the subsidiary were required by law to report to the Superintendent of Financial Institutions for that year. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Capital allowance

(8)  For the purposes of this section, the capital allowance for a taxation year of a life insurance corporation that carries on business in Canada at any time in the year is the total of,

(a) $10,000,000;

(b) 1/2 of the amount, if any, by which the lesser of,

(i) $50,000,000, and

(ii) its taxable capital employed in Canada for the year,

exceeds $10,000,000;

(c) 1/4 of the amount, if any, by which the lesser of,

(i) $100,000,000, and

(ii) its taxable capital employed in Canada for the year,

exceeds $50,000,000;

(d) 1/2 of the amount, if any, by which the lesser of,

(i) $300,000,000, and

(ii) its taxable capital employed in Canada for the year,

exceeds $200,000,000; and

(e) 3/4 of the amount, if any, by which its taxable capital employed in Canada for the year exceeds $300,000,000. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Exception

(9)  Despite subsection (8), if a life insurance corporation is related at the end of a taxation year to another life insurance corporation that carries on business in Canada, its capital allowance for the taxation year is nil, subject to subsections (10), (11) and (12). 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Allocation, related group

(10)  A life insurance corporation that carries on business in Canada at any time in a taxation year and is related at the end of the taxation year to another life insurance corporation that carries on business in Canada may file with the Minister, on behalf of the related group of life insurance corporations of which the corporation is a member, an agreement under which an amount that does not exceed the total of the following amounts is allocated for the taxation year among the members of the related group:

(a) $10,000,000;

(b) 1/2 of the amount, if any, by which the lesser of,

(i) $50,000,000, and

(ii) the total of all amounts each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $10,000,000;

(c) 1/4 of the amount, if any, by which the lesser of,

(i) $100,000,000, and

(ii) the total of all amounts each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $50,000,000;

(d) 1/2 of the amount, if any, by which the lesser of,

(i) $300,000,000, and

(ii) the total of all amounts each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group,

exceeds $200,000,000; and

(e) 3/4 of the amount, if any, by which the total of all amounts each of which is the taxable capital employed in Canada of a life insurance corporation for the year that is a member of the related group, exceeds $300,000,000. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Allocation by Minister

(11)  The Minister may request a life insurance corporation that carries on business in Canada at any time in a taxation year and that, at the end of the taxation year, is related to another life insurance corporation that carries on business in Canada to file with the Minister an agreement referred to in subsection (10) and, if the corporation does not file the agreement within thirty days after receiving the request, the Minister may allocate among the members of the related group of life insurance corporations of which the corporation is a member for the year an amount not exceeding the total that would be determined under clauses (10) (a) to (e) in respect of the related group. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Same

(12)  For the purposes of this section, the least amount allocated for a taxation year to a member of a related group under an agreement described in subsection (10) or by the Minister under subsection (11) is the capital allowance for the taxation year of that member. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Taxable capital employed in Canada

(13)  For the purposes of this section, the taxable capital employed in Canada of a life insurance corporation for a taxation year is,

(a) in the case of a life insurance corporation that is resident in Canada at any time in the taxation year, the total of the amounts determined under clauses (2) (a) and (b) in respect of the corporation for the taxation year; or

(b) in the case of a life insurance corporation that throughout the taxation year is not resident in Canada, its capital for the taxation year. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Application of *Income Tax Act* (Canada)

(14)  Subsections 181 (3) and (4) of the Income Tax Act (Canada), with such modifications as the circumstances require, and subsections 190 (1.1) and 190.15 (5) and (6) of that Act apply for the purposes of this section and, in the application of those subsections,

(a) references to this Part shall be read as references to this section; and

(b) the references in subsections 190.15 (5) and (6) to a corporation’s capital deduction shall be read as references to its capital allowance determined under this section. 1994, c. 14, s. 32 (1); 2004, c. 16, s. 2 (2).

Definitions

(15)  In this section,

“foreign insurance subsidiary”, of a particular life insurance corporation at any time, means a non-resident corporation that,

(a) carried on a life insurance business throughout its last taxation year ending at or before that time,

(b) did not carry on a life insurance business in Canada at any time in its last taxation year ending at or before that time, and

(c) is at that time,

(i) a subsidiary of the particular corporation, and

(ii) not a subsidiary of any corporation that is resident in Canada, carried on a life insurance business in Canada at any time in its last taxation year ending at or before that time and is a subsidiary of the particular corporation; (“filiale d’assurance étrangère”)

“long-term debt”, of a life insurance corporation or of a foreign insurance subsidiary of a life insurance corporation, means its subordinated indebtedness, within the meaning assigned by the Insurance Companies Act (Canada), evidenced by obligations issued for a term of not less than five years; (“passif à long terme”)

“reserves”, in respect of a life insurance corporation for a taxation year, means the amount at the end of the year of all of the corporation’s reserves, provisions and allowances, other than allowances in respect of depreciation or depletion, and includes any provision in respect of deferred taxes or future tax liabilities; (“réserves”)

“subsidiary”, of a corporation (in this definition referred to as the “parent corporation”), means a corporation not less than 90 per cent of the issued and outstanding shares of each class of the capital stock of which belong to,

(a) the parent corporation,

(b) a corporation that is a subsidiary of the parent corporation, or

(c) any combination of corporations each of which is a corporation described in clause (a) or (b); (“filiale”)

“surplus funds derived from operations” means, in respect of a life insurance corporation as of the end of a taxation year,

(a) the amount that would be its surplus funds derived from operations at that time under paragraph 138 (12) (o) of the Income Tax Act (Canada) as that paragraph read on September 13, 1988, if the taxation year commenced before April 30, 1992, or

(b) the amount that would be its surplus funds derived from operations at that time under subsection 138 (12) of theIncome Tax Act(Canada), computed as if no tax were payable under Part I.3 or VI of that Act or under this section for the year, if the taxation year commenced on or after April 30, 1992. (“fonds excédentaire résultant de l’activité”) 1994, c. 14, s. 32 (1); 2001, c. 23, s. 49 (2); 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (11).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 32 (1, 2) - 01/05/1992

[2001, c. 23, s. 49 (1, 2)](http://www.ontario.ca/laws/statute/S01023" \l "s49s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 11, Sched. B, s. 2 (10, 11)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s10) - 04/06/2007

Tax in respect of benefit plan

Interpretation

**74.2** (1)  In this section,

“administrator” means,

(a) in respect of a funded benefit plan,

(i) a person who receives contributions paid into the plan from which benefits will be paid,

(ii) a person to whom fees are paid for administering or servicing the plan or for reviewing the propriety of claims made by members of the plan,

(iii) the trustee or other legal representative having ownership or control of the trust property if the benefit plan is a trust,

(iv) each partner of the partnership if the business of an administrator of the plan is carried on by two or more persons in partnership,

(v) a planholder of the plan, if the person who receives the contribution paid into the plan is not an Ontario administrator of the plan at the time the contribution is made to the plan,

(b) in respect of an unfunded benefit plan,

(i) a person who makes the payment of a benefit to or for the benefit of members of the plan,

(ii) a person to whom fees are paid for administering or servicing the plan or for reviewing the propriety of claims made by members of the plan,

(iii) each partner of the partnership if the business of an administrator of the plan is carried on by two or more persons in partnership,

(iv) a planholder of the plan, if the person who makes the payment of the benefit is not an Ontario administrator of the plan at the time the payment is made; (“administrateur”)

“benefit plan” means a plan, fund or arrangement which gives protection against risk to an individual that could otherwise be obtained by taking out a contract of insurance, whether the benefits are partly insured or not, and under which the payment of benefits is made directly to or for the benefit of a member of the plan, upon the occurrence of a risk, but does not include,

(a) a plan or fund established by or under an Act of the Parliament of Canada or the Legislature of Ontario,

(b) a contract referred to in section 4 of the Prepaid Hospital and Medical Services Act between an association registered under that Act and persons who are subscribers with or members of the association; (“régime d’avantages sociaux”)

“contribution” does not include any amount paid to a funded benefit plan that can reasonably be considered to be an administration fee payable in respect of the plan; (“cotisation”)

“funded benefit plan” means a benefit plan that comes into existence when the amount of contributions paid into a fund out of which benefits will be paid exceeds the amounts required for the payment of benefits foreseeable and payable within 30 days; (“régime d’avantages sociaux par capitalisation”)

“member” means an individual to whom or for the benefit of whom benefits are payable under a benefit plan; (“participant”)

“net administration fees”, paid during a period of time in respect of a benefit plan, means the amount by which the total administration fees paid during that period of time for the administration or servicing of the plan or for reviewing the propriety of claims made by members of the plan exceed the amount, if any, which can reasonably be considered to be the portion of the administration fees relating to benefits that are,

(a) paid to or for the benefit of a member of the plan who is an Indian within the meaning of the Indian Act (Canada), ordinarily resident on a reserve in Canada at the time the contribution is made,

(b) paid to or for the benefit of a member of the plan not resident in Ontario at the time the contribution is made, or

(c) required to be included in the income from an office or employment for the purposes of taxation under the Income Tax Act (Canada) of a member of the plan; (“frais d’administration nets”)

“Ontario administrator” means an administrator of a benefit plan who has a permanent establishment in Ontario for the purposes of this Act or the Income Tax Act (Canada); (“administrateur ontarien”)

“planholder” means,

(a) in relation to a benefit plan that is not a qualifying trust, a person who provides or causes another person to provide the benefit plan, either alone or together with one or more other persons, or

(b) in relation to a benefit plan that is a qualifying trust, each trustee of the qualifying trust; (“titulaire de régime”)

“protection against risk to an individual” includes any undertaking to pay on death or disability, or for supplemental health care, drugs, dental care, vision care, hearing care or for protection against loss of income due to illness or accident or that provides any other similar benefit to or in respect of an individual; (“protection personnelle contre un risque”)

“qualifying trust” means a trust established on or after December 1, 2010 that is prescribed by the regulations or that satisfies the conditions prescribed by the regulations; (“fiducie admissible”)

“taxable benefit” means a benefit paid to or for the benefit of a member of an unfunded benefit plan, other than a member who is,

(a) an Indian within the meaning of the Indian Act (Canada), ordinarily resident on a reserve in Canada at the time the benefit is paid,

(b) not resident in Ontario at the time the benefit is paid, or

(c) required to include the amount of a benefit under the plan in his or her income from an office or employment for the purposes of taxation under the Income Tax Act (Canada); (“prestation imposable”)

“taxable contribution” means a contribution made to a funded benefit plan that cannot reasonably be considered to fund the payment of a benefit,

(a) to or for the benefit of a member of the plan who is an Indian within the meaning of the Indian Act (Canada), ordinarily resident on a reserve in Canada at the time the contribution is made,

(b) to or for the benefit of a member of the plan not resident in Ontario at the time the contribution is made, or

(c) that is required to be included in the income from an office or employment for the purposes of taxation under the Income Tax Act (Canada) of a member of the plan; (“cotisation imposable”)

“unfunded benefit plan” means a benefit plan other than a funded benefit plan. (“régime d’avantages sociaux sans capitalisation”) 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2); 2010, c. 26, Sched. 4, s. 1 (1, 2); 2011, c. 9, Sched. 8, s. 1.

Amount of tax in respect of a funded benefit plan

(2)  The amounts of tax payable under subsection 2 (2.1) by a planholder and by a member of a funded benefit plan shall be determined as follows:

1. The amount of tax payable by a planholder of the plan is equal to the sum of the following amounts:

i. 2 per cent of the taxable contributions made by the planholder to the plan.

ii. 2 per cent of the net administration fees paid in respect of the plan to the extent that the funds used to pay the fees have not been subject to tax as taxable contributions to the plan.

1.1 Despite paragraph 1, if the plan is a qualifying trust, the amount of tax payable by a planholder of the plan is equal to the sum of the following amounts:

i. 2 per cent of the taxable contributions received by the planholder from a person other than a member of the plan.

ii. 2 per cent of the net administration fees paid in respect of the plan to the extent that the funds used to pay the fees have not been subject to tax as taxable contributions to the plan.

2. The amount of tax payable by a member of the plan shall be an amount equal to 2 per cent of the taxable contributions, if any, made by the member to the plan. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2); 2010, c. 26, Sched. 4, s. 1 (3).

Amount of tax in respect of an unfunded benefit plan

(3)  The amount of tax payable under subsection 2 (2.1) by a planholder and by a member of an unfunded benefit plan shall be determined as follows:

1. The amount of tax payable by a planholder of the plan is equal to the sum of the following amounts:

i. 2 per cent of the taxable benefits paid under the plan that are funded by the planholder.

ii. 2 per cent of the net administration fees paid in respect of the plan.

1.1 Despite paragraph 1, if the plan is a qualifying trust, the amount of tax payable by a planholder of the plan is equal to the sum of the following amounts:

i. 2 per cent of the taxable benefits paid under the plan that are funded from amounts received by the planholder from a person other than a member of the plan.

ii. 2 per cent of the net administration fees paid in respect of the plan.

2. The amount of tax payable by a member of the plan shall be an amount equal to 2 per cent of the amount, if any, of the taxable benefits paid under the plan that are funded by the member. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2); 2010, c. 26, Sched. 4, s. 1 (4).

Election by qualifying trust

(3.1)  A planholder of a benefit plan that is a qualifying trust may elect on or after December 1, 2010 to have the rules in subsection (3.2) apply if the following circumstances exist:

1. The planholder elects, in the form and manner approved by the Minister, to have the rules in subsection (3.2) apply.

2. The amounts in the plan out of which benefits will be paid exceed the amounts required for the payment of benefits foreseeable and payable within three years, or a different period prescribed by the Minister. 2010, c. 26, Sched. 4, s. 1 (5).

Same, effect of election

(3.2)  If a planholder makes an election under subsection (3.1), the following rules apply:

1. The planholder’s tax payable under subsection 2 (2.1) shall not be determined under subsection (2).

2. The planholder’s tax payable under subsection 2 (2.1) shall be determined under subsection (3).

3. The qualifying trust is considered an unfunded benefit plan for the purposes of this Act. 2010, c. 26, Sched. 4, s. 1 (5).

Unfunded plan becomes funded

(3.3)  The following rules apply with respect to an unfunded benefit plan that becomes a funded benefit plan at any particular time on or after November 18, 2010:

1. In addition to any amounts of tax payable that are determined under subsection (3) or (4), the amount of tax payable under subsection 2 (2.1) by a planholder or by a member of a plan shall be determined in accordance with paragraphs 2 and 3.

2. The amount of tax payable by a planholder of the plan shall be an amount equal to 2 per cent of the amounts held by the plan at the particular time that are attributable to amounts funded by the planholder or received by the planholder from a person other than a member of the plan.

3. The amount of tax payable by a member of the plan shall be an amount equal to 2 per cent of the amountsheld by the plan at the particular time that are attributable to amounts funded by the member. 2010, c. 26, Sched. 4, s. 1 (5).

Funded plan becomes unfunded

(3.4)  The following rules apply with respect to a funded benefit plan that becomes an unfunded benefit plan at any particular time on or after November 18, 2010:

1. The amount of tax payable under subsection 2 (2.1) that is determined under subsection (3) after the particular time by a planholder or a member of the plan shall be reduced in accordance with paragraphs 2 and 3.

2. The amount of tax payable by a planholder shall be reduced by 2 per cent of the amounts held by the plan at the particular time and that are attributable to taxable contributions made by the planholder or received by the planholder from a person other than a member of the plan to the extent that they have not been applied under this subsection to reduce the tax payable under subsection (3) since the particular time.

3. The amount of tax payable by a member shall be reduced by 2 per cent of the amounts held by the plan at the particular time that are attributable to taxable contributions made by the member to the extent that they have not been applied under this subsection to reduce the tax payable under subsection (3) since the particular time. 2010, c. 26, Sched. 4, s. 1 (5).

Time of payment and collection of tax

(4)  The tax payable under subsection 2 (2.1) in respect of a benefit plan,

(a) is payable at the time of each contribution to the plan in the case of a funded benefit plan, or payment of a benefit under the plan in the case of an unfunded benefit plan, and at the time of each payment of administrative fees; and

(b) shall be paid at that time by the person liable to pay the tax to the Ontario administrator of the plan, who shall act as agent of the Minister to collect the tax and pay it over to the Minister. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Payment to the Minister

(5)  The amount of tax payable under subsection 2 (2.1) that an Ontario administrator of one or more benefit plans is required to collect under this section shall be accounted for and paid over to the Minister by the administrator in the following manner:

1. The amount of tax collected by the administrator during a taxation year of the administrator shall be a debt due by the administrator to Her Majesty in right of Ontario.

2. Instalments of tax payable under this Act by the administrator shall be calculated on the basis that the amount of tax the administrator is or will be required to collect during a taxation year is tax payable under Part IV by the administrator for that taxation year.

3. For the purposes of Parts V and VI, the tax required to be collected by the administrator during a taxation year shall be deemed to be tax payable under Part IV by the administrator for that taxation year and may be enforced and collected from the administrator by the Minister in the same way as any other tax payable by the administrator under this Act. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Tax assessment

(6)  If the Minister is of the opinion that a person liable to tax under subsection 2 (2.1) is not complying with the person’s obligations under this Act, the Minister may assess against that person the tax payable by the person under subsection 2 (2.1) and, where the Minister has assessed tax under this subsection, the following apply:

1. The assessment shall be deemed to have been made under subsection 80 (17).

2. Interest at the rate prescribed by the regulations shall be calculated and charged daily and be payable by the person from the day on which the person was required to pay the tax to the administrator under this section to the day on which the tax and interest is paid.

3. Subsection 80 (18), sections 81, 84, 85 to 91 and 93, subsection 95 (2) and sections 96, 97, 99 to 108 and 110 apply with such modifications as the circumstances require.

4. A reference to “corporation” in a provision of the Act referred to in paragraph 1 or 3 shall be deemed to include a reference to the person against whom the tax is assessed. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Penalty for non-collection of tax

(7)  The Minister may assess against an administrator who has failed to collect tax that the administrator is required to collect under this section a penalty equal to the amount of tax the administrator failed to collect, but any penalty assessed under this subsection by the Minister shall be calculated without reference to,

(a) any tax the administrator failed to collect that has been assessed by the Minister under subsection (6) against the person liable to the tax under subsection 2 (2.1); and

(b) the amount, if any, paid over to the Minister on account of the tax the administrator failed to collect. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Same

(8)  A penalty assessed under subsection (7) shall be deemed for the purposes of subsection 78 (2) and sections 79, 82 and 83 to be tax payable by the administrator under this Act for the taxation year during which the administrator was required to collect the tax under this section. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Multiple Ontario administrators

(9)  If during a period of time more than one person is an Ontario administrator of the same benefit plan, other than by reason of being a partner in a partnership, one of the persons may, with the return required under this Act for the taxation year that includes part or all of the period of time, deliver an election in a form approved by the Minister,

(a) specifying the particular plan, the period of time in the taxation year during which the person was not the only Ontario administrator of the plan and the name and address of each person who was also an Ontario administrator of the plan during that period; and

(b) containing the person’s certificate that all tax payable under subsection 2 (2.1) in respect of the plan for that period of time is accounted for by the person in the return. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Continuing liability

(10)  If part or all of the tax that is the subject of an election under subsection (9) is not accounted for in the return or not paid to the Minister at the time required under this Act, or no election is delivered under subsection (9) in respect of the period of time during which there was more than one Ontario administrator of the plan, the Minister may assess one or more of the persons who were Ontario administrators of the plan during the period of time for an amount equal to the tax payable under subsection 2 (2.1) in respect of the plan for that period of time that was not accounted for or remains unpaid to the Minister, and each amount assessed shall be deemed for the purposes of Parts V and VI to be tax payable under Part IV by the administrator who is assessed, for the taxation year or years that include the period of time. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Partnership

(11)  If a person is an administrator of a benefit plan by reason of being a partner in a partnership that carries on the business in Ontario of an administrator of the plan, the following rules apply:

1. The person shall be considered to be an Ontario administrator of the benefit plan for a taxation year if the partnership is considered to have a permanent establishment in Ontario for the purposes of this Act or the Income Tax Act (Canada) for a fiscal period of the partnership that ends in the person’s taxation year.

2. The person shall be deemed to be required to collect and pay over to the Minister under this section for a taxation year all amounts of tax in respect of the plan determined according to the following formula:

T = P × R

where:

“T” is an amount of tax the person shall be deemed to be required to collect and pay over to the Minister under this section for the taxation year,

“P” is the amount of tax that would be required, if the partnership were an Ontario administrator of the plan, to be collected and paid over to the Minister by the partnership under this section for a fiscal period of the partnership ending in the person’s taxation year, and

“R” is the percentage of the income or loss of the partnership to which the person is entitled for the same fiscal period of the partnership ending in the person’s taxation year.

3. The person may deliver a return under this Act jointly with other partners of the partnership who are Ontario administrators of the plan, if all terms and conditions as may be specified from time to time by the Minister that entitle partners to deliver a joint return have been satisfied.

4. A return delivered under paragraph 3 shall be in a form approved by the Minister and shall contain the information specified by the Minister. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Saving, funded benefit plan

(12)  For the purposes of this Act, a funded benefit plan does not cease to be a funded benefit plan even though at the end of any month the balance in the plan does not exceed the amount required for the payment of benefits foreseeable and payable within 30 days thereafter, so long as the contributions required to fund the plan are made within the following 30 days. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

Discretionary tax relief

(13)  The Minister may remit an amount of tax payable under subsection 2 (2.1) that has been calculated by reference to the amount of a benefit paid under an unfunded benefit plan if the unfunded plan was previously a funded plan and the Minister is satisfied that the amount of the benefit was included in the determination of an amount of tax paid under subsection 2 (2.1) in respect of contributions made to the plan when it was a funded benefit plan. 1996, c. 1, Sched. B, s. 9 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 1, Sched. B, s. 9 (1, 2) - 01/07/1993

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2010, c. 26, Sched. 4, s. 1 (1-5)](http://www.ontario.ca/laws/statute/S10026" \l "sched4s1s1) - 01/12/2010

[2011, c. 9, Sched. 8, s. 1](http://www.ontario.ca/laws/statute/S11009" \l "sched8s1) - 01/12/2010

Tax in respect of contract with unlicensed insurer

Definitions

**74.3** (1)  In this section,

“insurance broker” means an insurance broker within the meaning of the Registered Insurance Brokers Act; (“courtier d’assurances”)

“insurance contract” means a contract within the meaning of the Registered Insurance Brokers Act that is in respect of property situate in Ontario or a person resident in Ontario; (“contrat d’assurance”)

“insured person” means,

(a) an individual who is resident in Ontario and, through an insurance broker, enters into an insurance contract with an unlicensed insurer or pays a premium under the insurance contract,

(b) a corporation that has a permanent establishment in Ontario and enters into an insurance contract with an unlicensed insurer or pays a premium under the insurance contract, or

(c) any other person who, through an insurance broker, enters into an insurance contract with an unlicensed insurer or pays a premium under the insurance contract; (“assuré”)

“net premiums” means, in respect of an insurance contract, the total amount of premiums paid less the amount of any premiums returned; (“primes nettes”)

“unlicensed insurer” means a person who is an insurer within the meaning of the Insurance Act, but who does not hold a licence under that Act. (“assureur non titulaire d’un permis”) 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2).

Amount of tax, insurance contracts with unlicensed insurers

(2)  The amount of tax payable under subsection 2 (2.2) by an insured person in respect of an insurance contract with an unlicensed insurer is the total of,

(a) two per cent of the net premiums payable under the insurance contract, if the contract is for accident and sickness insurance, or three per cent of the net premiums payable under the insurance contract, if the contract is for any other insurance; and

(b) one-half of one per cent of the amount of net premiums payable under the insurance contract, if the contract is for property insurance. 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 37.

Tax payment and collection of tax

(3)  If the insurance contract with the unlicensed insurer is entered into through an insurance broker, the tax payable under subsection 2 (2.2),

(a) is payable at the time of payment of each premium under the insurance contract; and

(b) shall be paid at that time to the insurance broker to whom the premium is paid, who shall act as agent of the Minister to collect the tax and pay it over to the Minister. 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2).

Payment to the Minister

(4)  The amount of tax payable under subsection 2 (2.2) that an insurance broker is required to collect under this section shall be accounted for and paid over to the Minister by the insurance broker in the following manner:

1. The amount of tax collected by the insurance broker during a taxation year of the insurance broker shall be a debt due by the insurance broker to her Majesty in right of Ontario.

2. Instalments of tax payable under this Act by the insurance broker shall be calculated on the basis that the amount of tax the insurance broker is or will be required to collect during a taxation year is tax payable under Part IV by the insurance broker for that taxation year.

3. For the purposes of Parts V and VI, the tax required to be collected by the insurance broker during a taxation year shall be deemed to be tax payable under Part IV by the insurance broker for that taxation year and may be enforced and collected from the insurance broker by the Minister in the same way as any other tax that may be payable by the insurance broker under this Act. 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2).

Same

(5)  If tax is payable by an insured person under subsection 2 (2.2) in respect of premiums paid on an insurance contract that was not entered into through an insurance broker, the tax,

(a) shall be calculated on an annual basis in respect of all net premiums paid during a taxation year of the insured person; and

(b) shall be paid to the Minister in the same manner as any other tax that may be imposed on the insured person under this Act for the taxation year. 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 42 (1, 2) - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 37](http://www.ontario.ca/laws/statute/S04031" \l "sched9s37) - 30/04/2007

Insurance exchange

Definitions

**74.4** (1)  In this section,

“insurance contract” means a reciprocal contract of indemnity or inter-insurance that by reason of section 378 of the Insurance Act may be exchanged with a person in Ontario or elsewhere; (“contrat d’assurance”)

“insurance exchange” means a reciprocal or inter-insurance exchange within the meaning of the Insurance Act; (“bourse d’assurance”)

“net premiums” means, in respect of an insurance exchange for a taxation year, the total amount of premiums and deposits paid on account of premiums that are collected by the exchange during the taxation year, less the amount of any premiums and deposits returned in the taxation year. (“primes nettes”) 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2).

Amount of tax, insurance exchange

(2)  The amount of tax payable under subsection 2 (2.3) for a taxation year by an insurance exchange is an amount equal to the total of,

(a) three per cent of the net premiums collected by the insurance exchange during the taxation year in respect of insurance contracts with respect to individuals resident in Ontario or property situate in Ontario; and

(b) one-half of one per cent of the amount of net premiums collected by the insurance exchange during the taxation year in respect of insurance contracts with respect to property situate in Ontario. 1997, c. 43, Sched. A, s. 42 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 42 (1-3) - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

PART V  
RETURNS, PAYMENTS, ASSESSMENTS AND APPEALS

Division A — Returns

Tax return

**75** (1)  Every corporation, other than a corporation which is exempt from tax under sections 57 and 71, shall deliver a return for each taxation year to the Minister on or before the last day of the sixth month after the end of the taxation year. 1994, c. 14, s. 33 (1); 2004, c. 16, s. 2 (2).

Exception, insurance exchange

(1.1)  Despite subsection (1), an insurance exchange within the meaning of section 74.4 shall deliver a return for each taxation year to the Minister in accordance with subsection (1). 1997, c. 43, Sched. A, s. 43 (1); 2004, c. 16, s. 2 (2).

Exception

(2)  Subsection (1) does not apply to a corporation for a taxation year if,

(a) the corporation is otherwise exempt under this section from the requirement to deliver a return for the taxation year; or

(b) the taxation year ends after December 31, 2008, the corporation is not an insurance corporation that has a permanent establishment in Ontario in the year and the total amount of tax payable for the year by the corporation under section 74, 74.2, 74.3 and 74.4 is nil. 2007, c. 11, Sched. B, s. 2 (12).

Return required for carry back of loss

(3)  Despite subsection (2), a corporation shall deliver a return for a taxation year ending before January 1, 2009 within the time required under subsection (1) if, by reason of a loss sustained by the corporation in the taxation year, the corporation makes a written request to the Minister under subsection 80 (16) to permit a deduction in the calculation of taxable income of the corporation for a previous taxation year. 1994, c. 14, s. 33 (3); 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (13).

Demand for return

(4)  A corporation shall deliver a return for a taxation year to the Minister upon receipt of a written demand for the return from the Minister or from an officer of the Ministry of Finance authorized by the Minister to make the demand if,

(a) the return is for a taxation year ending before January 1, 2009; or

(b) the return relates to section 74, 74.2, 74.3 or 74.4. 2007, c. 11, Sched. B, s. 2 (14).

Exception to requirement to deliver return

(5)  A corporation, other than a bank, a corporation referred to in subsection 61 (4) or an insurance corporation to which Part IV applies, is exempt from the requirement to deliver a return to the Minister under subsection (1) for a taxation year ending before January 1, 2009 if,

(a) the corporation was a Canadian-controlled private corporation throughout the taxation year;

(b) the corporation has filed a return for the taxation year with the Minister of National Revenue under Part I of the Income Tax Act (Canada);

(c) the corporation had no taxable income under this Act for the taxation year;

(d) no tax was payable under this Act by the corporation for the taxation year; and

(e) the corporation has provided to the Minister the account number assigned to the corporation by the Minister of National Revenue in connection with the administration of Part I of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 75 (5); 1994, c. 14, s. 33 (6); 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (15).

Verification of return

(6)  The return shall contain an estimate of the taxes payable under this Act for the taxation year and, subject to subsection (6.2), shall be verified by a certificate certifying that all information contained in the return and all documents delivered with or as part of the return are in agreement with the records and books of account of the corporation. 1994, c. 14, s. 33 (8); 2004, c. 16, s. 2 (2).

Certificate

(6.1)  The certificate required by subsection (6) shall be signed,

(a) in the case of an extra-provincial corporation, by the manager or chief agent of the corporation in Ontario, or by another person or persons connected with the extra-provincial corporation as the Minister may require;

(b) in the case of an insurance exchange within the meaning of section 74.4, by the attorney of the insurance exchange as defined in section 377 of the Insurance Act; or

(c) in any other case, by the president of the corporation or another officer of the corporation who has personal knowledge of the affairs of the corporation. 1997, c. 43, Sched. A, s. 43 (2); 2004, c. 16, s. 2 (2).

Alternate verification

(6.2)  The Minister may,

(a) require that the certificate required by subsection (6) be delivered to the Minister in a manner and medium different from the return to which the certificate relates and may specify the manner and medium; or

(b) dispense with the requirement for a certificate and require that the corporation comply with an alternate method specified by the Minister for ensuring the integrity and authenticity of the return. 1994, c. 14, s. 33 (8); 2004, c. 16, s. 2 (2).

Certificate to be part of corporate records

(6.3)  A copy of any certificate delivered to the Minister relating to a corporation’s return for a taxation year shall form part of the records of the corporation required to be kept under section 94. 1994, c. 14, s. 33 (8); 2004, c. 16, s. 2 (2).

Trustees, etc.

(7)  Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a corporation shall deliver the corporation’s return for a taxation year if,

(a) the corporation was required by this section to have delivered a return for that year; and

(b) the day on or before which the return was required to be delivered has passed and no return for the corporation was delivered. 2007, c. 11, Sched. B, s. 2 (16).

Minister to specify information

(8)  The Minister shall specify the information to be included in a return delivered under this Act, the form and medium acceptable for a return and the documents to be delivered with or as part of the return, and may require that the content and format of a return, and the nature of any documents to be delivered with or as part of the return may vary, depending on the form and medium of the return and the manner of its delivery. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Financial statements

(9)  Where the Minister has specified that a corporation deliver with the return for a taxation year a copy of its financial statements relating to that year, the following rules apply:

1. The financial statements shall be prepared in accordance with generally accepted accounting principles, except that the financial statements shall not be consolidated financial statements.

2. The financial statements shall be complete and include all notes to the financial statements.

3. If an auditor has reported on the financial statements, the auditor’s report shall be delivered with the statements.

4. If the corporation is a bank, or a company undertaking and transacting life insurance licensed under the Insurance Act, its financial statements shall be prepared in accordance with the statute incorporating, continuing or governing the corporation and all applicable generally accepted accounting principles.

5. If the corporation is a member of a partnership, the financial statements shall be accompanied by a copy of the financial statements of the partnership, prepared in accordance with generally accepted accounting principles, for all fiscal periods ending in the corporation’s taxation year. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Exception

(10)  The Minister may accept financial statements that do not meet the requirements of subsection (9) if the Minister is satisfied that the particular financial statements accurately reflect the financial position and the results of operation of the corporation for the taxation year, and the Minister may specify the nature of and the circumstances under which a departure from a particular accounting treatment or disclosure requirement normally required by generally accepted accounting principles will be allowed. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Audited financial statements

(11)  The Minister may demand in writing, at least 180 days before the end of a taxation year, that the corporation deliver audited financial statements with its return for the year and for all subsequent taxation years, until the Minister notifies the corporation in writing that audited financial statements are no longer required. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Auditor’s report

(12)  If required by the Minister to deliver audited financial statements, the corporation shall also deliver the auditor’s report, which shall be in accordance with generally accepted auditing standards. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Delivery of return

(13)  A return may be delivered under this Act by physical transfer of a paper return in the approved form, or of a computer disk containing the required information in a sequence and format approved by the Minister or, if the person delivering the return meets the criteria specified in writing by the Minister, by electronic filing in a manner specified by the Minister. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Deemed time of delivery

(14)  For the purposes of this Act, a return shall be deemed to be delivered to the Minister,

(a) on the day prescribed by the regulations, if the return is not delivered by electronic filing; or

(b) on the day the Minister acknowledges receipt and acceptance of the return, if the return is delivered by electronic filing. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Return considered not delivered

(15)  A return shall be considered to be not delivered under this Act if,

(a) in the case of a return submitted by electronic filing, the electronic transmission received by the Minister is not in a format acceptable to the Minister or the data is not sequenced in a manner acceptable to the Minister; or

(b) in the case of a return submitted in paper form or on computer disk, the format is not acceptable to the Minister. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Refusal to accept return

(16)  The Minister may refuse to accept a return delivered on computer disk and may refuse to accept the electronic filing of returns from a corporation or a person delivering a return on behalf of a corporation if written notice of such refusal is given to the corporation or person before the return is delivered under this Act. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Processing fee

(17)  A corporation, other than a corporation which meets the conditions or criteria prescribed by the regulations, shall pay a processing fee to the Minister in an amount and at a time determined in accordance with the regulations for each return delivered under this Act which is neither on computer disk nor electronically filed. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Collection of processing fee

(18)  For the purposes of this Act, any fee required to be paid by a corporation under subsection (17) may be collected and enforced under the provisions of this Act as if it were tax payable by the corporation for the taxation year to which the return relates. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Compensation

(19)  If the Minister accepts delivery of a corporation’s return delivered on computer disk, by electronic filing or in another prescribed form or manner, the Minister may pay compensation to the corporation in an amount determined in accordance with the regulations. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

Publication

(20)  The Minister shall publicize by bulletin or by any other means of communication that, in the opinion of the Minister, will bring to the attention of those affected, the matters that are required by subsections (8), (10) and (13) to be specified by the Minister. 1994, c. 14, s. 33 (10); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 33 (1, 3, 5, 6, 8, 10) - 23/06/1994; 1994, c. 14, s. 33 (2, 4, 7) - see [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011; 1994, c. 14, s. 33 (9) - no effect - see [2007, c. 11, Sched. B, s. 2 (16)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s16) - 04/06/2007; 1997, c. 43, Sched. A, s. 43 (1-3) - 01/01/1998

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 11, Sched. B, s. 2 (12-16)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s12) - 04/06/2007

Penalties and offences

Penalty for failure to deliver return

**76** (1)  Every corporation or person who fails to deliver a return for a taxation year as and when required under this Act is liable to a penalty in the amount calculated using the formula,

(0.05 × D) + M (0.01 × D)

in which,

“D” is the amount, if any, of the deficiency in the corporation’s tax account for the taxation year as of the day the return was required to be delivered, determined under section 79 before taking into consideration the penalty imposed under this subsection, and

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

1998, c. 34, s. 52 (1); 2004, c. 16, s. 2 (2).

Repeated failures to deliver returns

(2)  Every corporation or person who fails to deliver a return for a taxation year as and when required under this Act, and who has received a demand for a return for the taxation year under subsection 75 (4), is liable to a penalty determined in accordance with the following formula, instead of a penalty under subsection (1), if, before the time the return was required to be delivered, a penalty was assessed under subsection (1) or this subsection against the corporation or person in respect of a return required to be delivered under this Act for any of the three previous taxation years:

(0.10 × D) + M (0.02 × D)

in which,

“D” is the amount, if any, of the deficiency in the corporation’s tax account for the taxation year as of the day the return was required to be delivered, determined under section 79 before taking into consideration the penalty imposed under this subsection, and

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

1998, c. 34, s. 52 (1); 2001, c. 23, s. 50; 2004, c. 16, s. 2 (2).

Saving

(3)  No corporation is liable to a penalty under subsection (1) for failing to file a return as and when required under subsection 75 (1) if it is reasonable at the time when the corporation would otherwise be required to deliver a return under subsection 75 (1) to consider the corporation to be exempt under subsection 75 (5) from the requirement to file the return. R.S.O. 1990, c. C.40, s. 76 (3); 2004, c. 16, s. 2 (2).

Offence, false statements

(4)  Every person is guilty of an offence who,

(a) makes, participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, certificate, statement or answer delivered or made as required by or under this Act or the regulations;

(b) to evade the payment of a tax imposed by this Act, destroys, alters, mutilates, hides or otherwise disposes of records or books of account;

(c) makes, assents to or acquiesces in the making of, false or deceptive entries or omits, or assents to or acquiesces in the omission, to enter a material particular in records or books of account; or

(d) wilfully, in any manner, evades or attempts to evade compliance with this Act or the payment of taxes imposed by this Act. R.S.O. 1990, c. C.40, s. 76 (4); 2004, c. 16, s. 2 (2).

Penalty

(5)  Every person who is guilty of an offence under subsection (4) is, in addition to any penalty otherwise provided by this Act, liable on conviction to a fine of not less than the greater of $500 and 50 per cent of the tax payable under this Act and sought to be evaded and not more than double the amount of such tax, or to imprisonment for a term of not more than two years, or to both the fine and the imprisonment. R.S.O. 1990, c. C.40, s. 76 (5); 2004, c. 16, s. 2 (2).

Penalty for false statements

(6)  Where a person, acting or purporting to act on behalf of a corporation, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes, or participates in, assents to or acquiesces in the making of, an incorrect statement or omission (in this subsection referred to as a “false statement”) in a return, certificate, statement or answer (in this subsection referred to as a “return”) delivered or made in respect of a taxation year as required by or under this Act or the regulations, the corporation is liable to a penalty of the greater of $100 and 50 per cent of the total of,

(a) the amount, if any, by which,

(i) the tax for the year that would be payable by the corporation under this Act if its taxable income or other subject of tax for the year were computed by adding to the taxable income for the year, or other subject of tax reported by it in its return for the year, that portion of the understatement of income, or of any other subject of tax, for the year, as applicable, that is reasonably attributable to the false statement, and if the tax payable for the year under this Act were computed by subtracting from the deductions from tax otherwise payable by the corporation for the year such portion of any such deduction that may reasonably be attributable to the false statement,

exceeds,

(ii) the tax for the year that would be payable by the corporation under this Act had the tax payable for the year been assessed on the basis of the information provided in the return for the taxation year;

(b) the total of all amounts, if any, each of which is the amount by which “A” exceeds “B”,

where,

“A” is the amount that would be deemed by one of sections 43.2 to 43.13 to be paid for the year by the corporation if that amount were calculated by reference to the amount of the tax credit claimed by the corporation for the year under that section as a payment made on account of its tax for the year, and

“B” is the maximum amount that the corporation is entitled to claim for the year under that section as a deemed payment on account of its tax payable for the year. 1996, c. 1, Sched. B, s. 10 (1, 2); 1996, c. 24, s. 28; 1997, c. 43, Sched. A, s. 44; 1998, c. 5, s. 21; 1998, c. 34, s. 52 (3, 4); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 38.

Application of subs. (6)

(7)  Subsection (6) does not apply if the person has been convicted of an offence under subsection (4) for an offence related to the same evasion of or attempt to evade the payment of tax, unless a penalty is imposed upon the corporation under subsection (6) before the commencement of proceedings against the person under subsection (4). R.S.O. 1990, c. C.40, s. 76 (7); 2004, c. 16, s. 2 (2).

Interpretation

(8)  For the purposes of subsection (6), the taxable income reported by a corporation in its return for a taxation year shall be deemed not to be less than nil and the “understatement of income” for a year shall be determined in accordance with the rules provided in subsection 163 (2.1) of the Income Tax Act (Canada). R.S.O. 1990, c. C.40, s. 76 (8); 2004, c. 16, s. 2 (2).

Penalty for repeated failure to report an amount

(9)  Every corporation that fails to report an amount required to be included in computing its income or other subject of tax in a return delivered under section 75 for a taxation year, and that has failed to report an amount required to be so included in any return delivered under section 75 for any of the preceding three taxation years is liable to a penalty equal to 25 per cent of the amount, if any, by which,

(a) the tax for the taxation year that would be payable by the corporation under this Act if its taxable income or other subject of tax for the taxation year were computed by including the amount the corporation failed to report,

exceeds,

(b) the tax for the taxation year that would be payable by the corporation under this Act had the tax been assessed on the basis of only the information provided in the return for the taxation year. R.S.O. 1990, c. C.40, s. 76 (9); 2004, c. 16, s. 2 (2).

Idem

(10)  Subsection (9) does not apply if the corporation has been assessed a penalty under subsection (6) with respect to a false statement concerning the same amount. R.S.O. 1990, c. C.40, s. 76 (10); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 34 (1) - 01/08/1995; 1994, c. 14, s. 34 (2) - 23/06/1994; 1994, c. 14, s. 34 (3) - see [Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*](http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006) - 31/12/2011; 1996, c. 1, Sched. B, s. 10 (1, 3) - 23/02/1994; 1996, c. 1, Sched. B, s. 10 (2, 4) - 01/01/1995; 1996, c. 24, s. 28 - 08/05/1996; 1997, c. 43, Sched. A, s. 44 - 07/05/1997; 1998, c. 5, s. 21 - 01/11/1997; 1998, c. 34, s. 52 (1, 2) - 18/12/1998; 1998, c. 34, s. 52 (3) - 01/07/1998; 1998, c. 34, s. 52 (4) - 01/01/1999

[2001, c. 23, s. 50](http://www.ontario.ca/laws/statute/S01023" \l "s50) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 38](http://www.ontario.ca/laws/statute/S04031" \l "sched9s38) - 16/12/2004

Time extension for filing return

**77** The Minister may enlarge the time for delivering a return before or after the date by which the return is required to be delivered under this Act. 1994, c. 14, s. 35; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 35 - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division B — Payments

Tax accrual, payment, etc.

**78** (1)  The taxes imposed by this Act shall be deemed to accrue proportionately as the days of each taxation year for which such taxes are imposed pass. R.S.O. 1990, c. C.40, s. 78 (1); 2004, c. 16, s. 2 (2).

Dates of payment

(2)  Every corporation on which a tax is imposed by this Act shall pay to the Minister,

(a) on or before,

(i) the last day of each month of the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the tax payable by the corporation for the taxation year, or

(ii) the last day of each month of the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the corporation’s first instalment base for the taxation year, or

(iii) the last day of each of the first two months in the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the corporation’s second instalment base for the taxation year and on or before the last day of each of the following months in the taxation year an amount equal to one-tenth of the amount remaining after deducting the amount computed under this subclause in respect of the first two months from the corporation’s first instalment base for the year; and

(b) the balance, if any, of the tax payable for the taxation year as estimated by it under subsection 75 (6),

(i) subject to subsection (3), on or before the last day of the third month following the taxation year,

(A) if the corporation was a Canadian-controlled private corporation throughout the taxation year,

(B) if, for a taxation year that ends before 2009, its taxable income for the taxation year immediately before that taxation year did not exceed the total of the amounts described in clauses 41 (3.2) (a) to (f), and

(C) if, for a taxation year that ends after 2008, its taxable income for the taxation year immediately before that taxation year did not exceed $500,000, or

(ii) on or before the last day of the second month following the taxation year, in any other case. R.S.O. 1990, c. C.40, s. 78 (2); 1994, c. 14, s. 36 (1, 2); 2000, c. 10, s. 9 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 39 (1); 2009, c. 18, Sched. 9, s. 3 (1); 2012, c. 8, Sched. 10, s. 1 (1).

Same

(3)  For the purposes of sub-subclauses (2) (b) (i) (B) and (C), if the immediately preceding taxation year is less than 51 weeks long, the amounts referred to in those provisions shall be multiplied by the ratio of the number of days in the immediately preceding year to 365. 2012, c. 8, Sched. 10, s. 1 (2).

Amalgamations

(3.1)  For the purposes of subclause (2) (b) (i), where a new corporation is formed as a result of an amalgamation within the meaning of section 87 of the Income Tax Act (Canada), the following rules apply:

1. The new corporation shall be deemed to have had a taxation year of 365 days that ended immediately before the amalgamation and a taxable income for that taxation year equal to the sum of all amounts, each of which is the product obtained when the taxable income of a predecessor corporation (within the meaning assigned by section 87 of the Income Tax Act (Canada)) for its taxation year that ended immediately before the amalgamation is multiplied by the ratio that 365 days is of the number of days in that taxation year of the predecessor corporation.

2. Sub-subclause (2) (b) (i) (B) shall be applied with respect to the new corporation as if that sub-subclause read “its taxable income within the meaning of paragraph 1 of subsection (3.1) did not exceed the total of the amounts described in clauses 41 (3.2) (a) to (f) for that taxation year”.

3. Sub-subclause (2) (b) (i) (C) shall be applied with respect to the new corporation as if that sub-subclause read “its taxable income within the meaning of paragraph 1 of subsection (3.1) did not exceed $500,000 for that taxation year”. 2004, c. 31, Sched. 9, s. 39 (3); 2009, c. 18, Sched. 9, s. 3 (3); 2012, c. 8, Sched. 10, s. 1 (3).

Special cases

(4)  Where the tax payable by a corporation for the taxation year or its first instalment base for the taxation year is less than $2,000, the corporation may, instead of paying the instalments required by clause (2) (a), pay its tax payable for the taxation year, as estimated by it under subsection 75 (6), in accordance with clause (2) (b). 1994, c. 14, s. 36 (3); 2004, c. 16, s. 2 (2).

Exception

(4.1)  The amount of any instalments payable by a corporation under subsection (2) in respect of tax payable for its first taxation year commencing after 1993 and before 1995 and the amount of tax payable for that year for the purposes of subsection (4) shall be determined without reference to any tax payable for the year by the corporation under Part II.1. 1994, c. 14, s. 36 (8); 2004, c. 16, s. 2 (2).

Exception

(4.2) If the amount of tax payable by the corporation for a taxation year commencing after December 31, 2001 or the amount of its first instalment base for a taxation year commencing after December 31, 2001 is at least $2,000 but less than $10,000, the corporation may pay instalments to the Minister in the following amounts at the following times, instead of the instalments required by clause (2) (a):

1. The corporation may pay an instalment on or before the last day of each of the third, sixth, ninth and twelfth months of the taxation year in respect of which the tax is payable, equal to,

i. one-quarter of the tax payable by the corporation for the taxation year, or

ii. one-quarter of the corporation’s first instalment base for the taxation year.

2. Instead of the instalments described in paragraph 1, the corporation may pay,

i. on or before the last day of the third month of the taxation year in respect of which the tax is payable, an instalment equal to one-quarter of the corporation’s second instalment base for the taxation year, and

ii. on or before the last day of the sixth, ninth and twelfth months of the taxation year in respect of which the tax is payable, an instalment equal to one-third of the amount by which the corporation’s first instalment base for the taxation year exceeds the amount paid under subparagraph i for the taxation year. 2001, c. 23, s. 51 (1); 2004, c. 16, s. 2 (2).

Same

(4.3) Instead of paying the instalments required by clause (2) (a) on account of the tax payable for a taxation year commencing after December 31, 2001, a corporation may pay its tax instalments for the taxation year in accordance with subsection (4.2) if,

(a) the tax payable by the corporation for the taxation year is at least $2,000 but less than $10,000 after deducting all amounts, if any, deemed under any of sections 43.2 to 43.13 to be tax paid by the corporation for the taxation year and the amount, if any, of its capital gains refund as determined under section 48 for the taxation year; or

(b) the tax payable by the corporation for the immediately preceding taxation year is at least $2,000 but less than $10,000 after deducting,

(i) the amount, if any, of its capital gains refund as determined under section 48 for that taxation year, and

(ii) the amount, if any, deemed under section 43.2 to be a payment on account of its tax payable for that taxation year. 2001, c. 23, s. 51 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 39 (4).

Exception

(5)  Despite clause (2) (a), the amount payable for a taxation year by a corporation to the Minister on or before the last day of any month in the taxation year shall be deemed to be the amount, if any, by which the amount payable for that month as determined under that clause exceeds,

(a) if the corporation is a mutual fund corporation, one-twelfth of the corporation’s capital gains refund for the year, as determined under section 48; and

(b) one-twelfth of the total of all amounts deemed by any of sections 43.2 to 43.13 to have been paid on account of the corporation’s tax payable under this Act for the year. 1996, c. 1, Sched. B, s. 11 (1, 2); 1996, c. 24, s. 29 (1); 1997, c. 43, Sched. A, s. 45 (1); 1998, c. 5, s. 22 (1); 1998, c. 34, s. 53 (1, 2); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 39 (5).

Exception

(5.1)  Despite paragraphs 1 and 2 of subsection (4.2), the amount payable for a taxation year commencing after December 31, 2001 by a corporation to the Minister on or before the last day of the third, sixth, ninth or twelfth months in the taxation year shall be deemed to be the amount, if any, by which the amount payable by that day as determined under paragraph 1 or 2 of subsection (4.2), as the case may be, exceeds,

(a) one-quarter of the corporation’s capital gains refund for the year, as determined under section 48, if the corporation is a mutual fund corporation; and

(b) one-quarter of the total of all amounts deemed by any of sections 43.2 to 43.13 to have been paid on account of the corporation’s tax payable under this Act for the year. 2001, c. 23, s. 51 (1); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 39 (6).

Same

(6)  Instead of paying the instalments required by clause (2) (a) or by paragraph 1 or 2 of subsection (4.2) on account of the tax payable for a taxation year, a corporation may pay its tax for the taxation year in accordance with clause (2) (b) if,

(a) the tax payable by the corporation for the taxation year is less than $2,000 after deducting all amounts, if any, deemed under any of sections 43.2 to 43.13 to be tax paid by the corporation for the taxation year and the amount, if any, of its capital gains refund as determined under section 48 for the taxation year; or

(b) the tax payable by the corporation for the immediately preceding taxation year is less than $2,000 after deducting,

(i) the amount, if any, of its capital gains refund as determined under section 48 for that taxation year, and

(ii) the amount, if any, deemed under section 43.2 to be a payment on account of its tax payable for that taxation year. 1996, c. 1, Sched. B, s. 11 (3, 4); 1996, c. 29, s. 59 (1-3); 1997, c. 43, Sched. A, s. 45 (2); 1998, c. 5, s. 22 (2); 1998, c. 34, s. 53 (3, 4); 2001, c. 23, s. 51 (2); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 39 (7).

Application of payments received

(7)  An amount paid, applied or credited on account of amounts payable under this Act by a corporation in respect of a particular taxation year shall be applied,

(a) firstly, against the tax payable by the corporation in respect of the particular year;

(b) secondly, against any penalty payable by the corporation in respect of the particular year;

(c) thirdly, against any interest payable by the corporation in respect of the particular year; and

(d) fourthly, against any other amount or amounts payable by the corporation in respect of the particular year. 1994, c. 14, s. 36 (5); 2004, c. 16, s. 2 (2).

Definitions

(8)  For the purposes of this Act,

“first instalment base” and “second instalment base” have the meanings prescribed by regulation. R.S.O. 1990, c. C.40, s. 78 (8); 1994, c. 14, s. 36 (6); 2004, c. 16, s. 2 (2).

Interpretation

(9)  For the purposes of this Part, where the previous taxation year of a corporation does not end on the last day of a calendar month,

(a) any reference to the last day of a month shall be deemed, in respect of that corporation, to be a reference to the day of that month corresponding to the day on which,

(i) the previous taxation year ended for the purpose of clause (2) (a) or paragraphs 1 and 2 of subsection (4.2), and

(ii) the taxation year ended for the purpose of clause (2) (b),

except that where either the previous taxation year or the taxation year ends on the 29th, 30th or 31st day of a month, the said reference to the last day of a month shall, with respect to the month of February, be deemed to be a reference to the last day of that month; and

(b) despite clause (a), if the taxation year of the corporation is more than 350 days,

(i) twelve instalments are required if the corporation is subject to clause (2) (a) and four instalments are required if the corporation makes its instalments under paragraph 1 or 2 of subsection (4.2), and

(ii) the last instalment must be paid on or before the last day of the taxation year. R.S.O. 1990, c. C.40, s. 78 (9); 1994, c. 14, s. 36 (7); 2001, c. 23, s. 51 (3, 4); 2004, c. 16, s. 2 (2).

Idem

(10)  Where a corporation made a deduction under subsection 42 (1) from tax otherwise payable for a previous taxation year, it shall be deemed to have made a deduction from tax under subsection 41 (1), and not under subsection 42 (1), for the purposes of,

(a) calculating the instalments required under clause (2) (a); and

(b) calculating its first instalment base and its second instalment base for the purposes of clause (2) (a); and

(c) determining whether the tax payable for the immediately preceding taxation year is less than $2,000 for the purposes of subsection (4),

for a taxation year other than a taxation year for which the corporation will make a deduction under subsection 42 (1) from tax otherwise payable for that year. R.S.O. 1990, c. C.40, s. 78 (10); 2004, c. 16, s. 2 (2).

Exception, insurance exchange

(11)  The following rules apply to an insurance exchange within the meaning of section 74.4:

1. Subsections (1), (2), (3), (4), (4.1), (4.2), (4.3), (5), (5.1), (6), (8), (9) and (10) do not apply to the insurance exchange in respect of tax payable by it under section 74.4.

2. The tax payable for a taxation year by the insurance exchange under section 74.4 shall be paid to the Minister on or before the last day of the second month following the taxation year. 1997, c. 43, Sched. A, s. 45 (3); 2001, c. 23, s. 51 (5); 2004, c. 16, s. 2 (2).

Application provision, 2000 Budget

(12)  Sub-subclause (2) (b) (i) (B) and subsection (3), as they are re-enacted by the Taxpayer Dividend Act, 2000, apply with respect to taxation years ending after May 1, 2000. 2000, c. 10, s. 9 (3); 2004, c. 16, s. 2 (2).

If refund payable under Part II.2

(13)  In calculating any amount payable under this section in respect of a taxation year, a corporation shall not take into account the amount of any refund that may be payable to it under Part II.2 in respect of the year. 2008, c. 24, s. 2.

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 36 (1, 3, 4, 6) - 23/06/1994; 1994, c. 14, s. 36 (2, 8) - 01/01/1994; 1994, c. 14, s. 36 (5, 7) - 01/08/1995; 1996, c. 1, Sched. B, s. 11 (1, 3, 5) - 23/02/1994; 1996, c. 1, Sched. B, s. 11 (2, 4, 6) - 01/01/1995; 1996, c. 24, s. 29 (1) - 08/05/1996; 1996, c. 29, s. 59 (1, 4) - 23/02/1994; 1996, c. 29, s. 59 (2, 5) - 01/01/1995; 1996, c. 29, s. 59 (3, 6) - 08/05/1996; 1997, c. 43, Sched. A, s. 45 (1, 2) - 07/05/1997; 1997, c. 43, Sched. A, s. 45 (3, 4) - 01/01/1998; 1998, c. 34, s. 53 (1, 3) - 01/07/1998; 1998, c. 34, s. 53 (2, 4) - 01/01/1999; 1998, c. 5, s. 22 (1, 2) - 01/11/1997

[2000, c. 10, s. 9 (1-3)](http://www.ontario.ca/laws/statute/S00010" \l "s9s1) - 02/05/2000

[2001, c. 23, s. 51 (1-5)](http://www.ontario.ca/laws/statute/S01023" \l "s51s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 39 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s39s1) - 01/01/2003; [2004, c. 31, Sched. 9, s. 39 (3)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s39s3) - 02/05/2000; [2004, c. 31, Sched. 9, s. 39 (4-7)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s39s4) - 16/12/2004

[2008, c. 24, s. 2](http://www.ontario.ca/laws/statute/S08024" \l "s2) - 10/12/2008

[2009, c. 18, Sched. 9, s. 3 (1-3)](http://www.ontario.ca/laws/statute/S09018" \l "sched9s3s1) - 01/01/2007

[2012, c. 8, Sched. 10, s. 1 (1-3)](http://www.ontario.ca/laws/statute/S12008" \l "sched10s1s1) - 01/01/2009

Liability in respect of transfer by insolvent corporation

**78.1** Section 160.4 of the Income Tax Act (Canada) applies for the purposes of this Act and, in the application of that section,

(a) references in subsections 160.4 (1) and (2) to “this Part” shall be read as references to Part II of this Act; and

(b) the reference in subsection 160.4 (3) to “this Division” shall be read as a reference to Part V of this Act. 1996, c. 29, s. 60 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1996, c. 29, s. 60 (1, 2) - 21/12/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Interest charges

**79** (1)  Interest at the rate prescribed by the regulations shall be calculated and charged daily and be payable by a corporation, on the deficiency in the corporation’s tax account for a taxation year, for each day there is a deficiency in the tax account after the end of the instalment period for the taxation year. 1994, c. 14, s. 37 (1); 2004, c. 16, s. 2 (2).

Deficiency, tax account

(2)  For the purposes of this Part, the deficiency, if any, in a corporation’s tax account for a taxation year on a particular day is the amount by which,

(a) the total of,

(i) the tax payable by the corporation under this Act for the taxation year,

(ii) the interest payable by the corporation under subsection (1) in respect of the taxation year during the period after the end of the instalment period for the taxation year but before the particular day,

(iii) all amounts in respect of the taxation year each of which is refunded or paid by the Minister to the corporation, or applied by the Minister to another liability of the corporation, as the case may be, on or before the particular day,

(iv) all amounts each of which is an amount previously credited or applied by the Minister to the corporation’s tax account or instalment account for the taxation year, and included in the amount determined under clause (b), that is subsequently debited or reversed by the Minister on or before the particular day,

(v) the interest payable by the corporation under subsection (4) for the instalment period for the taxation year,

(vi) all penalties in respect of the taxation year having effective dates on or before the particular day, and

(vii) all other amounts in respect of the taxation year that became payable under this Act, or became collectible and enforceable as if they were tax payable under this Act, on or before the particular day,

exceeds,

(b) the total of,

(i) all amounts paid or deemed to be paid by the corporation and applied or deemed to be applied by the Minister on or before the particular day on account of the corporation’s liability under this Act for the taxation year and all other amounts not otherwise included under this clause that are credited or applied by the Minister on or before the particular day on account of the corporation’s liability under this Act for the taxation year,

(ii) the interest in respect of the taxation year allowed under subsection 82 (4) during the period after the end of the instalment period for the taxation year up to and including the particular day,

(iii) the interest allowed to the corporation under subsection 83 (1) for the instalment period for the taxation year, and

(iv) all amounts each of which is a refund for the taxation year to which the corporation is entitled under section 46 or 48, if the effective date of the refund is on or before the particular day. 1994, c. 14, s. 37 (1); 1996, c. 1, Sched. B, s. 12 (1); 2004, c. 16, s. 2 (2).

Interpretation

(3)  For the purposes of this Act,

(a) an amount paid by a corporation under this Act shall be deemed to be paid on the day prescribed by the regulations;

(b) the effective date of a refund to which a corporation is entitled under section 46 or 48 is the date the balance of tax payable, if any, for the taxation year is required to be paid by the corporation under clause 78 (2) (b);

(c) the instalment period for a taxation year is the period from the first day of the taxation year to the day before the day the balance of the tax payable for the taxation year, if any, is required to be paid under clause 78 (2) (b); and

(d) the instalment obligations of a corporation for a taxation year include the liability of the corporation to pay,

(i) instalments of tax payable for the taxation year as required under this Act,

(ii) interest under subsection (4) on the deficiency, if any, in the corporation’s instalment account for the taxation year, and

(iii) any other amounts included in the calculation of a deficiency in the corporation’s instalment account for the taxation year. 1994, c. 14, s. 37 (1); 1996, c. 29, s. 61 (1, 2); 2004, c. 16, s. 2 (2).

Exception, instalment period

(3.1)  Despite clause (3) (c), if, at the time a calculation of interest is done under this Act, the most recent assessment or reassessment for the taxation year was made before the day the balance of tax payable, if any, for the taxation year is required to be paid under clause 78 (2) (b), the instalment period for the taxation year shall be deemed to have ended on the day before the day the assessment or reassessment was made if the result would be a surplus in the corporation’s tax account for the taxation year on the day the assessment or reassessment was made. 1998, c. 34, s. 54 (1); 2004, c. 16, s. 2 (2).

Effective date of penalties

(3.2)  The effective date of a penalty assessed under this Act shall be determined under the following rules:

1. If the penalty is under subsection 76 (1) or (2) in respect of a return, the effective date of the penalty is the date on or before which the corporation was required to deliver the return.

2. If the penalty is under subsection 76 (6) or (9) in respect of a taxation year, the effective date of the penalty is the date the balance of tax payable, if any, for that taxation year is required to be paid by the corporation under clause 78 (2) (b).

3. In any other case, the effective date of the penalty is the date the penalty is assessed by the Minister. 1996, c. 29, s. 61 (3); 2002, c. 22, s. 53 (1); 2004, c. 16, s. 2 (2).

Interest on deficiency in instalment account

(4)  If a corporation is required to pay instalments under section 78 in respect of a taxation year, the corporation is liable to pay interest at the rate prescribed by the regulations, calculated and charged daily on the deficiency in the corporation’s instalment account for the taxation year, for each day there is a deficiency in the instalment account during the period from the last day of the first month in the instalment period to the end of the instalment period. 1994, c. 14, s. 37 (1); 2004, c. 16, s. 2 (2).

Exception

(4.0.1)  Despite subsection (4), if a corporation is entitled to pay instalments under subsection 78 (4.2) for a taxation year, the corporation is liable to pay interest at the rate prescribed by the regulations, calculated and charged daily on the deficiency in the corporation’s instalment account for the taxation year, for each day there is a deficiency in the instalment account during the period from the last day of the third month in the instalment period to the end of the instalment period. 2001, c. 23, s. 52 (1); 2004, c. 16, s. 2 (2).

Deficiency, instalment account

(4.1)  For the purposes of this Part, the deficiency, if any, in a corporation’s instalment account for a taxation year on a particular day in the instalment period is the amount by which,

(a) the total of,

(i) all instalments of tax that are payable on or before the particular day by the corporation in respect of the taxation year,

(ii) the interest payable by the corporation under subsection (4) in respect of the corporation’s instalment account for the taxation year for the period before the particular day,

(iii) all amounts in respect of the taxation year which are refunded or paid by the Minister to the corporation, or applied by the Minister to another liability of the corporation, as the case may be, on or before the particular day,

(iv) all amounts each of which is an amount previously credited or applied by the Minister to the corporation’s instalment account for the taxation year, and included in the amount determined under clause (b), that is subsequently debited or reversed by the Minister on or before the particular day, and

(v) all other amounts in respect of the taxation year that became payable under this Act, or became collectible and enforceable as if they were tax payable under this Act, on or before the particular day,

exceeds,

(b) the total of,

(i) all amounts paid by the corporation and applied by the Minister on or before the particular day on account of the corporation’s instalment obligations under this Act for the taxation year and all other amounts not otherwise included under this clause that are credited or applied by the Minister on or before the particular day on account of the corporation’s instalment obligations for the taxation year, and

(ii) the interest allowed under subsection 83 (1) on or before the particular day in respect of the corporation’s instalment account for the taxation year. 1994, c. 14, s. 37 (1); 2004, c. 16, s. 2 (2).

(5)  Repealed: 1994, c. 14, s. 37 (2).

(6)  Repealed: 1994, c. 14, s. 37 (2).

Effect of loss carried back

(7)  For the purposes of calculating interest payable or allowed under this section or section 82 or 83 in respect of a particular taxation year, and for the purpose of determining the amount of a penalty, if any, to be assessed under subsection 76 (1) or (2) and the amount of tax payable under subsections 78 (4) and (6),

(a) the tax payable by the corporation under this Act for a taxation year shall be deemed to be the amount that would otherwise be determined if all amounts deducted by the corporation for that year under section 111 of the Income Tax Act (Canada), as it applies for the purposes of this Act, in respect of a loss for a taxation year after the particular year (in this section referred to as the “loss year”) were not deducted; and

(b) the amount, if any, by which the tax payable by the corporation under this Act for the particular taxation year is reduced as a result of a deduction referred to in clause (a) shall be deemed to be an amount paid by the corporation on account of its liability under this Act for the particular year on the day that is the latest of,

(i) the first day of the taxation year after the loss year,

(ii) the day on which the corporation’s return for the loss year is delivered to the Minister, or

(iii) the day on which the Minister receives a request in writing from the corporation to reassess the particular taxation year to take into account the deduction referred to in clause (a). 1994, c. 14, s. 37 (3); 1996, c. 29, s. 61 (4); 2002, c. 22, s. 53 (2); 2004, c. 16, s. 2 (2).

Interest on instalments

(8)  For the purposes of calculating interest payable or allowed under subsection (4) or 83 (1), the amount of an instalment of tax payable by a corporation in respect of a taxation year shall be deemed to be,

(a) in the case of a corporation to which subsection 78 (4) or (6) applies for the year, nil;

(b) in the case of a corporation to which subsection 78 (5) applies for the year, the amount determined under clause (c) less one-twelfth of the corporation’s capital gains refund for the year as determined under section 48; and

(c) in any other case, the instalment of tax payable under clause 78 (2) (a) or subsection 78 (4.2), as the case may be, determined under the method that results in the lowest total amount of instalments for the year. 1994, c. 14, s. 37 (3); 2001, c. 23, s. 52 (2); 2004, c. 16, s. 2 (2).

Interest off-set

(9)  Despite subsections (1) and (4),

(a) the total interest payable by a corporation on the deficiency in its instalment account and in its tax account for a taxation year for the period from the first day of the instalment period for the taxation year to the day the most recent assessment or reassessment for the taxation year is made (in this subsection called the “assessment date”) shall be the amount, if any, by which,

(i) the total of the interest charged and payable under subsection (4) for the instalment period for the taxation year and under subsection (1) for the period after the end of the instalment period but not after the assessment date,

exceeds,

(ii) the total interest allowed under subsection 83 (1) to the corporation for the instalment period for the taxation year and under subsection 82 (4) for the period after the end of the instalment period for the taxation year but not after the assessment date; and

(b) the total interest payable by a corporation on the deficiency in its tax account for a taxation year for each statement period after the assessment date referred to in clause (a) shall be the amount, if any, by which the total interest charged and payable under subsection (1) for the particular statement period exceeds the total interest allowed for the statement period under subsection 82 (4). 1994, c. 14, s. 37 (3); 2004, c. 16, s. 2 (2).

Definitions

(10)  In this Part, in respect of a taxation year of a corporation,

“statement of account” means a statement that the Minister may issue to a corporation from time to time containing an accounting as of a particular date of the corporation’s liability under this Act for the particular taxation year; (“relevé de compte”)

“statement period” means the period of time commencing on the day after the day when a statement of account for the taxation year is issued, or an assessment or reassessment in respect of the taxation year is made, as the case may be, and ending on the day the next statement of account for the taxation year is issued. (“période applicable”) 1994, c. 14, s. 37 (3); 2004, c. 16, s. 2 (2).

*Income Tax Act* (Canada), s. 221.1 applicable

(11)  Section 221.1 of the Income Tax Act (Canada) applies for the purposes of this Act in respect of amendments to this Act, amendments to the provisions of the Income Tax Act (Canada) which apply for the purposes of this Act and to amendments and enactments that relate to this Act or the Income Tax Act (Canada). 1994, c. 14, s. 37 (4); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 37 (1, 3, 5, 7-9) - 01/08/1995; 1994, c. 14, s. 37 (2, 6) - 01/01/1994; 1994, c. 14, s. 37 (4) - 01/01/1990; 1996, c. 1, Sched. B, s. 12 (1, 2) - 23/02/1994; 1996, c. 29, s. 61 (1-4) - 01/08/1995; 1998, c. 34, s. 54 (1, 2) - 18/12/1998

[2001, c. 23, s. 52 (1, 2)](http://www.ontario.ca/laws/statute/S01023" \l "s52s1) - 05/12/2001

[2002, c. 22, s. 53 (1, 2)](http://www.ontario.ca/laws/statute/S02022" \l "s53s1) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division C — Assessments

Assessment of returns

**80** (1)  The Minister shall, with all due dispatch,

(a) examine each return delivered under section 75;

(b) assess the tax for the taxation year and the interest and penalties payable, if any, on the basis of the corporation’s return for the taxation year;

(b.1) determine the total of the amounts, if any, deemed under any of sections 43.2 to 43.13 to be paid on account of the corporation’s tax payable under this Act for the taxation year; and

(c) determine the amount of refund, if any, to which the corporation may be entitled by virtue of section 46 or 48 for the taxation year. R.S.O. 1990, c. C.40, s. 80 (1); 1996, c. 1, Sched. B, s. 13 (1, 2); 1996, c. 24, s. 30; 1997, c. 43, Sched. A, s. 46 (1); 1998, c. 5, s. 23; 1998, c. 34, s. 55 (1, 2); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 40 (1).

Determination of losses

(2)  Where the Minister determines that the amount of a corporation’s non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for the taxation year is different from the amount reported by the corporation in its return of income for that taxation year, the Minister shall, if requested by the corporation, notify the corporation without undue delay of the amount determined to be such loss. R.S.O. 1990, c. C.40, s. 80 (2); 2004, c. 16, s. 2 (2).

Notice of determination

(3)  Where at any time the Minister ascertains the tax consequences to a corporation under section 5 with respect to a transaction, the Minister may determine any amount that is relevant for the purposes of computing the amount of the tax consequences and send to the corporation with all due dispatch a notice of determination stating the amount so determined. R.S.O. 1990, c. C.40, s. 80 (3); 2004, c. 16, s. 2 (2).

No determination for prior years

(4)  A determination of an amount shall not be made under subsection (3) at a time where the amount is relevant only for the purposes of computing the tax consequences to a corporation for a taxation year ending before the time. R.S.O. 1990, c. C.40, s. 80 (4); 2004, c. 16, s. 2 (2).

Provisions applicable

(5)  Paragraphs 56 (1) (l) and 60 (o) of the Income Tax Act (Canada), as those paragraphs apply by virtue of sections 15 and 16, respectively, of this Act, and this Part, as they relate to an assessment or reassessment and to assessing tax and reassessing tax, apply with necessary modifications to a determination or redetermination and to determining and redetermining amounts under this Part, except that subsections (1) and (8) do not apply to determinations made under subsection (2) or (3) and, for greater certainty, an original determination of a corporation’s non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the corporation. R.S.O. 1990, c. C.40, s. 80 (5); 2004, c. 16, s. 2 (2).

Determination binding

(6)  For greater certainty, where the Minister makes a determination of the amount of a corporation’s non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year, as the case may be, subject to the corporation’s rights of objection and appeal in respect of the determination and subject to any redetermination by the Minister, the determination is binding on both the Minister and the corporation for the purposes of calculating the taxable income of the corporation in any other year. R.S.O. 1990, c. C.40, s. 80 (6); 2004, c. 16, s. 2 (2).

Determination binding

(7)  Subject to the corporation’s rights of objection and appeal in respect of the determination and to any redetermination made by the Minister, a determination made by the Minister under subsection (3) with respect to a corporation is binding on both the Minister and the corporation for the purpose of calculating the tax consequences to the corporation for any taxation year. R.S.O. 1990, c. C.40, s. 80 (7); 2004, c. 16, s. 2 (2).

Notice of assessment

(8)  After examination of a return, the Minister shall send, by mail or by registered mail or deliver by personal service a notice of assessment to the corporation that delivered the return. R.S.O. 1990, c. C.40, s. 80 (8); 2004, c. 16, s. 2 (2).

Continuation of liability for tax

(9)  Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. R.S.O. 1990, c. C.40, s. 80 (9); 2004, c. 16, s. 2 (2).

Normal re-assessment period

(10)  For the purposes of this section, the normal re-assessment period for a corporation in respect of a taxation year is,

(a) if at the end of the year the corporation is a mutual fund corporation or a corporation other than a Canadian-controlled private corporation, the period that ends five years after the day of mailing of a notice of an original assessment in respect of the corporation for the year or the day of mailing of a notification that no tax is payable by the corporation for the year; or

(b) in any other case, the period that ends four years after the day of mailing of a notice of an original assessment in respect of the corporation for the year or the day of mailing of a notification that no tax is payable by the corporation for the year. R.S.O. 1990, c. C.40, s. 80 (10); 1994, c. 14, s. 38 (1); 2004, c. 16, s. 2 (2).

When assessment may issue

(11)  The Minister may at any time assess tax, interest or penalties, or notify in writing any person who has delivered a return for a taxation year that no tax is payable for the taxation year, and may reassess or make additional assessments or assess tax, interest or penalties, as the circumstances require,

(a) at any time, if the corporation, or a person delivering a return for the taxation year or acting on its behalf,

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing a return or in supplying any information under this Act,

(ii) has failed to deliver a return for the taxation year as required under this Act,

(iii) has been negligent in supplying or in failing to supply any information required under this Act,

(iv) has filed with the Minister a waiver in the form approved by the Minister on or before the later of,

(A) the expiry of the normal re-assessment period for the corporation in respect of the taxation year, and

(B) the latest day such a waiver could be filed under this Act for any previous taxation year,

(v) has filed a waiver under the Income Tax Act (Canada) within the time and in the form required by subsection 152 (4) of that Act, or

(vi) has claimed a deduction under paragraph 20 (1) (s) of the Income Tax Act (Canada) as made applicable for the purposes of this Act for the taxation year;

(b) before the day that is three years after the expiration of the normal reassessment period for the corporation in respect of the taxation year where,

(i) the assessment, reassessment or additional assessment is required under subsection (16) or (16.1) or would be required if the corporation had claimed an amount by filing the written request referred to in that subsection on or before the day referred to in that subsection,

(ii) as a consequence of a transaction involving the corporation and a non-resident person with whom it was not dealing at arm’s length, there is reason to assess or reassess the corporation’s tax for any relevant taxation year,

(iii) as a consequence of an additional payment or reimbursement of any income or profits tax to or by the government of a country other than Canada, there is reason to assess or reassess the corporation’s tax for any relevant taxation year,

(iii.1) the corporation is a non-resident that carries on business in Canada through a permanent establishment and the assessment, reassessment, additional assessment or notification is made for a taxation year ending after December 31, 1999 as a consequence of,

(A) an allocation by the corporation of revenues or expenses as amounts in respect of the Canadian business (other than revenue and expenses that relate solely to the Canadian business, that are recorded in the books of account of the Canadian business, and the documentation in support of which is kept in Canada), or

(B) a notional transaction between the corporation and its Canadian business, where the transaction is recognized for the purpose of the computation of an amount under this Act,

(iv) subsection 5.1 (2) or (5), 29.1 (6) or (7) or 31.1 (6) or (7) applies to the corporation, or to a partnership of which the corporation is a member, in respect of a disposition or acquisition of property in the taxation year,

(v) subsection 34 (10.3) applies to the corporation for the taxation year, or

(vi) section 5.2 or 5.3 applies to the corporation for the taxation year; and

(c) in any other case, on or before the later of,

(i) the expiry of the normal reassessment period for the corporation in respect of the taxation year, and

(ii) the latest day on which a reassessment, additional assessment or assessment can be made under any predecessor of this clause for any previous taxation year. R.S.O. 1990, c. C.40, s. 80 (11); 1992, c. 3, s. 16; 1994, c. 14, s. 38 (2); 1996, c. 1, Sched. B, s. 13 (5); 1997, c. 19, s. 4 (3); 1997, c. 43, Sched. A, s. 46 (2); 1998, c. 34, s. 55 (3); 1999, c. 9, s. 95 (1); 2001, c. 23, s. 53 (1, 2); 2004, c. 16, s. 2 (2); 2006, c. 33, Sched. G, s. 7 (1).

When assessment may issue

(12)  Where the Minister is authorized to issue an assessment under subsection (11) by reason only that the corporation has filed a waiver under subclause (11) (a) (iv) or (v), the Minister may not issue an assessment later than one year after the date on which the corporation has,

(a) filed a notice of revocation of the waiver in the form approved by the Minister, where the waiver was filed under subclause (11) (a) (iv); or

(b) filed with the Minister a copy of the notice of revocation of the waiver filed under subsection 152 (4.1) of the Income Tax Act (Canada), where the waiver was filed with the Minister of National Revenue under subsection 152 (4) of that Act. R.S.O. 1990, c. C.40, s. 80 (12); 1997, c. 19, s. 4 (3); 2004, c. 16, s. 2 (2).

Deemed assessment

(13)  Where a corporation is exempt under subsection 75 (5) from the requirement to deliver a return under subsection 75 (1) for the taxation year, an original notice of assessment shall be deemed, for the purposes of subsection (11), to be sent to the corporation on the day that is six months after the end of the taxation year. R.S.O. 1990, c. C.40, s. 80 (13); 2004, c. 16, s. 2 (2).

Exception

(14)  Subsection (13) does not apply if the Minister sends an original notice of assessment to the corporation for the taxation year within fifty-four months after the end of the taxation year. R.S.O. 1990, c. C.40, s. 80 (14); 2004, c. 16, s. 2 (2).

Limitation

(15)  A reassessment, an additional assessment or an assessment may be made under clause (11) (b) after the normal reassessment period for the corporation in respect of the taxation year only to the extent that it may reasonably be regarded as relating to,

(a) a written request under subsection (16) or (16.1);

(b) the transaction referred to in subclause (11) (b) (ii);

(c) the additional payment or reimbursement referred to in subclause (11) (b) (iii);

(c.1) the allocation or notional transaction referred to in subclause (11) (b) (iii.1);

(d) dispositions and acquisitions of property referred to in subclause (11) (b) (iv);

(e) designations referred to in subsection 34 (10.3); or

(f) the deduction or claim referred to in section 5.2 or 5.3. R.S.O. 1990, c. C.40, s. 80 (15); 1998, c. 34, s. 55 (4); 1999, c. 9, s. 95 (2); 2001, c. 23, s. 53 (3); 2004, c. 16, s. 2 (2); 2006, c. 33, Sched. G, s. 7 (2).

Reassessment for loss carried back

(16)  If a corporation has delivered the return required by section 75 for a particular taxation year and, within three years after the day on or before which it was required to deliver the return, has delivered to the Minister a written request that the Minister permit any of the following deductions, the Minister shall reassess the tax payable by the corporation for any relevant taxation year, other than a taxation year preceding the particular taxation year, in order to take into account the deduction claimed:

1. A deduction under section 41 of the Income Tax Act (Canada), as made applicable by section 14 of this Act, in respect of the corporation’s listed-personal-property loss for a subsequent taxation year.

2. A deduction under section 111 of the Income Tax Act (Canada), as made applicable by section 34 of this Act, in respect of a loss for a subsequent taxation year. 2006, c. 33, Sched. G, s. 7 (3).

Reassessment, reduction in amount included in income under s. 91 (1), *Income Tax Act* (Canada)

(16.1)  If there is a reduction in the amount included under subsection 91 (1) of the Income Tax Act (Canada), as made applicable by subsection 30 (1) of this Act, in computing the income of a corporation for a particular taxation year, the Minister shall reassess the tax payable by the corporation for any relevant taxation year, other than a taxation year preceding the particular year, in order to take into account the reduction if,

(a) the corporation has delivered the return required under section 75 for the particular taxation year;

(b) the reduction is because of a reduction in the foreign accrual property income of a foreign affiliate of the corporation for a taxation year of the affiliate that ends in the particular year (in this subsection referred to as the affiliate’s “earlier year”),

(i) that is attributable to the amount prescribed under the Income Tax Regulations (Canada) to be the deductible loss of the affiliate for the affiliate’s earlier year that arose in a subsequent taxation year of the affiliate that ends in a subsequent taxation year of the corporation, and

(ii) that is included in the description of “F” in the definition of “foreign accrual property income” in subsection 95 (1) of the Income Tax Act (Canada), as it applies for the purposes of this Act, in respect of the affiliate for the affiliate’s earlier year; and

(c) within three years after the day on or before which the corporation was required to deliver the return for the particular year, the corporation has delivered to the Minister a written request to amend the return to take into account the reduction in the foreign accrual property income. 2006, c. 33, Sched. G, s. 7 (3).

Minister not bound by returns

(17)  The Minister is not bound by a return or information delivered by or on behalf of a corporation and may, despite a return or information so delivered or if no return or information has been delivered, assess the tax payable under this Act. R.S.O. 1990, c. C.40, s. 80 (17); 2004, c. 16, s. 2 (2).

Assessment valid and binding

(18)  An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding despite any error, defect or omission therein or in any proceeding under this Act relating thereto. R.S.O. 1990, c. C.40, s. 80 (18); 2004, c. 16, s. 2 (2).

Collection of debt under *Financial Administration Act*

(19)  A debt due to the Crown by a corporation under section 8.1 of the Financial Administration Act in respect of a payment under this Act may be collected and enforced under this Act as if it were tax payable by the corporation for the taxation year to which the payment relates, but the Minister must first send written notice of the debt to the corporation by mail. 1994, c. 14, s. 38 (4); 2004, c. 16, s. 2 (2).

Consequential assessment

(20)  Despite subsections (11) and (12), if the result of an assessment or decision on an appeal is to change a particular balance of a corporation for a particular taxation year, the Minister may, and if an officer of the corporation requests it in writing shall, before the later of the expiration of the normal reassessment period in respect of a subsequent taxation year and the period of one year after the day on which all rights of objection and appeal have expired or have been determined in respect of the particular taxation year, reassess the tax, interest, penalties and any other amounts payable under this Act by the corporation in respect of the subsequent taxation year, but only for the purpose of giving effect to any provision of this Act requiring the inclusion or allowing the deduction of an amount in computing the balance of the corporation for the subsequent year, to the extent that the inclusion or deduction can reasonably be considered to relate to the change in the particular balance of the corporation for the particular year. 2001, c. 23, s. 53 (4); 2004, c. 16, s. 2 (2).

Same

(21)  For the purposes of subsection (20), a balance of a corporation for a taxation year includes the income, taxable income, taxable income earned in Canada, taxable paid-up capital, taxable paid-up capital employed in Canada or a loss of the corporation for the year, and an amount payable by or owing to the corporation under this Act for the year. 1994, c. 14, s. 38 (4); 2004, c. 16, s. 2 (2).

Assessment consequential on election

(22)  Despite subsections (11), (12) and (15), where, under subsection 220 (3.2) of the Income Tax Act (Canada), the Minister of National Revenue has extended the time for making an election under that Act or has granted permission to amend or revoke an election made under that Act, the Minister shall make such assessment or reassessment of the tax, interest, penalties and any other amounts payable by the corporation in respect of any taxation year commencing before the day the application for the extension, amendment or revocation was made that is necessary to take into account the election, amended election or the revocation of the election, as the case may be. 1994, c. 14, s. 38 (4); 2004, c. 16, s. 2 (2).

Same

(23)  Divisions B, D, E and F of Part V apply with necessary modifications in respect of assessments and reassessments made under subsection (22). 1994, c. 14, s. 38 (4); 2004, c. 16, s. 2 (2).

Exception

(24)  Despite subsection (11), if requested by a corporation, the Minister shall make an assessment of tax, interest, penalties and any other amounts payable under this Act by the corporation in respect of a taxation year commencing after December 31, 1985 and ending before January 1, 1994 in order to allow a deduction to which the corporation is entitled under clause 62 (1) (e). 1994, c. 14, s. 38 (5); 2004, c. 16, s. 2 (2).

Exception, reassessment

(25)  Despite subsections (11), (12) and (15), the Minister may reassess and make additional assessments or assess tax, interest or penalties in respect of any item that affects a corporation’s liability or potential liability under this Act and which can be reasonably regarded as relating to an assessment action carried out by a taxing authority in respect of the corporation, if the reassessment, additional assessment or assessment is made by the Minister on or before the day that is the later of,

(a) the latest day on which a reassessment, additional assessment or assessment may be made under clause (11) (b) or (c); or

(b) unless a waiver has been filed under subsection (26), the day that is 365 days after the date of notification of the assessment action carried out by the taxing authority. 1996, c. 29, s. 62 (1); 2004, c. 16, s. 2 (2).

Exception, reassessment

(25.1)  Despite subsections (11), (12) and (15), the Minister may reassess and make additional assessments or assess tax, interest or penalties at any time to give effect to subsection 69 (11) of the Income Tax Act (Canada) as it applies for the purposes of this Act. 2001, c. 23, s. 53 (5); 2004, c. 16, s. 2 (2).

Reassessment, illegal payments

(25.2)  Despite subsections (11), (12) and (15), the Minister may reassess and make additional assessments or assess tax, interest or penalties at any time in respect of any taxation year ending before or after this subsection comes into force to give effect to subsection 67.5 (1) of the Income Tax Act (Canada), as made applicable by subsection 26 (1) of this Act. 2006, c. 33, Sched. G, s. 7 (4).

Waiver

(26)  A corporation may,

(a) file a waiver with the Minister, in a form approved by the Minister, permitting the Minister to assess, reassess or make additional assessments under subsection (25) after the last date on which the Minister could otherwise assess, reassess or make additional assessments under that subsection; and

(b) file with the Minister, in a form approved by the Minister, a revocation of a waiver previously filed under clause (a). 1996, c. 29, s. 62 (1); 2004, c. 16, s. 2 (2).

Same

(27)  If a corporation has filed a revocation of a waiver under subsection (26), the Minister may not issue a notice of assessment or reassessment later than one year after the date on which the corporation filed the revocation of the waiver. 1996, c. 29, s. 62 (1); 2004, c. 16, s. 2 (2).

Interpretation

(28)  For the purposes of subsection (25),

(a) an assessment action carried out by a taxing authority means one or more of the following actions carried out by the Minister of National Revenue under the Income Tax Act (Canada) or by the appropriate statutory authority under a statute of a province or territory of Canada that imposes a tax similar to a tax imposed under this Act,

(i) an assessment, reassessment or additional assessment of tax, interest or penalties,

(ii) a determination or redetermination of a loss or any other written notice of a change in a loss,

(ii.1) a written notice that no tax is payable,

(iii) the confirmation of an assessment, reassessment or additional assessment of tax, interest or penalties or of a determination or redetermination of a loss,

(iv) a determination of the corporation’s entitlement to a refundable tax credit or other refund;

(b) the date of notification of an assessment action carried out by a taxing authority is the day that is the later of,

(i) the day that the Minister receives notification from the corporation of all items that affect the corporation’s liability or potential liability under this Act which can reasonably be regarded as relating to the assessment action, or if the Minister does not receive notification from the corporation, the day that the Minister receives notification of the assessment action from the taxing authority, and

(ii) the ninetieth day after the day of mailing of a notice of the assessment action by the taxing authority to the corporation. 1996, c. 29, s. 62 (1); 2002, c. 22, s. 54; 2004, c. 16, s. 2 (2).

Limit on consequential amendments

(29)  In assessing or reassessing the amount of a corporation’s tax, interest or penalties for a taxation year, or in determining the corporation’s losses for a taxation year, neither section 5.2 nor section 5.3 applies in respect of any other taxation year unless the Minister issues a notice of assessment or reassessment for that other taxation year to give effect to the amount deemed to have been deducted or claimed under section 5.2 or 5.3, as the case may be. 1999, c. 9, s. 95 (3); 2004, c. 16, s. 2 (2).

Application of s. 160 of *Income Tax Act* (Canada)

(30)  Section 160 of the Income Tax Act (Canada) applies for the purposes of this Act, to the extent that the section applies in respect of corporations, with the following exceptions:

1. In the application of subsection 160 (2), a reference to “this Division” shall be read as a reference to Division C of this Part.

2. In the application of subsection 160 (2), a reference to “section 152” shall be read as a reference to this section. 2001, c. 23, s. 53 (5); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 40 (2).

**Section Amendments with date in force (d/m/y)**

1992, c. 3, s. 16 - 25/06/1992; 1994, c. 14, s. 38 (1-5) - 23/06/1994; 1996, c. 1, Sched. B, s. 13 (1, 3) - 23/02/1994; 1996, c. 1, Sched. B, s. 13 (2, 4) - 01/01/1995; 1996, c. 1, Sched. B, s. 13 (5) - 31/12/1991; 1996, c. 24, s. 30 - 08/05/1996; 1996, c. 29, s. 62 (1, 2) - 09/12/1996; 1997, c. 19, s. 4 (3) - 10/10/1997; 1997, c. 43, Sched. A, s. 46 (1) - 07/05/1997; 1997, c. 43, Sched. A, s. 46 (2) - 18/12/1997; 1998, c. 5, s. 23 - 01/11/1997; 1998, c. 34, s. 55 (1) - 01/07/1998; 1998, c. 34, s. 55 (2) - 01/01/1999; 1998, c. 34, s. 55 (3, 4) - 18/12/1998; 1999, c. 9, s. 95 (1-3) - 14/12/1999

[2001, c. 23, s. 53 (1, 3)](http://www.ontario.ca/laws/statute/S01023" \l "s53s1) - 01/01/2000; [2001, c. 23, s. 53 (2, 4, 5)](http://www.ontario.ca/laws/statute/S01023" \l "s53s2) - 05/12/2001

[2002, c. 22, s. 54](http://www.ontario.ca/laws/statute/S02022" \l "s54) - 30/10/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 40 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s40s1) - 16/12/2004

[2006, c. 33, Sched. G, s. 7 (1-4)](http://www.ontario.ca/laws/statute/S06033" \l "schedgs7s1) - 20/12/2006

Payment of assessment

**81** Every corporation shall pay, immediately on receipt of a notice of assessment or reassessment or of a statement of account in respect of a taxation year, any part of the tax, interest, penalties and any other amounts then unpaid in respect of the taxation year, whether or not an objection to or an appeal from an assessment in respect of the taxation year is outstanding. 1994, c. 14, s. 39 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 39 (1, 2) - 01/08/1995

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division D — Refunds of Overpayments

Refunds

**82** (1)  If a return required to be delivered by a corporation under section 75 for a taxation year is delivered within four years from the end of the taxation year, the Minister,

(a) may, upon mailing the notice of assessment for the taxation year, without application from the corporation, refund or pay the overpayment, if any, in respect of the taxation year, in the amount determined by the Minister to be the overpayment as of the day the Minister makes the determination; and

(b) subject to subsection (3), shall refund or pay the overpayment, if any, in respect of the taxation year in the amount determined by the Minister to be the overpayment as of the day the Minister makes the determination, after mailing the notice of assessment, if the corporation has applied for the refund or payment in writing within the period determined under clause 80 (11) (b) or (c), as the case may be, for that taxation year. R.S.O. 1990, c. C.40, s. 82 (1); 1994, c. 14, s. 40 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Where a corporation has paid instalments of tax in accordance with clause 78 (2) (a) in respect of a taxation year, the Minister may make a refund of such instalments prior to making his assessment under section 80 if application therefor has been made in writing by the corporation. R.S.O. 1990, c. C.40, s. 82 (2); 2004, c. 16, s. 2 (2).

Application to other liabilities

(3)  Instead of making a refund or payment under this section, if the corporation is liable or is about to become liable to make a payment under this Act or under any other Act administered by the Minister which imposes tax or is prescribed by the regulations, the Minister may apply the amount of the overpayment to the liability and, in such case, the Minister shall notify the corporation that such action was taken. 1994, c. 14, s. 40 (2); 2004, c. 16, s. 2 (2).

Interest allowed

(4)  Interest at the rate prescribed by the regulations shall be calculated and allowed daily to a corporation on the surplus in the corporation’s tax account for a taxation year, for each day there is a surplus in the tax account after the end of the instalment period for the taxation year. 1994, c. 14, s. 40 (3); 2004, c. 16, s. 2 (2).

Interest, after objection or appeal

(5)  Where, by a decision made under section 84 or 92 or by a court, it is finally determined that the tax payable under this Act by a corporation for a taxation year is less than the amount assessed under section 80 to which the objection was made or from which the appeal was taken, and as a result of the decision there is a surplus in the corporation’s tax account for a taxation year or in the corporation’s instalment account for a taxation year, the interest rate prescribed by the regulations for the purposes of this subsection, and not the rate prescribed for the purposes of subsection (4) or 83 (1), as the case may be, shall be used to determine the amount of interest for the purposes of those subsections, for each day that the surplus in the account is attributable to the decision. 1994, c. 14, s. 40 (3); 2004, c. 16, s. 2 (2).

No interest until return delivered

(6)  Despite subsection (4), if a return for a taxation year is delivered after the day on which it is required to be delivered, no interest shall be allowed for the period from the day the return was required to be delivered to the day after the day the return is delivered to the Minister. 1994, c. 14, s. 40 (3); 2004, c. 16, s. 2 (2).

Surplus in tax account defined

(7)  For the purposes of this Part, the surplus, if any, in a corporation’s tax account for a taxation year on a particular day is the amount by which,

(a) the total of,

(i) the amounts determined as of the particular day under subclauses 79 (2) (b) (i), (iii) and (iv) in respect of the taxation year, and

(ii) the interest allowed under subsection (4) in respect of the taxation year during the period after the end of the instalment period for the taxation year but before the particular day,

exceeds,

(b) the amount determined as of the particular day under clause 79 (2) (a) in respect of the taxation year. 1994, c. 14, s. 40 (3); 2004, c. 16, s. 2 (2).

Overpayment defined

(8)  For the purposes of subsection (1), an overpayment in respect of a taxation year of a corporation as of a particular day is an amount equal to the surplus as of that day in the corporation’s tax account for the taxation year as determined under this section, except that,

(a) when determining the amount included under clause (7) (b), the amount determined under subclause 79 (2) (a) (iii) shall not include either,

(i) the overpayment being determined, or

(ii) any refunds made under section 46 or 48 in respect of the taxation year; and

(b) subclause (7) (a) (i) shall be read without reference to subclause 79 (2) (b) (iv). 1994, c. 14, s. 40 (5); 2004, c. 16, s. 2 (2).

Interest off-set

(9)  Despite subsections (4) and 83 (1),

(a) the total interest allowed to a corporation on the surplus in its instalment account and in its tax account for a taxation year for the period from the first day of the instalment period for the taxation year to the day the most recent assessment or reassessment for the taxation year is made (in this subsection called the “assessment date”) shall be the amount, if any, by which,

(i) the amount determined under subclause 79 (9) (a) (ii) in respect of the corporation for the taxation year,

exceeds,

(ii) the amount determined under subclause 79 (9) (a) (i) in respect of the corporation for the taxation year; and

(b) the total interest allowed to a corporation on the surplus in its tax account for a taxation year for each statement period after the assessment date referred to in clause (a) shall be the amount, if any, by which the total interest allowed under subsection (4) for the particular statement period exceeds the total interest charged and payable for the statement period under subsection 79 (1). 1994, c. 14, s. 40 (5); 2004, c. 16, s. 2 (2).

Amended election

(10)  Despite subsection 1 (5.2) and subsections (4) and 83 (1), if the Minister has made an assessment or reassessment under subsection 80 (22) with respect to a particular taxation year, no interest shall be allowed under subsection (4) or 83 (1), to the extent that the interest is attributable to the assessment or reassessment made under subsection 80 (22), for the period before the day the application referred to in subsection 80 (22) was made to the Minister of National Revenue under subsection 220 (3.2) of the Income Tax Act (Canada). 1994, c. 14, s. 40 (6); 2004, c. 16, s. 2 (2).

Recovery of excess refund

(11)  If an amount in respect of a taxation year has been refunded or paid to a corporation under this Act or applied by the Minister to another liability of the corporation and the Minister subsequently determines that the amount refunded, paid or applied exceeded the amount to which the corporation was entitled under this Act,

(a) the amount of the excess shall be a liability of the corporation under this Act from the date the amount was refunded, paid or applied and the Minister may assess the corporation in respect thereof; and

(b) the provisions of Part V apply with necessary modifications to such assessment as though the assessment were made under subsection 80 (11). 1994, c. 14, s. 40 (7); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 40 (1, 3, 5) - 01/08/1995; 1994, c. 14, s. 40 (2, 4, 7) - 23/06/1994; 1994, c. 14, s. 40 (6) - 17/12/1991; 1996, c. 1, Sched. B, s. 14 - 23/02/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Interest on surplus in instalment account

**83** (1)  Interest at the rate prescribed by the regulations shall be computed and allowed daily to a corporation on the surplus in the corporation’s instalment account for a taxation year, for each day there is a surplus in the instalment account during the period from the last day of the first month in the instalment period to the end of the instalment period. 1994, c. 14, s. 41 (1); 2004, c. 16, s. 2 (2).

Surplus, instalment account

(2)  For the purposes of this Part, the surplus, if any, in a corporation’s instalment account for a taxation year on a particular day is the amount by which,

(a) the total of,

(i) the amount determined as of the particular day under subclause 79 (4.1) (b) (i) in respect of the taxation year, and

(ii) the interest allowed under subsection (1) in respect of the corporation’s instalment account for the taxation year for the period before the particular day,

exceeds,

(b) the amount determined as of the particular day under clause 79 (4.1) (a) in respect of the taxation year. 1994, c. 14, s. 41 (1); 2004, c. 16, s. 2 (2).

(3)  Repealed: 1994, c. 14, s. 41 (1).

(4)  Repealed: 1994, c. 14, s. 41 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 41 (1) - 01/08/1995; 1994, c. 14, s. 41 (2) - 01/01/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Division D.1 — Redirection of Payments

Redirection of payments, certain electricity corporations

**83.1** (1)  This section applies with respect to a corporation for a taxation year if all of the following criteria are met:

1. The corporation engages in the transmission, distribution or retail of electricity at any time during the taxation year or the assets of the corporation consist primarily of shares or debt obligations, or both, of one or more related corporations that are engaged in the transmission, distribution or retail of electricity at any time during the taxation year.

2. Subsection 90 (1) or 93 (2) of the Electricity Act, 1998 does not apply to the corporation for the taxation year.

3. Subsection 90 (1) or 93 (2) of the Electricity Act, 1998 applied for a prior taxation year to the corporation or to a predecessor corporation of the corporation.

4. The corporation meets such additional conditions as may be prescribed by regulation. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Same, assets transferred

(2)  If,

(a) a corporation (the “purchasing corporation”) that is not subject to the application of subsection 90 (1) or 93 (2) of the Electricity Act, 1998 acquires assets of another corporation (the “selling corporation”) other than shares or debt obligations held by the selling corporation;

(b) the selling corporation is subject to the application of this section or subsection 90 (1) or 93 (2) of the Electricity Act, 1998 at the time the assets are acquired by the purchasing corporation; and

(c) immediately after the assets are acquired, the property of the purchasing corporation consists primarily of the assets acquired from the selling corporation,

this section applies to the purchasing corporation for each taxation year that commences after the date on which the assets are acquired. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Exception

(3)  This section does not apply to a corporation for a taxation year if the corporation is a prescribed corporation or meets the conditions prescribed by regulation. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Payments by a corporation

(4)  Despite sections 2, 75, 78, 79, 81, 87 and 111, any amount required to be paid by a corporation under this Act in respect of the taxation year shall be paid to the Financial Corporation and not to the Minister. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Payments to a corporation

(5)  Despite sections 82 and 87, if a corporation is entitled to a refund or payment under this Act in respect of the taxation year, the Financial Corporation shall pay the refund or make the payment instead of the Minister. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Payments incorrectly made

(6)  If a corporation pays an amount to the Minister that should have been paid to the Financial Corporation under subsection (4),

(a) the Minister shall be deemed to have received the payment from the corporation on behalf of the Financial Corporation;

(b) the Minister shall immediately pay the amount he or she receives to the Financial Corporation; and

(c) the Minister may impose a charge of $200 on the corporation for each failure to comply with subsection (4), and the charge is payable to the Financial Corporation. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Collection and enforcement

(7)  All amounts payable by a corporation to the Financial Corporation under subsection (4) shall, for the purposes of Part VI, be considered to be amounts payable to Her Majesty and any amounts collected by the Minister from the corporation under Part VI in respect of an amount payable under subsection (4) shall be paid to the Financial Corporation. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Predecessor corporation

(8)  For the purposes of this section, a corporation is a predecessor corporation of another corporation (the “successor corporation”),

(a) if the corporation amalgamated with one or more other corporations to form the successor corporation or if the corporation was wound up and its assets transferred to the successor corporation; and

(b) if the assets of the successor corporation immediately after the amalgamation or wind-up consisted primarily of the assets of the predecessor corporation immediately before the amalgamation or wind-up,

and a predecessor corporation of a successor corporation includes a predecessor corporation of a corporation that is itself a predecessor corporation of the successor corporation. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Definition

(9)  In this section,

“Financial Corporation” has the meaning assigned by section 2 of the Electricity Act, 1998. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

Repeal

(10)  This section is repealed on the day on which Part V of the Electricity Act, 1998 is repealed under section 84.1 of that Act. 2002, c. 1, Sched. C, s. 2; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

R.S.O. 1990, c. C.40, s. 83.1 (10) - see [2002, c. 1, Sched. C, s. 2](http://www.ontario.ca/laws/statute/S02001" \l "schedcs2) - not in force

[2002, c. 1, Sched. C, s. 2](http://www.ontario.ca/laws/statute/S02001" \l "schedcs2) - 27/06/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 04/11/2004

Division E — Objections to Assessment

Notice of objection

**84** (1)  Subject to subsection 92 (3), a corporation that objects to an assessment may, within 180 days from the day of mailing of the notice of assessment, serve on the Minister a notice of objection in the form approved by the Minister. 1997, c. 43, Sched. A, s. 47 (1); 2004, c. 16, s. 2 (2).

Limitation of right to object to assessments or determinations

(1.0.1)  Despite subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Act by, or makes a determination in respect of, a corporation under any of the following provisions or in any of the following circumstances, the corporation may object to the assessment or determination within 180 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded as relating to any matter that gave rise to the assessment or determination and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the corporation to object to an assessment or determination issued or made before that time:

1. Subsection 5 (6), subclause 80 (11) (b) (i) or subsection 80 (16), (20), (22), (25) or (25.2).

2. An assessment or determination made in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment.

3. An assessment or determination made under subsection (5) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph 1 or 2.

4. An assessment made under a provision of a federal Act made applicable for the purposes of this Act that requires an assessment to be made that, but for that provision, would not be made because of a limitation described under section 80. 2005, c. 31, Sched. 5, s. 13 (1); 2006, c. 33, Sched. G, s. 8.

Facts and reasons to be given

(1.1)  The notice of objection shall,

(a) clearly describe each issue raised by way of objection; and

(b) fully set out the facts and reasons relied on by the corporation in respect of each issue. 1997, c. 43, Sched. A, s. 47 (1); 2004, c. 16, s. 2 (2).

Same

(1.2)  If a notice of objection does not fully set out the facts and reasons relied on by the corporation in respect of an issue, the Minister may in writing request the corporation to provide the information, and the corporation shall be deemed to have complied with clause (1.1) (b) in respect of the issue if the corporation provides the information to the Minister in writing within 60 days after the day the request is made by the Minister. 1997, c. 43, Sched. A, s. 47 (1); 2004, c. 16, s. 2 (2).

Limitation

(1.3)  A corporation shall not raise, by way of objection under this section to a reassessment or variation of assessment under subsection (5), any issue that the corporation is not entitled to raise by way of appeal under section 85 in respect of the reassessment or variation of assessment. 1997, c. 43, Sched. A, s. 47 (1); 2004, c. 16, s. 2 (2).

Assessment includes determination

(2)  For the purposes of this section and sections 85 to 92, an assessment includes a determination made by the Minister under subsection 80 (3) and a notice of assessment includes a notice of determination, a reassessment includes a redetermination by the Minister and an additional assessment includes an additional determination. R.S.O. 1990, c. C.40, s. 84 (2); 2004, c. 16, s. 2 (2).

Service

(3)  A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister or by such other method of service as the Minister prescribes. R.S.O. 1990, c. C.40, s. 84 (3); 1997, c. 43, Sched. A, s. 47 (2); 2004, c. 16, s. 2 (2).

Computation of time

(4)  For the purpose of calculating the number of days mentioned in subsection (1), (1.0.1), (1.2) or 85 (1), the day on which a notice of assessment or determination is mailed, a request is made under subsection (1.2) or a notification is given under subsection (5) is the date stated in the notice of assessment, determination, request or notification. 2005, c. 31, Sched. 5, s. 13 (2).

Reconsideration

(5)  Upon receipt of the notice of objection, the Minister shall with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess and shall thereupon notify the corporation of his or her action in writing. R.S.O. 1990, c. C.40, s. 84 (5); 1997, c. 43, Sched. A, s. 47 (4); 2004, c. 16, s. 2 (2).

Idem

(6)  A reassessment made by the Minister pursuant to subsection (5) is not invalid by reason only of not having been made within the time period described in clause 80 (11) (b) or (c). R.S.O. 1990, c. C.40, s. 84 (6); 2004, c. 16, s. 2 (2).

Reassessment, additional assessment or determination does not invalidate objection or appeal

(7)  Where a corporation has served a notice of objection to an assessment in accordance with this section or has instituted an appeal in accordance with section 85 and thereafter the Minister issues to the corporation,

(a) a reassessment or additional assessment of tax, interest or penalties under section 80; or

(b) a determination of the amount of a refund or loss under subsection 80 (1) or (2),

for the taxation year in respect of which the notice of objection was served or the appeal instituted, and sends to the corporation a notice of such reassessment, additional assessment or determination,

(c) the reassessment, additional assessment or determination does not invalidate the notice of objection or appeal, as the case may be; and

(d) the corporation may, if section 92 does not apply, serve an additional objection in respect of any new matters raised in the reassessments, additional assessment or determination, as the case may be. R.S.O. 1990, c. C.40, s. 84 (7); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 41.

Regulations

(8)  The Minister may make regulations prescribing methods of service for the purpose of subsection (3). 1997, c. 43, Sched. A, s. 47 (5); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 47 (1-5) - 18/12/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 41](http://www.ontario.ca/laws/statute/S04031" \l "sched9s41) - 16/12/2004

[2005, c. 31, Sched. 5, s. 13 (1, 2)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s13s1) - 15/12/2005

[2006, c. 33, Sched. G, s. 8](http://www.ontario.ca/laws/statute/S06033" \l "schedgs8) - 20/12/2006

Division F — Appeals

Appeal

**85** (1)  Where a corporation has served notice of objection to an assessment under section 84, the corporation may appeal to the Superior Court of Justice to have the assessment vacated or varied after the Minister has confirmed or reassessed, but no appeal under this section may be instituted after the expiration of ninety days from the day notice has been mailed to the corporation under section 84 that the Minister has confirmed the assessment or reassessed. R.S.O. 1990, c. C.40, s. 85 (1); 2001, c. 23, s. 54 (1); 2004, c. 16, s. 2 (2).

Limitation of right to appeal

(1.1)  Despite subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Act by, or makes a determination in respect of, a corporation under any of the following provisions or in any of the following circumstances, the corporation may appeal to the Superior Court of Justice within the time period set out in subsection (1), but only to the extent that the reasons for the appeal can reasonably be regarded as relating to any matter that gave rise to the assessment or determination and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the corporation to appeal from an assessment or determination issued or made before that time:

1. Subsection 5 (6), subclause 80 (11) (b) (i) or subsection 80 (16), (20), (22), (25) or (25.2).

2. An assessment or determination made in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment.

3. An assessment or determination made under subsection 84 (5) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph 1 or 2.

4. An assessment made under a provision of a federal Act made applicable for the purposes of this Act that requires an assessment to be made that, but for that provision, would not be made because of a limitation described under section 80. 2005, c. 31, Sched. 5, s. 14 (1); 2006, c. 33, Sched. G, s. 9.

Appeal, how instituted

(2)  An appeal to the Superior Court of Justice shall be instituted by,

(a) filing a notice of appeal with the court in the form approved by the Minister;

(b) paying a fee to the court in the same amount and manner as the fee payable under regulations made under the Administration of Justice Act on the issue of a statement of claim; and

(c) serving on the Minister a copy of the notice of appeal as filed. 1997, c. 43, Sched. A, s. 48; 2001, c. 23, s. 54 (2); 2004, c. 16, s. 2 (2).

Limitation

(2.1)  A corporation is entitled to raise by way of appeal only those issues raised by it in a notice of objection to the assessment being appealed and in respect of which it complied or was deemed to have complied with subsection 84 (1.1). 1997, c. 43, Sched. A, s. 48; 2004, c. 16, s. 2 (2).

Exception

(2.2)  Despite subsection (2.1), a corporation may raise by way of appeal an issue forming the basis of a reassessment or variation of assessment under subsection 84 (5) if the issue was not part of the assessment with respect to which the corporation served the notice of objection. 1997, c. 43, Sched. A, s. 48; 2004, c. 16, s. 2 (2).

Application, subss. (2.1) and (2.2)

(2.3)  Subsections (2.1) and (2.2) apply only in respect of appeals in respect of which the period of 90 days referred to in subsection (1) begins after December 31, 1997. 1997, c. 43, Sched. A, s. 48; 2004, c. 16, s. 2 (2).

Waived right of objection or appeal

(2.4)  Despite subsections (1) and (1.1), no corporation shall institute an appeal under this section to have an assessment vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by or on behalf of the corporation. 1997, c. 43, Sched. A, s. 48; 2004, c. 16, s. 2 (2); 2005, c. 31, Sched. 5, s. 14 (2).

Notice of appeal

(3)  A notice of appeal shall be served upon the Minister by being sent by registered mail addressed to the Minister. R.S.O. 1990, c. C.40, s. 85 (3); 2004, c. 16, s. 2 (2).

Statement of allegations

(4)  The corporation appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and reasons that it intends to submit in supporting its appeal. R.S.O. 1990, c. C.40, s. 85 (4); 2004, c. 16, s. 2 (2).

Motion to strike out notice of appeal

(5)  The Minister may move to the Superior Court of Justice to have a notice of appeal struck out in whole or in part. 2011, c. 9, Sched. 8, s. 2.

Notice of motion

(6)  The Minister shall give written notice of a motion under subsection (5) to the corporation appealing at least 21 days before the motion is made. 2011, c. 9, Sched. 8, s. 2.

Striking out notice of appeal

(7)  The court may strike out the notice of appeal in whole or in part upon being satisfied that one or more of the requirements of this section relating to a notice of appeal or to the instituting of an appeal have not been met. 2011, c. 9, Sched. 8, s. 2.

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 48 - 18/12/1997

[2001, c. 23, s. 54 (1, 2)](http://www.ontario.ca/laws/statute/S01023" \l "s54s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2005, c. 31, Sched. 5, s. 14 (1, 2)](http://www.ontario.ca/laws/statute/S05031" \l "sched5s14s1) - 15/12/2005

[2006, c. 33, Sched. G, s. 9](http://www.ontario.ca/laws/statute/S06033" \l "schedgs9) - 20/12/2006

[2011, c. 9, Sched. 8, s. 2](http://www.ontario.ca/laws/statute/S11009" \l "sched8s2) - 12/05/2011

Reply to notice of appeal

**86** The Minister shall with all due dispatch serve on the corporation appealing and file in the Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and all statutory provisions and reasons as the Minister intends to rely on, and, where the Minister has failed to serve the reply within 180 days from the date of service of the notice of appeal, the corporation may, upon twenty-one days notice to the Minister, apply to a judge of the Superior Court of Justice for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if he or she considers it proper in the circumstances, also order that, upon failure by the Minister to serve the reply in the time specified in the order, the assessment or part thereof, as the case may be, with respect to which the appeal is taken shall be vacated and any tax paid pursuant to such assessment or part thereof, as the case may be, shall be repaid to the corporation, but nothing in this section revives an appeal that is void or affects an assessment that has become valid and binding under subsection 80 (18). R.S.O. 1990, c. C.40, s. 86; 2001, c. 23, s. 55; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 55](http://www.ontario.ca/laws/statute/S01023" \l "s55) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Matter deemed action

**87** (1)  Upon the filing of the material referred to in sections 85 and 86 with the local registrar of the Superior Court of Justice, the matter shall be deemed to be an action in the court. R.S.O. 1990, c. C.40, s. 87 (1); 2001, c. 23, s. 56; 2004, c. 16, s. 2 (2).

(2)  Repealed: 1997, c. 43, Sched. A, s. 49.

Disposal of appeal

(3)  The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and,

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment. R.S.O. 1990, c. C.40, s. 87 (3); 2004, c. 16, s. 2 (2).

Court may order payment of tax, etc.

(4)  The court may in delivering judgment disposing of an appeal order payment or refund of tax, interest, penalties or costs by the corporation or the Minister, as the case may be. R.S.O. 1990, c. C.40, s. 87 (4); 2004, c. 16, s. 2 (2).

Settlement of appeal

(5)  Despite clauses 80 (11) (b) and (c), the Minister may at any time vacate the assessment, vary the assessment, assess or reassess in order to give effect to the terms of a settlement of the appeal that have been agreed to by the Minister and the corporation. 1998, c. 34, s. 56; 2004, c. 16, s. 2 (2).

Same

(6)  Sections 84 and 85 do not apply to an assessment or reassessment made under subsection (5). 1998, c. 34, s. 56; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 43, Sched. A, s. 49 - 18/12/1997; 1998, c. 34, s. 56 - 18/12/1998

[2001, c. 23, s. 56](http://www.ontario.ca/laws/statute/S01023" \l "s56) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Dismissing appeal for delay

**87.1** (1)  If the corporation appealing fails to set the appeal down for trial within seven years after it is instituted under section 85, the Minister may move to the Superior Court of Justice for an order dismissing the appeal for delay. 2011, c. 9, Sched. 8, s. 3.

Notice of motion

(2)  The Minister shall give written notice of a motion under subsection (1) to the corporation appealing at least 21 days before the motion is made. 2011, c. 9, Sched. 8, s. 3.

Order

(3)  At the hearing of the motion under subsection (1), the corporation appealing shall show cause why the appeal should not be dismissed for delay and the court may,

(a) if it is not satisfied that the appeal should proceed, dismiss the appeal for delay with or without costs; or

(b) if it is satisfied that the appeal should proceed,

(i) set time periods for completion of the remaining steps necessary to have the appeal placed on a trial list and order that it be placed on a trial list within a specified time, or

(ii) make such other order as is just. 2011, c. 9, Sched. 8, s. 3.

Setting aside dismissal

(4)  An order dismissing an appeal under this section may be set aside in accordance with the Rules of Civil Procedure. 2011, c. 9, Sched. 8, s. 3.

**Section Amendments with date in force (d/m/y)**

[2011, c. 9, Sched. 8, s. 3](http://www.ontario.ca/laws/statute/S11009" \l "sched8s3) - 12/05/2011

Proceedings closed

**88** Proceedings under this Division shall be closed to the public upon request made to the court by the corporation appealing or by the Minister. R.S.O. 1990, c. C.40, s. 88; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Superior Court of Justice practice to govern

**89** The practice and procedure of the Superior Court of Justice, including the right of appeal and the practice and procedure relating to appeals, apply to every matter deemed to be an action under section 87 and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court. R.S.O. 1990, c. C.40, s. 89; 2001, c. 23, s. 57; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 57](http://www.ontario.ca/laws/statute/S01023" \l "s57) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Irregularities

**90** An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act. R.S.O. 1990, c. C.40, s. 90; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Extension of time

**91** The time within which a notice of objection is to be served or an appeal is to be instituted may be extended by the Minister if application for extension is made,

(a) with respect to a notice of objection under subsection 84 (1),

(i) before the expiration of the time allowed under that subsection for service of the notice of objection, or

(ii) within one year from the day of mailing of the notice of assessment that is the subject of the objection, if the corporation provides an explanation satisfactory to the Minister explaining why the notice of objection could not be served within the time required by subsection 84 (1) and the Minister agrees to the extension of time; or

(b) with respect to an appeal, before the expiry of the time allowed under subsection 85 (1) for instituting the appeal. R.S.O. 1990, c. C.40, s. 91; 2001, c. 23, s. 58; 2004, c. 16, s. 2 (2); 2006, c. 33, Sched. G, s. 10.

**Section Amendments with date in force (d/m/y)**

[2001, c. 23, s. 58](http://www.ontario.ca/laws/statute/S01023" \l "s58) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2006, c. 33, Sched. G, s. 10 (1, 2)](http://www.ontario.ca/laws/statute/S06033" \l "schedgs10s1) - 20/12/2006

Alternative objection and appeal procedure

**92** (1)  Where,

(a) a notice of assessment is issued to a corporation under section 80 that states on the face thereof that the assessment or a designated part thereof has been made pursuant to this section (which assessment or part, as the case may be, is hereinafter referred to as the designated assessment);

(b) a notice of assessment has been issued to the corporation under the Income Tax Act (Canada) based on provisions in that Act corresponding to the provisions in this Act on which the designated assessment was based;

(c) the corporation has served a notice of objection to the assessment referred to in clause (b) in which the same issues have been raised as would have been raised in an objection to the designated assessment; and

(d) the corporation has not served in accordance with section 84 a notice of objection to the designated assessment,

this section applies to the designated assessment, and in any such case, sections 84 to 90 do not apply, but those sections do apply to the part, if any, of the assessment referred to in clause (a) that is not a designated assessment. R.S.O. 1990, c. C.40, s. 92 (1); 2004, c. 16, s. 2 (2).

Corporation and Minister bound

(2)  The corporation and the Minister shall, with respect to a designated assessment to which this section applies or a specified assessment that has met the conditions under clause (3) (b), be bound by,

(a) the decision of the Minister of National Revenue for Canada from which no appeal is taken in accordance with the Income Tax Act (Canada); or

(b) where an appeal is instituted, the final disposition of the appeal by the Tax Court of Canada or any court of competent jurisdiction; or

(c) any minutes of settlement of the issues raised in the notice of objection to the assessment referred to in clause (1) (b) made between the corporation and the Minister of National Revenue for Canada at any stage of the proceedings following the service of that notice of objection. R.S.O. 1990, c. C.40, s. 92 (2); 2002, c. 22, s. 55 (1); 2004, c. 16, s. 2 (2).

Reassessment

(2.1)  If necessary, the Minister shall reassess the corporation in accordance with the decision referred to in clause (2) (a), the final disposition referred to in clause (2) (b) or the minutes of settlement referred to in clause (2) (c), as the case may be, and shall also change the tax payable by the corporation under Part II.1, III or IV to the extent that the change can reasonably be considered to relate to the reassessment. 2002, c. 22, s. 55 (2); 2004, c. 16, s. 2 (2).

Application of ss. 84 to 90

(3)  Sections 84 to 90 do not apply,

(a) to a reassessment referred to in subsection (2.1) of tax payable under Part II; and

(b) to a specified assessment if the corporation has served a notice of objection to the assessment or determination issued under the Income Tax Act (Canada), referred to in clause (5) (c), in which the same issues have been raised as would have been raised in an objection to the specified assessment. R.S.O. 1990, c. C.40, s. 92 (3); 2002, c. 22, s. 55 (3); 2004, c. 16, s. 2 (2).

Idem

(4)  A reassessment made by the Minister pursuant to subsection (2.1) is not invalid by reason only of not having been made within the time period described in clause 80 (11) (b) or (c). R.S.O. 1990, c. C.40, s. 92 (4); 2002, c. 22, s. 55 (4); 2004, c. 16, s. 2 (2).

Specified assessment, defined

(5)  For the purposes of this Part, an assessment in respect of a particular taxation year, or a part thereof, is a specified assessment if,

(a) the assessment or the part thereof, as applicable, states on its face that it is a specified assessment under this section;

(b) the assessment or the part thereof, as applicable, is an assessment or determination involving the application of section 5 in respect of the taxation year; and

(c) a notice of assessment or determination has been issued to the corporation under the Income Tax Act (Canada) involving the application of section 245 of that Act in respect of the same taxation year or transaction. R.S.O. 1990, c. C.40, s. 92 (5); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2002, c. 22, s. 55 (1-4)](http://www.ontario.ca/laws/statute/S02022" \l "s55s1) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

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

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

1. The application is to determine one or more issues of law that depend solely on the interpretation of,

i. this Act or the regulations, or

ii. this Act or the regulations and another Ontario statute or regulation.

2. The Minister has indicated in writing that the Minister is satisfied that it is in the public interest for the applicant to make the application.

3. The Minister and the applicant have executed a statement of agreed facts on which they both intend to rely and the applicant files the statement as part of the applicant’s application record.

4. No facts remain in dispute between the Minister and the applicant that either of them believes may be relevant to the determination of any issue of law that is a subject of the application. 2006, c. 33, Sched. G, s. 11.

Application of rule 38.10, Rules of Civil Procedure

(2)  Rule 38.10 of the Rules of Civil Procedure does not apply to an application referred to in this section, except that the presiding judge may, on the hearing of the application, adjourn the application in whole or in part and with or without terms under clause 38.10 (1) (a) of that rule. 2006, c. 33, Sched. G, s. 11.

Disposition of application

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

(a) making a declaration of law in respect of one or more issues of law forming the subject of the application;

(b) declining to make a declaration of law in respect of any of the issues of law forming the subject of the application; or

(c) dismissing the application. 2006, c. 33, Sched. G, s. 11.

Effect of declaration of law

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

(a) shall be binding on the Minister and the applicant except in relation to the facts agreed to by them in the proceeding; or

(b) shall otherwise affect the rights of the Minister or the applicant in any appeal instituted under this Act. 2006, c. 33, Sched. G, s. 11.

No applications under subrule 14.05 (3)

(5)  No person other than the Minister may bring an application under subrule 14.05 (3) of the Rules of Civil Procedure on or after the day this section comes into force, in respect of any matter arising under this Act. 2006, c. 33, Sched. G, s. 11.

Other proceedings

(6)  On the motion of the Minister, the court shall dismiss a proceeding commenced by an application under rule 14.05 of the Rules of Civil Procedure relating to a matter under this Act or the regulations if any condition in subsection (1) has not been satisfied or the application is prohibited under subsection (5). 2006, c. 33, Sched. G, s. 11.

**Section Amendments with date in force (d/m/y)**

[2006, c. 33, Sched. G, s. 11](http://www.ontario.ca/laws/statute/S06033" \l "schedgs11) - 20/12/2006

Division G — Part II.2 Objections and Appeals

Rules for objections and appeals, Part II.2

**92.2** (1)  Sections 84 to 92.1 do not apply in respect of any matter relevant in determining whether a corporation is entitled to a refund under Part II.2 or the amount of any refund under that Part. 2008, c. 24, s. 3.

Objection

(2)  A corporation may object to a determination or revised determination made by the Minister of Revenue under section 57.17 by serving on the Minister of Revenue a notice of objection in a form approved by the Minister of Revenue. 2008, c. 24, s. 3.

Time

(3)  The notice of objection must be served not later than 90 days after the day on which the notice of determination or revised notice of determination is sent. 2008, c. 24, s. 3.

Issues on objection

(4)  In an objection under subsection (2), the corporation may raise issues only about whether the corporation is a qualifying corporation for the purposes of Part II.2 for a taxation year. 2008, c. 24, s. 3.

Content of notice of objection

(5)  The notice of objection shall,

(a) clearly describe each issue raised by way of objection; and

(b) fully set out the facts and reasons relied on by the corporation in respect of each issue. 2008, c. 24, s. 3.

Additional information

(6)  If a notice of objection does not fully set out the facts and reasons relied on by the corporation in respect of an issue, the Minister of Revenue may in writing request the corporation to provide the information, and the corporation is deemed to have complied with clause (5) (b) in respect of the issue if it provides the information to the Minister of Revenue in writing within 60 days after the day the request is made by the Minister of Revenue, but if the corporation does not comply within that time, the Minister of Revenue may, at his or her discretion, consider the notice of objection to be void and the determination or revised determination of the Minister of Revenue under section 57.17 to be final and binding. 2008, c. 24, s. 3.

Calculating time limits

(7)  For the purposes of calculating the number of days mentioned in subsections (3) and (6),

(a) a notice of determination or a revised notice of determination referred to in subsection (3) is deemed to have been sent on the date stated in the notice; and

(b) a request for information under subsection (6) is deemed to have been made on the date stated in the notice. 2008, c. 24, s. 3.

Service of notice of objection

(8)  Service of a notice of objection under this section shall be by registered mail addressed to the Minister of Revenue or by another method that is prescribed by the Minister of Finance. 2008, c. 24, s. 3.

Same

(9)  The Minister of Revenue may accept a notice of objection under this section even though the notice was not served in the manner required by subsection (8). 2008, c. 24, s. 3.

Extension of time

(10)  The time within which a notice of objection is to be served may be extended by the Minister of Revenue if application for the extension is made within 180 days from the day of mailing of the notice of determination or revised notice of determination which is the subject of the objection. 2008, c. 24, s. 3.

Reconsideration by Minister of Revenue

(11)  Upon receipt of a notice of objection, the Minister of Revenue shall, as quickly as possible, reconsider whether the corporation was a qualifying corporation for the taxation year for the purposes of Part II.2. 2008, c. 24, s. 3.

Notification

(12)  The Minister of Revenue shall notify the corporation in writing of whether he or she is confirming the determination that the corporation is not a qualifying corporation for the taxation year for the purposes of Part II.2 or making a new determination that the corporation is a qualifying corporation for the taxation year for the purposes of Part II.2. 2008, c. 24, s. 3.

Decision final

(13)  The decision of the Minister of Revenue under subsection (12) is final and is not subject to appeal unless the decision involves the interpretation of a provision of this Act or involves an issue solely of law. 2008, c. 24, s. 3.

Appeal on question of law

(14)  If a corporation disagrees with the decision of the Minister of Revenue under subsection (12), the corporation and the Minister of Revenue may agree in writing as to the undisputed facts and then the Minister of Revenue may apply to the Superior Court of Justice to have the issue in dispute determined if,

(a) under subsection (4), the issue in dispute may be raised on an objection; and

(b) the issue in dispute involves the interpretation of a provision of this Act or is solely an issue of law in which no facts are in dispute, or the issue in dispute involves the proper inference to be drawn from facts that are not in dispute. 2008, c. 24, s. 3.

Same

(15)  If the Minister of Revenue does not apply to the court under subsection (14) within six months after the date on which the Minister of Revenue and the corporation have both agreed in writing on the facts, the corporation may apply to the court to have the issue determined. 2008, c. 24, s. 3.

**Section Amendments with date in force (d/m/y)**

[2008, c. 24, s. 3](http://www.ontario.ca/laws/statute/S08024" \l "s3) - 10/12/2008

PART VI  
ADMINISTRATION AND ENFORCEMENT

Audit and inspection

**93** (1)  Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are or should be kept pursuant to this Act, and,

(a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act;

(b) examine property described by an inventory or any property, process or matter an examination of which may, in the person’s opinion, assist him or her in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act; and

(c) require the president, manager, secretary or any director, agent or representative of the corporation liable to pay or considered possibly liable to pay tax under this Act and any other person on the premises of such corporation to give all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or, if he or she so requires, in writing, on oath or affirmation or by statutory declaration and, for that purpose, require such person to attend at the premises or place with him or her. R.S.O. 1990, c. C.40, s. 93 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  The Minister may, for any purpose relating to the administration or enforcement of this Act, by registered letter or by a demand served personally or delivered by a courier service, require from any corporation or from the president, manager, secretary, or any director, agent or representative thereof,

(a) any information or additional information or a return as required by section 75 or a supplementary return; or

(b) production, or production on oath or affirmation, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein. R.S.O. 1990, c. C.40, s. 93 (2); 2001, c. 23, s. 59 (1); 2004, c. 16, s. 2 (2).

Idem

(3)  The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally or delivered by a courier service, require from any person, partnership, syndicate, trust or corporation holding or paying or liable to pay any portion of the income of the corporation, or from any partner, agent or official of any such person, partnership, syndicate, trust or corporation, production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents, within such reasonable time as is stipulated therein. R.S.O. 1990, c. C.40, s. 93 (3); 2001, c. 23, s. 59 (2); 2004, c. 16, s. 2 (2).

Idem

(4)  The Minister may, by registered letter or by a demand served personally or delivered by a courier service, require the production, under oath or affirmation or otherwise, by any person, partnership, syndicate, trust or corporation, or by his, her or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his, her or its agent or officer, for the purpose of determining what tax, if any, is payable under this Act by any corporation and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand. R.S.O. 1990, c. C.40, s. 93 (4); 2001, c. 23, s. 59 (3); 2004, c. 16, s. 2 (2).

Deemed receipt of registered letter

(4.1)  A registered letter sent to a person or entity under subsection (2), (3) or (4) is deemed to have been received on the fifth day after the day of mailing unless the person or entity to whom it is sent establishes that, although acting in good faith, the person or entity did not receive it or did not receive it until a later date. 2011, c. 9, Sched. 8, s. 4.

Idem

(5)  The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Ministry of Finance, to make such inquiry as he or she deems necessary with reference to anything relating to the administration or enforcement of this Act. R.S.O. 1990, c. C.40, s. 93 (5); 1994, c. 14, s. 42 (1); 2004, c. 16, s. 2 (2).

Copies

(6)  Where a book, record or other document has been examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Finance may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister, or a person authorized by the Minister, to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way. 1994, c. 14, s. 42 (2); 2004, c. 16, s. 2 (2).

Print-out admissible in evidence

(6.1)  If a return, document or any information has been delivered by a person to the Minister on computer disk or other electronic medium, or by electronic filing as permitted under this Act, a document, accompanied by the certificate of the Minister, or of a person authorized by the Minister, stating that the document is a print-out of the return, document or information received by the Minister from the person and certifying that the information contained in the document is a true and accurate representation of the return, document or information delivered by the person, is admissible in evidence and shall have the same probative force as the original return, document or information would have had if it had been delivered in paper form. 1994, c. 14, s. 42 (2); 2004, c. 16, s. 2 (2).

Same

(6.2)  The Minister or a person authorized by the Minister may, for any purpose related to the administration or enforcement of this Act, reproduce from original data stored electronically any document previously issued by the Minister under this Act, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way. 1994, c. 14, s. 42 (2); 2004, c. 16, s. 2 (2).

Same

(6.3)  If the data contained on a return or other document received by the Minister from a person has been stored electronically by the Minister on computer disk or other electronic medium and the return or other document has been destroyed by a person so authorized by the Minister, a document, accompanied by the certificate of the Minister or of a person authorized by the Minister, stating that the document is a print-out of the data contained on the return or other document received and stored electronically by the Minister and certifying that the information contained in the document is a true and accurate representation of the data contained on the return or document delivered by the person, is admissible in evidence and shall have the same probative force as the original return or document would have had if it had been proved in the ordinary way. 1994, c. 14, s. 42 (2); 2004, c. 16, s. 2 (2).

Compliance

(7)  No person shall hinder or molest or interfere with any person doing anything that he or she is authorized by this section to do or prevent or attempt to prevent any person doing any such thing and, despite any other law to the contrary, every person shall, unless unable to do so, do everything the person is required by this section to do. R.S.O. 1990, c. C.40, s. 93 (7); 2004, c. 16, s. 2 (2).

Administration of oaths and affirmations

(8)  Declarations or affidavits in connection with returns delivered under this Act or statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or affirmation, or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. R.S.O. 1990, c. C.40, s. 93 (8); 2004, c. 16, s. 2 (2).

Application of *Public Inquiries Act, 2009*

(9)  Section 33 of the Public Inquiries Act, 2009 apply to an inquiry authorized under subsection (5). 2009, c. 33, Sched. 6, s. 49.

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 42 (1, 2) - 23/06/1994

[2001, c. 23, s. 59 (1-3)](http://www.ontario.ca/laws/statute/S01023" \l "s59s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2009, c. 33, Sched. 6, s. 49](http://www.ontario.ca/laws/statute/S09033" \l "sched6s49) - 01/06/2011

[2011, c. 9, Sched. 8, s. 4](http://www.ontario.ca/laws/statute/S11009" \l "sched8s4) - 12/05/2011

Books and records

**94** (1)  Every corporation that is required by this Act to pay taxes shall keep records and books of account, including an annual inventory kept in the same manner as is required for purposes of the Income Tax Act (Canada) and the regulations made thereunder at its permanent establishment in Ontario or at such other place as is designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act to be determined. R.S.O. 1990, c. C.40, s. 94 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Where a corporation has failed to keep adequate records and books of account for the purpose of this Act, the Minister may require the corporation to keep such records and books of account as he or she specifies and the corporation shall thereafter keep records and books of account as so required. R.S.O. 1990, c. C.40, s. 94 (2); 2004, c. 16, s. 2 (2).

Idem

(3)  Every corporation required by this section to keep records and books of account shall, until written permission for their disposal is obtained from the Minister, retain every such record or book of account and every account or voucher necessary to verify the information in any such records or books of account. R.S.O. 1990, c. C.40, s. 94 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Offences

**95** (1)  Every corporation that has failed to deliver a return as and when required by this Act or the regulations is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of not less than $200 for each day of default. R.S.O. 1990, c. C.40, s. 95 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  Every person who has failed to comply with or contravened section 93 or 94 is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of $200 for each day during which the default continues. R.S.O. 1990, c. C.40, s. 95 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Officers, etc., of corporations

**96** Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. R.S.O. 1990, c. C.40, s. 96; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Time for laying information

**97** An information in respect of an offence against this Act shall be laid within six years of the time when the matter of the information arose. R.S.O. 1990, c. C.40, s. 97; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Confidentiality

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

(a) as may be required in connection with the administration or enforcement of this Act, another Act administered by the Minister, the Taxation Act, 2007 or the regulations under any of them;

(b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario or the Government of Canada;

(c) to his or her legal counsel; or

(d) with the consent of the person to whom the information or material relates. R.S.O. 1990, c. C.40, s. 98 (1); 1994, c. 14, s. 43; 2004, c. 16, s. 2 (2); 2007, c. 11, Sched. B, s. 2 (17).

Offence and penalty

(2)  Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than $2,000. R.S.O. 1990, c. C.40, s. 98 (2); 2004, c. 16, s. 2 (2).

Exception

(3)  Despite subsection (1), the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. R.S.O. 1990, c. C.40, s. 98 (3); 2004, c. 16, s. 2 (2).

Exception

(4)  Despite subsection (1), upon the request of the Minister of Consumer and Business Services, the Minister of Finance may give the following information that has been given to him or her by a corporation to an authorized person employed in the Ministry of Consumer and Business Services or an authorized agent of that Ministry for the purposes of the administration of the Corporations Information Act:

1. The name and mailing address of the corporation.

2. The address of the corporation’s registered office or head office, the location of its books and records, and the name, telephone number and fax number of the individual to contact about the books and records.

3. If the corporation is an extra-provincial corporation within the meaning of the Corporations Information Act, the address of its principal place of business in Ontario and any former names of the corporation.

4. The corporation’s tax account number with the Ministry of Finance, its business number with the Canada Revenue Agency and its Ontario Corporation Number with the Ministry of Consumer and Business Services.

5. The taxation year of the corporation.

6. The jurisdiction and date of the incorporation or amalgamation of the corporation.

7. If the corporation was not incorporated in Ontario, the date it commenced business activity in Ontario and, if applicable, the date it ceased business activity in Ontario.

8. The corporation’s preferred official language.

9. The name and title of the individual certifying that the information provided to the Minister of Finance is true, correct and complete.

10. Such other non-financial information as may be prescribed by regulation.

11. Any change in the information described in paragraphs 1 to 10 of which the Minister of Finance becomes aware. 1999, c. 9, s. 96; 2001, c. 9, Sched. D, s. 13; 2004, c. 16, s. 2 (2).

Regulations

(5)  The Minister may make regulations for the purposes of paragraph 10 of subsection (4) in respect of one or more corporations, and any such regulation is effective with reference to a period before it is filed, if it so provides. 1999, c. 9, s. 96; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 43 - 23/06/1994; 1999, c. 9, s. 96 - 01/01/2000

[2001, c. 9, Sched. D, s. 13](http://www.ontario.ca/laws/statute/S01009" \l "schedds13) - 29/06/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2007, c. 11, Sched. B, s. 2 (17)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s17) - 04/06/2007

[CTS 16 MR 10 - 1](https://www.ontario.ca/laws/consolidated-statutes-change-notices)

Agreement with Minister of National Revenue

**98.1** (1)  The Minister of Finance, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, enter into an agreement with the Minister of National Revenue for the provision of services by the Canada Revenue Agency relating to the administration and enforcement of this Act on behalf of the Minister of Finance. 2006, c. 9, Sched. D, s. 4.

Agreement may apply to other Acts

(2)  An agreement under subsection (1) may provide that the Canada Revenue Agency also supply services relating to the administration and enforcement on behalf of the Minister of Finance of the Mining Tax Act and the provisions of the Electricity Act, 1998 relating to amounts payable under section 89, 90, 93 or 94 of that Act. 2006, c. 9, Sched. D, s. 4.

Agreement applies to regulations

(3)  An agreement under subsection (1) may provide for services related to the administration or enforcement of one or more regulations made under an Act to which the agreement applies. 2006, c. 9, Sched. D, s. 4.

Provisions to be prescribed

(4)  An agreement under subsection (1) shall provide that the Canada Revenue Agency supply services related to the administration and enforcement of only,

(a) the provisions of an Act to which the agreement applies that are prescribed by the Minister by regulation; and

(b) the provisions of a regulation to which the agreement applies that are prescribed by the Minister by regulation. 2006, c. 9, Sched. D, s. 4.

Effect of agreement

(5)  If an agreement under subsection (1) is entered into,

(a) the Commissioner of Revenue, on behalf of and as agent for the Minister, is authorized, subject to the provisions of the agreement and the regulations, to exercise all the powers and perform all the duties of the Minister under a provision of an Act or regulation to which the agreement applies that is prescribed by the Minister by regulation; and

(b) any reference to the Minister in a provision of an Act or regulation that the Commissioner of Revenue is authorized to administer under the agreement shall be read to include a reference to the Commissioner of Revenue and, similarly, a reference to the Ministry of Finance shall include a reference to the Canada Revenue Agency. 2006, c. 9, Sched. D, s. 4.

Delegation

(6)  The Commissioner of Revenue may authorize any employee of the Canada Revenue Agency or any class of employees of the Canada Revenue Agency to exercise the powers and perform the duties referred to in clause (5) (a) that may be exercised or performed by the Commissioner of Revenue, subject to such conditions as may be set out in the authorization, the agreement and the regulations. 2006, c. 9, Sched. D, s. 4.

Minister deemed to have exercised power and performed duty

(7)  The Minister shall be deemed to have exercised every power and performed every duty that is exercised or performed in accordance with this section, the regulations and the agreement by the Commissioner of Revenue or by an employee or class of employees authorized under subsection (6). 2006, c. 9, Sched. D, s. 4.

Agreement to amend the agreement

(8)  The Minister, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, enter into one or more agreements to amend the provisions of an agreement entered into under this section. 2006, c. 9, Sched. D, s. 4.

Payment of fees under agreement

(9)  All fees and other amounts payable to the Government of Canada under an agreement entered into under this section are a charge on and payable out of the Consolidated Revenue Fund. 2006, c. 9, Sched. D, s. 4.

Regulations

(10)  The Minister may make regulations,

(a) prescribing one or more provisions of this Act or the regulations for the purposes of an agreement under subsection (1);

(b) prescribing one or more provisions of the Mining Tax Act, the Electricity Act, 1998 or the regulations made under those Acts to which an agreement under subsection (1) applies;

(c) governing the exercise of the Minister’s powers and the performance of the Minister’s duties relating to the administration and enforcement, by the Commissioner of Revenue or by an employee or class of employees authorized under subsection (6), of an Act or regulation to which an agreement under subsection (1) applies. 2006, c. 9, Sched. D, s. 4.

Definition

(11)  In this section,

“Commissioner of Revenue” means the Commissioner of Revenue appointed under section 25 of the Canada Revenue Agency Act (Canada). 2006, c. 9, Sched. D, s. 4.

**Section Amendments with date in force (d/m/y)**

[2006, c. 9, Sched. D, s. 4](http://www.ontario.ca/laws/statute/S06009" \l "schedds4) - 18/05/2006

Collection

Lien on real property

**99** (1)  Any amount payable or required to be remitted under this Act by any person is, upon registration by the Minister in the proper land registry office of a notice claiming a lien and charge conferred by this section, a lien and charge on any interest the corporation liable to pay or remit the amount has in the real property described in the notice. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Lien on personal property

(2)  Any amount payable or required to be remitted under this Act by any person is, upon registration by the Minister with the registrar under the Personal Property Security Act of a notice claiming a lien and charge under this section, a lien and charge on any interest in personal property in Ontario owned or held at the time of registration or acquired afterwards by the corporation liable to pay or remit the amount. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Amounts included and priority

(3)  The lien and charge conferred by subsection (1) or (2) is in respect of all amounts for which the corporation is liable under this Act at the time of registration of the notice or any renewal of it and all amounts for which the corporation afterwards becomes liable while the notice remains registered and, upon registration of a notice of lien and charge, the lien and charge has priority over,

(a) any perfected security interest registered after the notice is registered;

(b) any security interest perfected by possession after the notice is registered; and

(c) any encumbrance or other claim that is registered against or that otherwise arises and affects the corporation’s property after the notice is registered. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Same

(4)  For the purposes of subsection (3), a lien and charge referred to in subsection (2) does not have priority over a perfected purchase money security interest in collateral or its proceeds and shall be deemed to be a security interest perfected by registration for the purposes of the priority rules under section 28 of the Personal Property Security Act. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Lien effective

(5)  A notice of lien and charge under subsection (2) is effective from the time assigned to its registration by the registrar or branch registrar and expires on the fifth anniversary of its registration unless a renewal notice of lien and charge is registered under this section before the end of the five-year period, in which case the lien and charge remains in effect for a further five-year period from the date the renewal notice is registered. 2001, c. 23, s. 60; 2004, c. 16, s. 2 (2).

Same

(6)  Where any amount payable or required to be remitted under this Act remains outstanding and unpaid at the end of the period, or its renewal, referred to in subsection (5), the Minister may register a renewal notice of lien and charge; the lien and charge remains in effect for a five-year period from the date the renewal notice is registered, until the amount is fully paid, and shall be deemed to be continuously registered since the initial notice of lien and charge was registered under subsection (2). 2001, c. 23, s. 60; 2004, c. 16, s. 2 (2).

Where corporation not registered owner

(7)  Where a corporation has an interest in real property but is not shown as its registered owner in the proper land registry office,

(a) the notice to be registered under subsection (1) shall recite the interest of the corporation in the real property; and

(b) a copy of the notice shall be sent to the registered owner at the owner’s address to which the latest notice of assessment under the Assessment Act has been sent. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Secured party

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

(a) all the rights, remedies and duties of a secured party under sections 17, 59, 61, 62, 63 and 64, subsections 65 (4), (5), (6) and (7) and section 66 of the Personal Property Security Act;

(b) a security interest in the collateral for the purpose of clause 63 (4) (c) of that Act; and

(c) a security interest in the personal property for the purposes of sections 15 and 16 of the Repair and Storage Liens Act, if it is an article as defined in that Act. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Registration of documents

(9)  A notice of lien and charge under subsection (2) or any renewal of it shall be in the form of a financing statement or a financing change statement as prescribed under the Personal Property Security Act and may be tendered for registration at a branch office established under Part IV of that Act, or by mail addressed to an address prescribed under that Act. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Errors in documents

(10)  A notice of lien and charge or any renewal thereof is not invalidated nor is its effect impaired by reason only of an error or omission in the notice or in its execution or registration, unless a reasonable person is likely to be materially misled by the error or omission. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

*Bankruptcy and Insolvency Act* (Canada) unaffected

(11)  Subject to Crown rights provided under section 87 of the Bankruptcy and Insolvency Act (Canada), nothing in this section affects or purports to affect the rights and obligations of any person under that Act. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

Definition

(12)  In this section,

“real property” includes fixtures and any interest of a corporation as lessee of real property. 1994, c. 14, s. 44 (1); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 44 (1-3) - 23/06/1994

[2001, c. 23, s. 60](http://www.ontario.ca/laws/statute/S01023" \l "s60) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Garnishment

**100** (1) When the Minister has knowledge or suspects that a person (a “third party”) is or will be, within 365 days, liable to make any payment to a corporation (a “garnishee”) liable to make a payment under this Act, the Minister may, by registered letter or by letter served personally, require the third party to pay forthwith, where the money is immediately payable and, in any other case, as and when the money becomes payable, to the Minister any money that is otherwise payable by the third party to the garnishee in whole or in part on account of the garnishee’s liability under this Act. 2001, c. 23, s. 61 (1); 2004, c. 16, s. 2 (2).

Same

(2)  If the Minister has knowledge or suspects that within 365 days,

(a) a bank, credit union, trust corporation or other similar person (in this section referred to as the “institution”) will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a corporation which is indebted to the institution and which has granted security in respect of the indebtedness; or

(b) a person other than an institution will loan or advance money to, or make a payment on behalf of, a corporation which the Minister knows or suspects,

(i) is engaged in providing services or property to that person, or was or will be within 365 days, or

(ii) where that person is a corporation which is not dealing at arm’s length with the first mentioned corporation,

the Minister may, by registered letter or by a letter served personally, require the institution or the person, as the case may be, to pay in whole or in part to the Minister, on account of the corporation’s liability under this Act, the money that would otherwise be loaned, advanced or paid, and any money paid to the Minister shall be deemed to have been loaned, advanced or paid, as the case may be, to the corporation. R.S.O. 1990, c. C.40, s. 100 (2); 1994, c. 14, s. 45 (1, 2); 1997, c. 43, Sched. A, s. 50; 2004, c. 16, s. 2 (2); 2011, c. 9, Sched. 8, s. 5.

Idem

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

(a) the requirement shall apply to all such periodic payments to be made by the person to the corporation after the date of receipt of the Minister’s letter, until the corporation’s liability under this Act has been satisfied; and

(b) the payments required to be made to the Minister shall be made from each such periodic payment in the amount or amounts designated in the Minister’s letter. R.S.O. 1990, c. C.40, s. 100 (3); 1994, c. 14, s. 45 (1); 2004, c. 16, s. 2 (2).

Idem

(4)  The receipt of the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. R.S.O. 1990, c. C.40, s. 100 (4); 1994, c. 14, s. 45 (1); 2004, c. 16, s. 2 (2).

Idem

(5)  Every person who fails to comply with a requirement under subsection (1) or (3) is liable to pay to Her Majesty in right of Ontario an amount equal to the amount that the person was required under subsection (1) or (3), as applicable, to pay to the Minister. R.S.O. 1990, c. C.40, s. 100 (5); 1994, c. 14, s. 45 (1); 2004, c. 16, s. 2 (2).

Idem

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

(a) the aggregate of money so loaned, advanced or paid; and

(b) the amount that the institution or person was required by subsection (2) to pay to the Minister. R.S.O. 1990, c. C.40, s. 100 (6), 1994, c. 14, s. 45 (1); 2004, c. 16, s. 2 (2).

Service of garnishee

(7)  If a person (a “third party”) who is, or within 365 days will become, indebted or liable to make a payment to a corporation liable to make a payment under this Act carries on business under a name or style other than the third party’s own name, the letter under this section from the Minister to the third party may be addressed using the name or style under which the third party carries on business and, in the case of personal service, the letter shall be deemed to have been validly served if it is left with an adult employed at the place of business of the addressee. 2001, c. 23, s. 61 (2); 2004, c. 16, s. 2 (2).

Same

(8)  If persons (“partners”) who are, or within 365 days will become, indebted or liable to make a payment to a corporation liable to make a payment under this Act carry on business in partnership, the letter under this section from the Minister to the partners may be addressed to the partnership name and, in the case of personal service, the letter shall be deemed to have been validly served if it is served on a partner or left with an adult employed at the place of business of the partnership. 2001, c. 23, s. 61 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 45 (1, 2) - 23/06/1994; 1997, c. 43, Sched. A, s. 50 - 18/12/1997

[2001, c. 23, s. 61 (1, 2)](http://www.ontario.ca/laws/statute/S01023" \l "s61s1) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2011, c. 9, Sched. 8, s. 5 (1, 2)](http://www.ontario.ca/laws/statute/S11009" \l "sched8s5s1) - 12/05/2011

Money seized in criminal proceedings

**101** (1)  Where the Minister knows or suspects that a person is holding money that was seized by a police officer in the course of administering or enforcing the criminal law of Canada from a corporation, which is liable to make a payment under this Act, that are restorable to the corporation, the Minister may, by registered letter or by a letter served personally, require that person to turn over the money otherwise restorable to the corporation in whole or in part to the Minister on account of the corporation’s liability under this Act. R.S.O. 1990, c. C.40, s. 101 (1); 1994, c. 14, s. 46; 2004, c. 16, s. 2 (2).

Receipt

(2)  The receipt of the Minister for money turned over as required by this section is a good and sufficient discharge of the requirement to restore the money to the corporation to the extent of the amount so turned over. R.S.O. 1990, c. C.40, s. 101 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 46 - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Recovery of amounts payable

**102** (1)  Upon default of payment by a corporation of any amount required by this Act to be paid,

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his or her name of office and may be continued by his or her successor in office as if no change had occurred, and shall be tried without a jury;

(b) the Minister may issue a warrant, directed to the sheriff for any area in which any property of the corporation is located or situate, for any amount required by this Act to be paid by the corporation, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Superior Court of Justice. R.S.O. 1990, c. C.40, s. 102 (1); 1994, c. 14, s. 47; 2001, c. 23, s. 62; 2004, c. 16, s. 2 (2).

Compliance of Minister to be proved by affidavit

(2)  For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Part as well as the failure of any person, partnership, syndicate, trust or corporation to comply with the requirements of this Part shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proven in any court of law by affidavit of the Minister or of any officer of the Ministry of Finance. R.S.O. 1990, c. C.40, s. 102 (2); O.C. 355/93; 1997, c. 19, s. 4 (4); 2004, c. 16, s. 2 (2).

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

(3)  Subrule 60.07 (2) of the Rules of Civil Procedure does not apply in respect of a warrant issued by the Minister under clause (1) (b). 2010, c. 26, Sched. 4, s. 2.

**Section Amendments with date in force (d/m/y)**

O.C. 355/93 - 03/02/1993; 1994, c. 14, s. 47 (1, 2) - 23/06/1994; 1997, c. 19, s. 4 (4) - 10/10/1997

[2001, c. 23, s. 62](http://www.ontario.ca/laws/statute/S01023" \l "s62) - 05/12/2001

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2010, c. 26, Sched. 4, s. 2](http://www.ontario.ca/laws/statute/S10026" \l "sched4s2) - 08/12/2010

Security

**103** The Minister may, if he or she considers it advisable, accept security for the payment of taxes by a corporation by way of a mortgage or other charge of any kind upon the property of the corporation or of any other person, or by way of a guarantee of the payment of the taxes by another person. R.S.O. 1990, c. C.40, s. 103; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Recovery of costs

**104** The Minister is entitled to recover from a corporation the reasonable costs and charges incurred by or on behalf of the Minister in the course of obtaining payment of any amount required to be paid under this Act by the corporation, if the costs and charges relate to any of the following things:

1. Service of a notice or other document.

2. Registration of a notice of lien and charge, including any charges for related searches and for enforcement activities.

3. An action under clause 102 (1) (a) for the recovery of any amount payable under this Act.

4. Issuance and execution of a warrant referred to in clause 102 (1) (b), to the extent that the costs and charges are not recovered by the sheriff upon execution of the warrant.

5. Other prescribed payments made by or on behalf of the Minister to a third party. 2011, c. 9, Sched. 8, s. 6.

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 48 - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

[2011, c. 9, Sched. 8, s. 6](http://www.ontario.ca/laws/statute/S11009" \l "sched8s6) - 12/05/2011

Costs

**105** For the purpose of collecting debts owed by a corporation to Her Majesty in right of Ontario under this Act, the Minister may purchase or otherwise acquire any interest in the corporation’s property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest so acquired in such manner as he or she considers reasonable. R.S.O. 1990, c. C.40, s. 105; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Remedies for recovery of tax and penalty

**106** The use of any of the remedies provided by sections 100 and 102 does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery or enforcement of the payment of any amount required to be paid under this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise. R.S.O. 1990, c. C.40, s. 106; 1994, c. 14, s. 49; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 49 - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Payment of tax by receivers

**107** (1)  Every person required under subsection 75 (7) to deliver a return for a corporation for a taxation year shall, immediately on receipt of a notice of assessment or reassessment in respect of the taxation year, pay all taxes, interest, penalties and other amounts payable under this Act by or in respect of the corporation to the extent that the person has or had in the person’s possession or control property belonging to the corporation or its estate, at any time since the taxation year, and the person shall thereupon be deemed to have made the payment on behalf of the corporation. 1994, c. 14, s. 50 (1); 2004, c. 16, s. 2 (2).

Certificate of tax paid

(2)  Every assignee, liquidator, receiver, receiver-manager, and other agent, other than a trustee in bankruptcy, before distributing any property of the corporation under their control, shall obtain a certificate from the Minister certifying that all taxes, interest, penalties and other amounts payable by the corporation under this Act have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under section 103. 1994, c. 14, s. 50 (1); 2004, c. 16, s. 2 (2).

Personal liability of receivers

(3)  Any person referred to in subsection (2) who fails to obtain the certificate referred to therein shall be personally liable to Her Majesty in right of Ontario for an amount equal to the taxes, interest, penalties and other amounts payable under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act. R.S.O. 1990, c. C.40, s. 107 (3); 1994, c. 14, s. 50 (2); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 50 (1, 2) - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Notice of sale of company assets

**108** (1)  Where a corporation has failed to pay an amount payable under this Act for a period of more than three years from the date of mailing of the notice of assessment or reassessment under this Act, no person shall sell any property of the corporation unless the person has given written notice by registered mail to the Minister not less than ten days before the date of the sale. 1994, c. 14, s. 51; 2004, c. 16, s. 2 (2).

Penalty

(2)  Every person who contravenes subsection (1) is liable to a penalty equal to the amount payable by the corporation under this Act as of the date of the sale, and such penalty is recoverable by action in any court in which a debt or money demand of a similar amount may be collected. 1994, c. 14, s. 51; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 51 - 23/06/1994

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Compromising disputes as to liability for taxes

**109** If any doubt or dispute arises as to the liability of a corporation to pay a tax or any portion of a tax demanded under the authority of this Act, or if owing to special circumstances it is deemed inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as he or she deems proper. R.S.O. 1990, c. C.40, s. 109; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Remission of interest and penalties

**109.1** (1)  The Minister may remit all or part of any interest and penalties otherwise payable under this Act by a corporation in respect of a taxation year beginning on or after January 1, 2008 and, despite section 80, may make any assessment or reassessment of the interest and penalties payable by the corporation that is necessary to take into account the remission. 2007, c. 11, Sched. B, s. 2 (18).

Time limit

(2)  No remission under subsection (1) may be granted and no assessment or reassessment referred to in subsection (1) may be made more than 120 months after the end of the taxation year to which the remission relates. 2007, c. 11, Sched. B, s. 2 (18).

**Section Amendments with date in force (d/m/y)**

[2007, c. 11, Sched. B, s. 2 (18)](http://www.ontario.ca/laws/statute/S07011" \l "schedbs2s18) - 04/06/2007

General offence

**110** Every person who, and every corporation that, contravenes or fails to comply with any of the provisions of this Act or the regulations for which no other fine is provided is guilty of an offence and on conviction is liable to a fine of not less than $50 and not more than $5,000. R.S.O. 1990, c. C.40, s. 110; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Fines payable to Minister

**111** The fines imposed for offences under this Act are payable to the Minister. R.S.O. 1990, c. C.40, s. 111; O.C. 355/93; 1997, c. 19, s. 4 (5); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

O.C. 355/93 - 03/02/1993; 1997, c. 19, s. 4 (5) - 10/10/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

Regulations

**112** (1)  The Lieutenant Governor in Council may make regulations,

(a) defining any word or expression used in this Act that is not expressly defined in this Act;

(b) providing for the issuance of certificates as to the amount of tax, interest, penalties or other amounts owing by a corporation under this Act and prescribing the fee payable for the issuance of such certificates;

(c) prescribing anything that by this Act may be or is required to be prescribed, anything that may be or is required to be determined or regulated by the regulations or any matter referred to in this Act as prescribed by the regulations;

(d) prescribing amendments to the provisions of Part II that relate to the computation of income and taxable income and to the provisions of Parts VII and VIII, such amendments to remain effective only if enacted by the Legislature at the first regular session after such amendments have been prescribed;

(d.1) prescribing rules for the purposes of subsection 11.2 (14);

(d.2) Repealed: 2004, c. 31, Sched. 9, s. 42 (1).

(e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act;

(f) prescribing rates of interest for the purposes of Part V or a formula for computing those rates and the method of calculating that interest;

(g) prescribing the conditions or criteria to be met to relieve a corporation from the obligation to pay all or part of the processing fee under subsection 75 (17) and prescribing the reduced amount, or a method of determining it, that the corporation may be required to pay, and, in prescribing the reduced amount, different amounts or methods may be prescribed for different classes of corporations;

(g.1) prescribing rules for determining in which production year an eligible Ontario production is considered to commence for the purposes of section 43.5;

(g.2) prescribing rules for the purposes of section 43.5 in respect of labour expenditures incurred in respect of first-time productions and eligible Ontario productions that are not first-time productions;

(g.3) Repealed: 2005, c. 31, Sched. 5, s. 15.

(h) prescribing the method for determining the total assets or gross revenue of a corporation in a qualifying small business corporation’s corporate group under subsection 66.1 (11);

(i) defining “disposition” for the purposes of section 66.1;

(j) prescribing the rules and when they apply for determining the amount of a tax credit under this Act, and the taxation year in which it is deducted, in respect of an amount of government assistance that was deducted in determining the amount of the tax credit for a prior taxation year and that is repaid in a subsequent taxation year;

(k) prescribing the rules for the calculation of some or all of the refundable tax credits, how the tax credits are claimed and who claims the tax credits in the event that a corporation becomes insolvent or bankrupt;

(l) prescribing, for corporations whose business includes generating electricity within the meaning of the Electricity Act, 1998, rules authorizing and governing the deduction from income, for the purpose of calculations under this Act, of amounts related to,

(i) the capital cost of all or part of a nuclear generation facility,

(ii) the decommissioning of all or part of a nuclear generation facility, or

(iii) the management of nuclear waste or used fuel from a nuclear generation facility. R.S.O. 1990, c. C.40, s. 112 (1); 1994, c. 14, s. 52; 1996, c. 18, s. 23; 1996, c. 24, s. 31; 1997, c. 43, Sched. A, s. 51; 1998, c. 15, Sched. E, s. 5 (1); 2001, c. 23, s. 63; 2002, c. 23, s. 2 (3); 2004, c. 16, s. 2 (2); 2004, c. 31, Sched. 9, s. 42; 2005, c. 31, Sched. 5, s. 15.

Idem

(2)  A regulation is, if it so provides, effective with reference to a period before it was filed. R.S.O. 1990, c. C.40, s. 112 (2); 2004, c. 16, s. 2 (2).

Rules for electricity corporations

(3)  In the event of a conflict, the rules made under clause (1) (l) prevail over the provisions of this Act.1998, c. 15, Sched. E, s. 5 (2); 2004, c. 16, s. 2 (2).

Determination for purposes of capital cost allowance

(4)  A regulation that provides for the determination of all or a part of the amount of a deduction under clause 11 (10) (a) for a taxation year may authorize the Minister of Energy or his or her delegate to determine if property belongs to a class of property in respect of which part or all of the deduction may be claimed. 2002, c. 23, s. 2 (4); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1994, c. 14, s. 52 (1, 2) - 23/06/1994; 1996, c. 18, s. 23 - 08/05/1996; 1996, c. 24, s. 31 - 08/05/1996; 1997, c. 43, Sched. A, s. 51 - 07/05/1997; 1998, c. 15, Sched. E, s. 5 (1, 2) - 01/04/1999

[2001, c. 23, s. 63](http://www.ontario.ca/laws/statute/S01023" \l "s63) - 05/12/2001

[2002, c. 23, s. 2 (3, 4)](http://www.ontario.ca/laws/statute/S02023" \l "s2s3) - 09/12/2002

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004; [2004, c. 31, Sched. 9, s. 42 (1, 2)](http://www.ontario.ca/laws/statute/S04031" \l "sched9s42s1) - 16/12/2004

[2005, c. 31, Sched. 5, s. 15](http://www.ontario.ca/laws/statute/S05031" \l "sched5s15) - 15/12/2005

Forms

**112.1** (1)  The Minister may approve forms for the purposes of this Act and the forms may provide for such information to be furnished as the Minister may require. 1997, c. 19, s. 4 (6); 2004, c. 16, s. 2 (2).

Fees

(2)  The Minister may establish and charge fees for anything that the Minister is required or authorized to do under this Act. 1997, c. 19, s. 4 (6); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

1997, c. 19, s. 4 (6) - 10/10/1997

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

PART VII  
TRANSITIONAL PROVISIONS

Application rules

**113** (1)  For the purposes of this Act, the Income Tax Application Rules, 1971 (Canada) shall, where applicable, be deemed to apply with necessary modifications to taxation years ended in 1972 and subsequent taxation years. R.S.O. 1990, c. C.40, s. 113 (1); 2004, c. 16, s. 2 (2).

Idem

(2)  In this Act where reference is made to The Corporations Tax Application Rules, 1972, such reference shall mean the provisions made applicable by subsection (1). R.S.O. 1990, c. C.40, s. 113 (2); 2004, c. 16, s. 2 (2).

Reference to predecessor Act

(3)  In this Act where reference is made to The Corporations Tax Act, such reference shall mean the provisions of The Corporations Tax Act, R.S.O. 1970, c. 91, as amended. R.S.O. 1990, c. C.40, s. 113 (3); 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

PART VIII  
MISCELLANEOUS

Application of predecessor Act and this Act

**114** The Corporations Tax Act, being chapter 91 of the Revised Statutes of Ontario, 1970, applies to corporations in respect of all taxation years ending before or during the year 1971 and this Act applies thereafter, provided that the provisions of this Act relating to the collection of taxes apply to the collection of taxes under The Corporations Tax Act. R.S.O. 1990, c. C.40, s. 114; 2004, c. 16, s. 2 (2).

**Section Amendments with date in force (d/m/y)**

[2004, c. 16, s. 2 (2)](http://www.ontario.ca/laws/statute/S04016" \l "s2s2) - 01/01/2004

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