

(7) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (8) in relation to the inquiry, on application by the Commissioner or a person giving evidence orders otherwise in relation to the whole or any part of the inquiry on the ground that the presence of the person and his counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

42. Section 232 of the federal Act applies *mutatis mutandis* for the purposes of this Ordinance where, in the same or similar circumstances, that section is or would be applicable for the purposes of the federal Act.

43. Whether or not he has filed an information return as required by a regulation made under paragraph 221(1)(d) of the federal Act as it applies by virtue of subsection 32(2) of this Ordinance, every person shall, on demand by registered letter from the Commissioner file within such reasonable time as may be stipulated in the registered letter, with the Commissioner such prescribed information return as is designated in the letter.

44. (1) Every person who fails to comply with a regulation made under paragraph 221(1)(d) or (e) of the federal Act as it applies by virtue of subsection 32(2) of this Ordinance, is liable in respect of each failure to so comply to a penalty of ten dollars a

day for each day of default but not exceeding in all two thousand five hundred dollars.

(2) Every person who fails to comply with a regulation made under section 32 or incorporated by reference by virtue of subsection (2) thereof is liable to a penalty of ten dollars a day for each day of default but not exceeding in all two thousand five hundred dollars.

45. A return, certificate or other document made by a corporation under this Ordinance or the regulations shall be signed on its behalf by the president, secretary or treasurer of the corporation or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation.

Offences

46. (1) Every person who fails to file a return as and when required by or under this Ordinance or the regulations is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of not less than twenty-five dollars for each day of default.

(2) Every person who fails to comply with or contravenes subsection 13(1), subsection 39(5), section 40 or section 41 is guilty of an offence and, in addition to any penalty otherwise provided is liable on summary conviction to

- (a) a fine of not less than two hundred dollars and not more than ten thousand dollars, or
- (b) both the fine described in paragraph (a) and imprisonment for a term not exceeding six months.

(3) Where a person is convicted under this section of failing to comply with a provision of this Ordinance or the regulations, he is not liable to pay a penalty imposed under section 20, 39 or 44 for the same failure unless he was assessed for that penalty or that penalty was demanded from him before the information or complaint giving rise to the conviction was laid or made.

47. Every person who

- (a) makes, or participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Ordinance or a regulations, or
- (b) to evade payment of a tax imposed by this Ordinance, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a taxpayer, or
- (c) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits, or assents or acquiesces in the omission, to enter a material particular, in records or books

of account of a taxpayer, or

- (d) wilfully, in any manner, evades or attempts to evade compliance with this Ordinance or payment of taxes imposed by this Ordinance, or
- (e) conspires with any person to commit an offence described by paragraphs (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

- (f) a fine of not less than twenty-five per cent and not more than double the amount of the tax that was sought to be evaded, or
- (g) both the fine described in paragraph (f) and imprisonment for a term not exceeding two years.

48. Where a collection agreement is entered into and proceedings under section 238 or 239 of the federal Act are taken against any person, the Minister may take or refrain from any action against such person contemplated by section 46 or 47 of this Ordinance, as the case may be.

49. (1) Every person who, while employed in the administration of this Ordinance, communicates or allows to be communicated to a person not legally entitled thereto any information obtained under this

Ordinance or allows any such person to inspect or have access to any written statement furnished under this Ordinance is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars.

(2) Subsection (1) does not apply to the communication of information between

(a) the Minister and the Commissioner,

(b) the Minister, acting on behalf of the Northwest Territories and the Commissioner or the Minister of Finance of the government of

(i) an agreeing province, or

(ii) a non-agreeing province to which an adjusting payment may be made under subsection 57(2).

50. Where a corporation is guilty of an offence under this Ordinance, an 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 is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

51. Notwithstanding any other Ordinance, statute or law in force at the commencement of this Ordinance, a court has, in any prosecution or proceeding under

this Ordinance, no power to impose less than the minimum fine or imprisonment fixed by this Ordinance and the court has no power to suspend sentence.

Procedure and Evidence

52. (1) An information or complaint under this Ordinance may be laid or made by any officer of the Department of the Treasury, by a member of the Royal Canadian Mounted Police or by any person thereunto authorized by the Commissioner and, where an information or complaint purports to have been laid or made under this Ordinance it shall be deemed to have been laid or made by a person thereunto authorized by the Commissioner and shall not be called in question for lack of authority of the informant or complainant except by the Commissioner or by some person acting for him or Her Majesty.

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

(3) An information or complaint in respect of an offence under this Ordinance may be laid or made on or before a day five years from the time when the matter of the information or complaint arose or

within one year from the day on which evidence, sufficient in the opinion of the Commissioner to justify a prosecution for the offence, came to his knowledge, and the Commissioner's certificate as to the day on which such evidence came to his knowledge is conclusive proof thereof.

(4) Where, by this Ordinance or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Department of the Treasury sworn before a commissioner or other person authorized to take affidavits setting out that he has charge of the appropriate records, that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed, indicating such address, and that he identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, is admissible in evidence as *prima facie* proof of the sending and of the request, notice or demand.

(5) Where, by this Ordinance or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of the Treasury sworn before a commissioner

or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by such person is admissible in evidence as *prima facie* proof that in such case that person did not make the return, statement, answer or certificate, as the case may be.

(6) Where, by this Ordinance or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of the Treasury sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular day, is admissible in evidence as *prima facie* proof that it was filed or made on that day and not prior thereto.

(7) An affidavit of an officer of the Department of the Treasury sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Commissioner or some person exercising the powers of the Commissioner or by or on behalf of a taxpayer, shall be

received as *prima facie* proof of the nature and contents of the document and is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way.

(8) An affidavit of an officer of the Department of the Treasury sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Ordinance and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefor, is admissible in evidence as *prima facie* proof of the statements contained therein.

(9) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Department of the Treasury it is not necessary to prove his signature or that he is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

(10) Judicial notice shall be taken of

(a) all orders or regulations made under this Ordinance, and

(b) a collection agreement entered into under this Ordinance or any agreement for the collection by Canada of the tax imposed under the income tax statute of an agreeing province

without such orders, regulations or agreements being specially pleaded or proven.

(11) Every document purporting to be an order, direction, demand, notice, certificate, requirement, decision, assessment, discharge of mortgage or other document purporting to have been executed under, or in the course of administration or enforcement of, this Ordinance over the name in writing of the Commissioner, the Territorial Treasurer, or an officer authorized by regulation to exercise powers or perform duties of the Commissioner under this Ordinance, shall be deemed to be a document signed, made and issued by the Commissioner, the Territorial Treasurer, or the officer unless called in question by the Commissioner or by some person acting for him or Her Majesty.

(12) For the purposes of this Ordinance, the day of mailing of any notice of assessment or notification described in subsection 12(4) shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice or notification to be the date thereof unless called in question by the

Commissioner or by some person acting for him or Her Majesty.

(13) Where any notice of an assessment has been sent by the Commissioner as required by this Ordinance, the assessment shall be deemed to have been made on the day of mailing of the notice of the assessment.

(14) Every form purporting to be a form prescribed or authorized by the Commissioner shall be deemed to be a form prescribed by order of the Commissioner under this Ordinance unless called in question by the Commissioner or some person acting for him or for Her Majesty.

(15) A document purporting to be a collection agreement entered into under this Ordinance or an agreement with Canada for the collection of tax imposed under the income tax statute of an agreeing province that is

- (a) published in the Canada Gazette, or
- (b) certified as such by or on behalf of

- (i) the Commissioner, or

- (ii) the Provincial Treasurer or the Minister of Finance of the appropriate agreeing province,

is admissible in evidence as *prima facie* proof of the contents thereof.

(16) In any prosecution for an offence under this Ordinance, the production of a return, certificate, statement or answer required by or under this

Ordinance or a regulation purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by him or on his behalf is admissible in evidence as *prima facie* proof that such return, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by him or on his behalf.

(17) Every certificate by the Commissioner as to
(a) a taxpayer's tax payable under the federal Act as defined in paragraph 4(4)(d), or

(b) a taxpayer's income for the year as defined in paragraph 4(4)(c), or

(c) the taxable income of a corporation,

is admissible in evidence as *prima facie* proof that a taxpayer's tax payable under the federal Act, his income for the year or the taxable income of a corporation, as the case may be, is in the amount set out therein.

(18) Where a collection agreement is entered into, any document or certificate that is executed or issued by the Minister, the Deputy Minister of the Department of National Revenue for Taxation, or an official of the Department of National Revenue on behalf or in place of the Commissioner, the Territorial Treasurer or an officer of the Department of the Treasury, shall be deemed, for all purposes of

this Ordinance, to be executed or issued by the Commissioner, the Territorial Treasurer, or the Department of the Treasury, as the case may be.

PART III

COLLECTION OF TAX

Collection Agreement

53. (1) The Commissioner may, on behalf of the Government of the Northwest Territories, enter into a collection agreement with the Government of Canada under which the Government of Canada will collect taxes payable under this Ordinance on behalf of the Government of the Northwest Territories and will make payments to the Government of the Northwest Territories in respect of the taxes so collected, in accordance with such terms and conditions as the collection agreement prescribes.

(2) The Commissioner may, on behalf of the Government of the Northwest Territories, enter into an agreement amending the terms and conditions of a collection agreement entered into under subsection (1).

(3) Where a collection agreement is entered into, the Minister, on behalf of, or as agent for, the Commissioner, may employ all the powers, and perform all the duties of the Commissioner or the deputy head under this Ordinance, and exercise any discretion that the Commissioner or the deputy head has under this

Ordinance including the discretion to refuse to permit the production in judicial or other proceedings in the Northwest Territories of any document that is not, in the opinion of the Minister, in the interests of public policy to produce.

(4) Where a collection agreement is entered into, the Deputy Minister of National Revenue for Taxation of Canada may

- (a) employ all the powers and perform the duties of the Minister and exercise any discretion that the Minister has under subsection (3) or otherwise under this Ordinance, and
- (b) designate officers of his department to carry out such functions, duties and powers as are similar to those that are exercised by them on his behalf under the federal Act.

54. (1) A collection agreement may provide that where any payment is received by the Minister on account of tax payable by a taxpayer for a taxation year under this Ordinance, the federal Act or an income tax statute or Ordinance of another agreeing province, or under any two or more of such Acts, statutes, or Ordinances, the payment so received may be applied by the Minister towards the tax payable by the taxpayer under any such Act, statute or Ordinance in such manner as may be specified in the agreement,

notwithstanding that the taxpayer directed that the payment be applied in any other manner or made no direction as to its application.

(2) Any payment or part thereof applied by the Minister in accordance with a collection agreement towards the tax payable by a taxpayer for a taxation year under this Ordinance

- (a) relieves the taxpayer of liability to pay such tax to the extent of the payment or part thereof so applied, and
- (b) shall be deemed to have been applied in accordance with a direction made by the taxpayer.

55. Where a collection agreement is entered into and an amount is remitted to the Minister under section 13 on account of the tax of an individual who is resident on the last day of the taxation year in another agreeing province,

- (a) no action lies for recovery of such amount by that individual, and
- (b) the amount may not be applied in discharge of any liability of that individual under this Ordinance.

56. (1) Where a collection agreement is entered into, an individual resident in the Northwest Territories on the last day of the taxation year is not required to

remit any amount on account of tax payable by him under this Ordinance for the taxation year to the extent of the amount deducted or withheld on account of his tax for that year under the income tax statute of another agreeing province.

(2) Where the total amount deducted or withheld on account of tax payable under this Ordinance and under the income tax statute of another agreeing province by an individual resident in the Northwest Territories on the last day of the taxation year to whom subsection (1) applies exceeds the tax payable by him under this Ordinance for that year, section 23 of this Ordinance applies in respect of such individual as though the excess were an overpayment under this Ordinance.

57. (1) In this section,

- (a) "adjusting payment" means a payment, calculated in accordance with this section, made by or on the direction of the Northwest Territories to a non-agreeing province;
- (b) "amount deducted or withheld" does not include any refund made in respect of that amount;
- (c) "non-agreeing province" means a province that is not an agreeing province.

(2) Where, in respect of a taxation year, a non-agreeing province is authorized to make a payment to

the Northwest Territories that, in the opinion of the Commissioner, corresponds to an adjusting payment, the Commissioner may make an adjusting payment to that non-agreeing province and enter into any agreement that may be necessary to carry out the purposes of this section.

(3) Where a collection agreement is entered into, the adjusting payment that may be made pursuant to subsection (2) may be made by the Government of Canada where it has agreed to act on the direction of the Commissioner as communicated to the Minister.

(4) The adjusting payment to be made under this section shall be in an amount that is equal to the aggregate of the amounts deducted or withheld under section 13 in respect of the tax payable for a taxation year by individuals who

- (a) file returns under the federal Act,
- (b) are taxable thereunder in respect of that year,
and
- (c) are resident on the last day of that year in the non-agreeing province to which the adjusting payment is to be made.

(5) Where an adjusting payment is to be made and there has been an amount deducted or withheld under section 13 on account of the tax for a taxation year of an individual who is taxable under the federal Act in respect of that year and who is resident on the

last day of that taxation year in the non-agreeing province,

(a) no action lies for the recovery of such amount by that individual, and

(b) the amount may not be applied in discharge of any liability of that individual under this Ordinance.

(6) Where an adjusting payment to a non-agreeing province is to be made under this section for a taxation year, an individual resident in the Northwest Territories on the last day of the taxation year is not required to remit any amount on account of tax payable by him under this Ordinance for the taxation year to the extent of the amount deducted or withheld on account of his income tax for that year under the law of that non-agreeing province.

(7) Where an adjusting payment to a non-agreeing province is to be made under this section for a taxation year and the total amount deducted or withheld on account of tax payable under this Ordinance and on account of the income tax payable under the law of the non-agreeing province by an individual resident in the Northwest Territories on the last day of the taxation year to whom subsection (6) applies exceeds the tax payable by him under this Ordinance for that year, section 23 of this Ordinance applies in respect of such individual as though the excess were an over-

payment under this Ordinance.

(8) Where a collection agreement is entered into and the Government of Canada has agreed in respect of a taxation year to carry out the direction of the Commissioner and to make an adjusting payment on behalf of the Northwest Territories, the adjusting payment

(a) shall be made out of any moneys that have been collected on account of tax under this Ordinance for any taxation year, and

(b) shall be the amount calculated by the Minister to be the amount required to be paid under subsection (4),

and the payment thereof discharges any obligation the Government of Canada may have with respect to the payment to the Northwest Territories of any amount deducted or withheld under section 13 to which subsection (5) applies.

58. (1) A judgment of a superior court of an agreeing province under that province's income tax statute or Ordinance, including any certificate registered in such superior court in a manner similar to that provided in subsection 34(2), may be enforced in the manner provided in the *Reciprocal Enforcement of Judgments Ordinance*, and shall be deemed to be a judgment to which that Ordinance applies.

(2) For the purposes of subsection (1), where a

judgment of a superior court of an agreeing province is sought to be registered under the *Reciprocal Enforcement of Judgments Ordinance*, the judgment shall be registered notwithstanding that it is established that one or more of the provisions of subsection 3(3) of that Ordinance apply.

(3) For the purposes of subsection (1), the Commissioner may make regulations to enable the enforcement in the Northwest Territories of judgments in respect of taxes in agreeing provinces.

PART IV

COMING INTO FORCE

59. This Ordinance shall come into force ^{and effect} on the first day of January, 1978, and is retroactive to the extent necessary to give full force and effect to its provisions from and after that date.