



ANALYSIS

Title
1. Short Title

2. Evidence of financial or property
transactions

1961, No. 137

An Act to amend the Inland Revenue Department Act 1952
[1 December 1961]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Inland Revenue Department Amendment Act 1961, and shall be read together with and deemed part of the Inland Revenue Department Act 1952* (hereinafter referred to as the principal Act).

2. Evidence of financial or property transactions—(1) The principal Act is hereby amended by inserting, after section 16A (as inserted by section 2 of the Inland Revenue Department Amendment Act 1958), the following section:

“16B. (1) In proceedings for an offence against the Land and Income Tax Act 1954, any record, or entry in any record, made in the regular course of business by any person (not being a bank as defined in section 2 of the Banking Act 1908)

*1957 Reprint, Vol. 6, p. 623

Amendments: 1958, No. 11; 1960, No. 10

in carrying on any business shall be admissible as evidence of the transactions, dealings, matters, and amounts therein disclosed.

“(2) Subject to this section, a copy of any record, or of an entry in any record, that would be admissible in evidence under subsection (1) of this section, or a copy of any such copy, shall be admissible as evidence of the record or entry and of the transactions, dealings, matters, and amounts therein disclosed, whether or not notice to produce the record or entry or copy has been given.

“(3) The circumstances of the making of any record, entry, or copy that would be admissible in evidence under subsection (1) or subsection (2) of this section shall not affect its admissibility; but, in estimating the weight, if any, to be attached to it, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of it, and in particular to the question whether or not it was made contemporaneously with the occurrence or existence of the facts stated therein or within a reasonable time thereafter, and to the question whether or not the maker had any incentive to conceal or misrepresent facts.

“(4) Where the original of any record is in the custody or control of the record holder, a copy of the record or of any entry therein shall be admissible in evidence under this section, if it is first proved—

“(a) That the record is in the custody or control of the record holder; which proof may be given, either orally or by affidavit, by the record holder or by any of his officers or employees or by such other person as the Court thinks fit; and

“(b) That the copy has been examined with the original record or entry, as the case may be, and is a correct copy; which proof shall be given, either orally or by affidavit, by some person who has examined the copy with the original record.

“(5) Where the original of any record is not in the custody or control of the record holder, but a copy (whether a counterpart, a carbon copy, or other copy) purporting to be a copy of the original record and appearing to have been made in the regular course of business is in the custody or control of the record holder, that purported copy or a copy thereof or of any entry therein shall be admissible in evidence under this section, if it is first proved—

“(a) That the original of the record is not in the custody or control of the record holder, and that the purported copy of the original record is in the custody or control of the record holder and in the belief of the witness or deponent, as the case may be, would have been made in the regular course of business at or about the same time as the original record would have been made; which proof may be given, either orally or by affidavit, by the record holder or by any of his officers or employees or by such other person as the Court thinks fit; and

“(b) That, in the case of a copy of the purported copy of the original record or a copy of an entry in that purported copy, the copy has been examined with the purported copy or the entry therein, as the case may be, and is a correct copy; which proof shall be given, either orally or by affidavit, by some person who has examined the copy with the purported copy.

“(6) Any affidavit for the purposes of this section may be sworn before any person authorised to take affidavits.

“(7) The death of any person by whom an affidavit has been made for the purposes of this section shall not affect the admissibility of the affidavit.

“(8) Where any affidavit sworn for the purposes of this section is filed in any Court, the Court may, of its own motion or on the application of the defendant in the proceedings, order that the deponent attend for cross-examination before the Court at the hearing; and, unless the deponent attends accordingly, his affidavit shall not be admissible in evidence under this section except where the Court in any special case otherwise orders.

“(9) Where in any proceedings for an offence against the Land and Income Tax Act 1954 any record or copy of any record or entry in any record or in a copy of any record that is admissible in evidence under this section is tendered in evidence, the Court may require the production by any person of any record or copy of any record in his possession or under his control that the Court considers is or may be relevant.

“(10) In proceedings for an offence against the Land and Income Tax Act 1954, the following provisions of this subsection shall apply for the purposes of section 5 of the Evidence Amendment Act 1952 (which relates to proof of photographic copies of documents), namely:

“(a) Every record holder shall be deemed to be an authorised person, whether or not he is already an authorised person as defined in section 3 of that Act:

“(b) Every record to which this section relates, and every copy purporting to be a copy of an original record that would have been admissible in evidence in accordance with subsection (5) of this section if it were available for that purpose and proof had been given as provided in that subsection or, where applicable, in subsection (8) of this section, shall be deemed to be a document to which the said section 5 applies.

“(11) Where in any proceedings for an offence against the Land and Income Tax Act 1954 the informant intends to tender in evidence under this section any record or copy of any record or entry in any record or in a copy of any record, he shall give to the defendant notice in writing thereof not less than seven days before the hearing specifying the record or copy or entry intended to be tendered in evidence.

“(12) Where any notice is given by the informant under subsection (11) of this section, the defendant may at any time before the hearing apply to the Court for an order that any record or copy or entry specified in the notice shall not be admitted in evidence upon the ground that it is or is likely to be false or fraudulent or that for any other reason it is inexpedient in the interests of justice that the record or copy or entry should be admitted, and if the Court is satisfied as to the grounds of the application it shall order accordingly.

“(13) The provisions of subsections (9) and (10) of this section, and also of subsection (8) where an affidavit has been filed, shall, with the necessary modifications, apply with respect to the hearing of an application under subsection (12) of this section as if it were the hearing of the information for the offence and as if the record or copy or entry had been tendered in evidence.

“(14) Nothing in this section shall affect the provisions of section 19 of the Banking Act 1908, and that section shall apply in proceedings for an offence against the Land and Income Tax Act 1954.

“(15) For the purposes of this section, where it appears to the Court that any record or any copy of any record is part of the records kept or held in relation to any business, the Court may infer that the record or copy and entries in the record or copy were made in the regular course of business by a person in carrying on that business.

“(16) For the purposes of this section—

“‘Business’ means any business, profession, trade, manufacture, occupation, or calling of any kind; and includes the activities of any Department of State or of any organisation or society :

“‘Record’ means—

“(a) Any book of account or accounting record recording receipts, payments, sales, purchases, income, expenditure, or other financial or property transactions, dealings, or matters :

“(b) Any voucher, invoice, receipt, or other document or paper recording receipts, payments, sales, purchases, income, expenditure, or other financial or property transactions, dealings, or matters, or verifying, explaining, or relating to any entry in any such book of account or accounting record :

“(c) Any wages book or wages record :

“‘Record holder’, in relation to any record or to any copy of any record, means—

“(a) The person carrying on the business in the regular course of which the record or the copy of the record was made :

“(b) Any person carrying on a business and having the custody or control of the record or of the copy of the record, being a record or copy that was made in the regular course of a business of which the first-mentioned business is wholly or in part the successor :

“(c) Any person carrying on a business and having the custody or control of the record or of the copy of the record, being a record or copy that was made in the regular course of that business by any predecessor of that person in carrying on that business or part of that business :

“(d) Any person having the custody or control of the record or of the copy of the record, being a record or copy that was made in the regular course of a business that has terminated.”

(2) Section 16B of the principal Act (as inserted by subsection (1) of this section) shall apply with respect to—

(a) All records and copies of records to which that section relates, whether the records or copies came into existence before, or come into existence after, the date of the passing of this Act :

- (b) All proceedings for offences against the Land and Income Tax Act 1954 commenced whether before or after the date of the passing of this Act:
- (c) All offences alleged to have been committed against the Land and Income Tax Act 1954 whether before or after the date of the passing of this Act.

This Act is administered in the Inland Revenue Department.
