

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 16 November 1961

Words struck out by the Statutes Revision Committee are shown with black rule at beginning and after last line of struck out matter; words inserted are shown with double rule before first line and after last line of new matter.

Hon. Mr Lake

INLAND REVENUE DEPARTMENT AMENDMENT

ANALYSIS

Title
1. Short Title

2. Evidence of financial or property transactions

A BILL INTITULED

An Act to amend the Inland Revenue Department Act 1952

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:

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“16B. (1) In proceedings for an offence against any of the Inland Revenue Acts, records, or entries in records, kept or held by any person, not being the person charged with the

*1957 Reprint, Vol. 6, p. 623
Amendments: 1958, No. 11; 1960, No. 10

Struck Out

offence or a bank as defined in section 2 of the Banking Act 1908 (the first-mentioned person being hereinafter in this section referred to as the record holder), in carrying on an undertaking and purporting to relate to financial or property transactions, dealings, or matters by any other person (whether the person charged with the offence or any other person) with the record holder or with the undertaking shall be received as prima facie evidence of, and of the truth 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 received in evidence under subsection (1) of this section, or a copy of any such copy, shall be received as prima facie evidence of the record or entry and as prima facie evidence of, and of the truth 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) 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 received in evidence under this section, if it is first proved—

“(a) That the record is in the custody or control of the record holder and is one of his ordinary records; 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.

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

Struck Out

5 “(a) That the original of the record is not in the custody
or control of the record holder and that the pur-
ported copy of the original record is in the custody
or control of the record holder and is one of his
ordinary records, and, it is believed, would have
been made in the usual or ordinary course of
business at or about the same time as the original
record would have been made; which proof may
10 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

15 “(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.

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

25 “(6) 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.

30 “(7) 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.

35 “(8) In proceedings for an offence against any of the
Inland Revenue Acts, the following provisions of this sub-
section shall apply for the purposes of section 5 of the Evid-
ence Amendment Act 1952 (which relates to proof of photo-
graphic copies of documents), namely:

40 “(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:

Struck Out

- “(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 (4) 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 (7) of this section, shall be deemed to be a document to which the said section 5 applies. 5
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- “(9) 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 any of the Inland Revenue Acts. 15
- “(10) For the purposes of this section— 15
- “‘Records’ includes—
- “(a) Books of account recording receipts, payments, sales, purchases, income, expenditure, or other financial or property transactions, dealings, or matters: 20
- “(b) Such vouchers, invoices, receipts, and other documents as are necessary to verify or explain or as relate to the entries in any such books of account:
- “(c) Wages books and wages records: 25
- “(d) Any other books, documents, or papers relating to financial or property transactions, dealings, or matters: 25
- “‘Records kept or held by any person in carrying on an undertaking’ includes records that are in the custody or control of any person who is carrying on an undertaking and were kept by any predecessor of that person in carrying on the undertaking or in carrying on any undertaking of which the first-mentioned undertaking is the successor: 30
- “‘Undertaking’ includes any business, profession, trade, manufacture, occupation, or calling of any kind; and also includes any Department of State and any organisation or society.” 35

New

“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) 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.

New

“(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— 5

“(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 10 15 20

“(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. 25

“(6) Any affidavit for the purposes of this section may be sworn before any person authorised to take affidavits. 30

“(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. 35 40

New

“ (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
5 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
10 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
15 Act:

“ (b) Every record to which this section relates, and every
20 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
25 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
30 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
35 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
40 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.

New

“(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. 5

“(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. 10

“(15) 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: 15

“‘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: 20

“(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: 25

“(c) Any wages book or wages record:

“‘Record holder’, in relation to any record or to any copy of any record, means— 30

“(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: 35 40

New

5 “(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:

10 “(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—

15 (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:

20 (b) All proceedings for offences against any Inland Revenue Act commenced whether before or after the date of the passing of this Act:

(c) All offences alleged to have been committed against any Inland Revenue Act whether before or after the date of the passing of this Act.