

1968 Bill 13

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First Session, 16th Legislature, 17th Parliament

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

## **BILL 13**

**An Act respecting the Taxation of Fuel Oil**

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THE PROVINCIAL SECRETARY

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 13

1968

An Act respecting the Taxation of Fuel Oil

(Assented to \_\_\_\_\_, 1968)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as *The Fuel Oil Tax Act, 1968*.
2. In this Act,
  - (a) "fuel oil" means any petroleum product whether in gas or liquid form, other than natural gas;
  - (b) "fuel oil tax" means the tax payable under section 3 or 4, or both;
  - (c) "fuel system" includes the fuel tank, the carburetor, the fuel pump, the fuel filter and any inter-connecting pipes;
  - (d) "liquefied petroleum gas" means fuel oil that is composed predominantly of any of the following hydrocarbons or mixtures of them, namely, propane, propylene, butane (normal or isobutane) or butylene;
  - (e) "marked fuel" means fuel oil coloured or identified in accordance with section 6;
  - (f) "Minister" means the member of the Executive Council charged with the administration of this Act;
  - (g) "motor vehicle" means any self-propelled vehicle powered by an internal combustion engine, and includes any trailer pulled by a motor vehicle;
  - (h) "officer" means
    - (i) a member of the Inspection Service Branch of the Department of the Attorney General, or
    - (ii) a member of a police force in Alberta, or
    - (iii) any other person appointed by the Minister as an officer for the purposes of this Act;
  - (i) "owner" means any person in whose name a vehicle is registered under *The Highway Traffic Act* or *The Public Service Vehicles Act*, or any person renting a motor vehicle or having exclusive use thereof under a lease or otherwise;
  - (j) "purchase" means

## **Explanatory Notes**

**1.** This Bill will repeal and replace The Fuel Oil Tax Act which is chapter 125 of the Revised Statutes.

**2.** Definitions.

- (i) to purchase or otherwise obtain fuel oil in Alberta, or
- (ii) to bring fuel oil into Alberta,  
for one's own use or as agent for another for the other's use.

**3.** (1) Except as provided in this section every person shall pay to the Minister for the use of the Crown in right of Alberta a tax on all fuel oil purchased by him for use in Alberta at the rate of 3 cents a gallon.

(2) A tax is not payable pursuant to this section on:

- (a) fuel oil brought into Alberta in the fuel system of a motor vehicle if a tax has been paid or is payable on that fuel oil in the jurisdiction in which the fuel oil was purchased;
- (b) fuel oil purchased by Her Majesty in right of Canada;
- (c) fuel oil purchased by consuls, vice-consuls, trade commissioners, assistant trade commissioners and other accredited representatives of other countries in Canada;
- (d) fuel oil purchased for export from Alberta;
- (e) fuel oil purchased for use within the petroleum industry for oil well or gas well servicing and drilling purposes (other than in an internal combustion engine) and in respect of which the Minister has issued a permit providing for the purchase of that fuel oil without payment of tax;
- (f) fuel oil purchased for use as a raw material in a manufacturing process and in respect of which the Minister has issued a permit providing for the sale of that fuel oil without payment of tax;
- (g) fuel oil purchased in accordance with the regulations for use in domestic appliances and for lighting and heating.

(3) Fuel oil purchased for any of the purposes listed in subsection (2) shall not be used for any purpose not listed therein unless the tax prescribed in subsection (1) is paid thereon.

**4.** (1) Except as provided in this section every person shall pay to the Minister for the use of the Crown in right of Alberta a tax on all fuel oil purchased by him for use in Alberta

- (a) at the rate of 12 cents a gallon for fuel oil other than diesel fuel, and
- (b) at the rate of 14 cents a gallon for diesel fuel.

(2) A tax is not payable pursuant to this section on:

- (a) fuel oil brought into Alberta in the fuel system of a motor vehicle if a tax has been paid or is pay-

**3.** A new tax of 3 cents a gallon is imposed on all fuel oil with certain listed exceptions.

**4.** Present tax continued.

- able on that fuel oil in the jurisdiction in which the fuel oil was purchased;
- (b) marked fuel purchased for use
    - (i) other than in the fuel system of a motor vehicle registered or required to be registered pursuant to *The Highway Traffic Act* or *The Public Service Vehicles Act* or an equivalent statute of another jurisdiction, or
    - (ii) in the engine of a motor vehicle when the engine is being used as a stationary engine and is receiving the fuel from a fuel tank that is not in or on the vehicle and that does not supply the engine when used to propel the motor vehicle, or
    - (iii) in the fuel system of a truck owned or operated by a farmer (or the employee of a farmer) and in respect of which an "F" licence or a special farm truck licence has been issued pursuant to *The Highway Traffic Act* or *The Public Service Vehicles Act*, or
    - (iv) in the fuel system of a transit bus owned, controlled and operated by a city within the city;
  - (c) fuel oil purchased for use in the fuel system of an aircraft;
  - (d) fuel oil purchased by Her Majesty in right of Canada;
  - (e) fuel oil purchased by consuls, vice-consuls, trade commissioners, assistant trade commissioners and representatives of other countries in Canada;
  - (f) fuel oil purchased for export from Alberta;
  - (g) fuel oil that is not suitable for use in the fuel system of a motor vehicle and is so designated by the regulations;
  - (h) fuel oil purchased by a railway company for use in the fuel system of a railway locomotive;
  - (i) liquefied petroleum gas purchased in accordance with the regulations
    - (i) for any of the uses mentioned in clause (b),  
or
    - (ii) for use in the fuel system of a vehicle employed exclusively for the distribution of liquefied petroleum gas;
  - (j) fuel oil which will be used only for an industrial purpose and in respect of which the Minister has issued a permit providing for the purchase of that fuel oil without payment of tax.
- (3) Fuel oil purchased for any of the purposes listed in subsection (2) shall not be used for any purpose not listed therein unless the tax prescribed in subsection (1) is paid thereon.



(4) The tax payable pursuant to this section is in addition to the fuel oil tax payable pursuant to section 3.

**5.** (1) Where a motor vehicle licensed under *The Public Service Vehicles Act* is operated elsewhere than on the public highways while using fuel oil on which fuel oil tax has been paid pursuant to section 4, then upon production of proof satisfactory to the Minister of the amount of fuel oil used by the vehicle in

- (a) operating on the public highways, and
  - (b) operating elsewhere than on the public highways,
- the Minister may make a tax refund
- (c) at the rate of 10 cents a gallon for fuel oil other than diesel fuel, and
  - (d) at the rate of 12 cents a gallon for diesel fuel,
- on the fuel oil used by the motor vehicle in operating elsewhere than on the public highways.

(2) When any fuel oil on which fuel oil tax has been paid pursuant to section 4 is used for any purpose for which marked fuel could be used under clause (b) of subsection (2) of section 4, and the regulations have

- (a) designated that fuel oil as fuel oil not suitable to be coloured or identified as marked fuel, or
- (b) designated that purpose as one which precludes the use of a colouring or identifying substance in the fuel oil,

then, upon production of proof satisfactory to the Minister of the amount of fuel oil so used, the Minister may make a tax refund on the fuel so used

- (c) at the rate of 10 cents a gallon for fuel oil other than diesel fuel, and
- (d) at the rate of 12 cents a gallon for diesel fuel.

**6.** (1) The Minister may determine

- (a) the manner in which fuel oil is to be coloured or identified as marked fuel,
- (b) the persons by whom the colouring or identifying is to be done,
- (c) the colouring matter or identifying substance to be used to colour or identify fuel oil as marked fuel, and
- (d) the manufacturer from whom the colouring matter or identifying substance is to be acquired.

(2) Unless he is authorized by the Minister in writing, no person shall introduce into any fuel oil any dye or agent or substance or thing for the purpose of or having the effect of colouring or identifying the fuel oil so that it is capable of being sold free of fuel oil tax as marked fuel.



**5.** Refund of tax in certain cases.

**6.** Marked fuel.

**7.** (1) No retail dealer or wholesale dealer in fuel oil shall place marked fuel in the fuel system of a motor vehicle.

(2) No retail dealer in fuel oil shall have marked fuel in any pump or other dispensing equipment that may be used for delivering or dispensing fuel oil directly into the fuel system of a motor vehicle.

(3) In this section,

(a) "retail dealer" means a person required to be licensed under section 5 of *The Fuel Oil Licensing Act*;

(b) "wholesale dealer" means a person required to be licensed under section 4 of *The Fuel Oil Licensing Act*.

**8.** (1) Where the Minister finds that fuel oil tax is owing to the Crown, he may

(a) calculate the amount of the tax owing to the Crown, and

(b) assess the amount of the tax upon the person by whom he finds it should have been paid.

(2) Evidence that an assessment pursuant to this section has been made is *prima facie* proof that the amount of tax so assessed is due and owing to the Crown and is payable by the person so assessed.

**9.** (1) Fuel oil tax payable may be recovered as a debt due to the Crown.

(2) In an action for the recovery of fuel oil tax the burden of proving that the tax has been paid is upon the defendant.

**10.** From the date upon which payment of any fuel oil tax is in arrears, the tax bears interest at the rate of 6 per cent a year and the interest accrued is a debt due to the Crown and may be assessed and recovered in the same manner as the tax.

**11.** The Lieutenant Governor in Council may make regulations:

(a) establishing the method of collection of fuel oil tax;

(b) designating the persons by whom fuel oil tax is to be collected;

(c) fixing the commission to be paid for the collection of fuel oil tax;

(d) prescribing the records to be kept by and the returns to be made by any person for the purposes of this Act;

(e) providing for the bonding of persons to secure payment of fuel oil tax;

**7.** Handling of marked fuel by dealers.

**8.** Assessment of tax.

**9.** Recovery of tax by action.

**10.** Interest on unpaid tax.

**11.** Regulations authorized.

- (f) prescribing the forms to be used under this Act;
- (g) governing the issuance of permits to persons bringing fuel oil into Alberta in the fuel systems of motor vehicles from jurisdictions in which a tax is not paid or is not payable at the time of purchase of the fuel oil and prescribing the method and the time of payment of the tax and the reports to be made to the Minister;
- (h) providing for the method of collecting fuel oil tax on liquefied petroleum gas sold for taxable purposes and providing for exemption from fuel oil tax on liquefied petroleum gas sold for tax exempt purposes;
- (i) designating fuel oils as not suitable for use in the fuel system of a motor vehicle;
- (j) prescribing the proofs to be furnished to establish entitlement to an exemption from fuel oil tax or to a refund of tax;
- (k) designating
  - (i) fuel oil as being not suitable to be coloured or identified as marked fuel, and
  - (ii) purposes which preclude the use of a colouring or identifying substance in fuel oil;
- (l) generally for carrying out the purposes of this Act.

**12.** (1) An officer may without warrant, for the purpose of ascertaining whether fuel oil tax has been paid or is payable, search or enter upon any motor vehicle wherever found and may

- (a) examine the fuel oil in the fuel system or the cargo tank of the motor vehicle or in any container carried in or on the motor vehicle,
- (b) take a sample of that fuel oil, and
- (c) examine bills of lading, invoices, permits and other documents required to be carried in the motor vehicle pursuant to the Act or the regulations.

(2) An officer may without warrant at any time enter upon any premises (other than a private dwelling house) for the purpose of ascertaining whether fuel oil tax has been or is being paid, collected or remitted, and may

- (a) examine or inspect the bills of lading, invoices, permits, books, records, documents, engines, machinery, apparatus and premises of a dealer, and
- (b) take samples of any fuel oil or substance he believes to be fuel oil.

(3) Where the officer has reason to believe that an offence has been or is being committed or that fuel oil tax has not been paid he may, for the purpose of proving the offence or that tax has not been paid or the amount of that tax, seize

**12.** Powers of officer to search and seize without warrant.

- (a) the bills of lading, invoices, permits, books, records, documents, engines, machinery and apparatus,
- (b) the motor vehicle, any container or machine or apparatus carried in or on a motor vehicle,
- (c) any fuel oil or substance which he believes to be fuel oil, and
- (d) any other thing or document that he considers will assist in proving the offence or that tax had not been paid or the amount of that tax.

(4) Upon the conviction of the owner or person in possession or in charge of anything seized pursuant to this section, the magistrate may order the forfeiture of the thing to the Crown in right of Alberta.

**13.** Where an officer is prevented from searching or examining a vehicle or any premises for any reason and the owner or the person in charge of the vehicle or the premises refuses or fails to make possible the search or examination the officer may take such action as he finds reasonably necessary in the circumstances to enable him to carry out his search or examination.

**14.** (1) Any person who uses or has marked fuel in the fuel system of a motor vehicle of which he is the owner or driver otherwise than as authorized by clause (b) of subsection (2) of section 4 is guilty of an offence.

(2) Any person who uses or has in the fuel system of a motor vehicle of which he is owner or driver fuel oil in respect of which fuel oil tax is payable and who has not paid or has not undertaken to pay the tax is guilty of an offence.

- (3) Any person who contravenes
  - (a) subsection (3) of section 3, or
  - (b) subsection (3) of section 4,

is guilty of an offence.

(4) A person who is guilty of an offence under this section is liable upon summary conviction,

- (a) for a first offence to a fine of not less than \$50 and not more than \$100,
- (b) for a second offence to a fine of not less than \$100 and not more than \$200, and
- (c) for a third and each subsequent offence to a fine of not less than \$500 and not more than \$1,000.

(5) Where any fine imposed pursuant to this section is not paid immediately or within such time as the magistrate may allow, the magistrate may cause the vehicle in the fuel system of which the fuel oil was used or found to be impounded and the motor vehicle shall not be released until the fine and costs and the cost of impounding and storing the vehicle is paid.

**13.** Resistance to officers.

**14.** Offence for wrongly using marked fuel.

**15.** (1) The driver of a motor vehicle used in the business of transporting or delivering fuel oil

(a) shall have in his possession in that motor vehicle at all times an invoice or bill of lading covering and identifying the fuel oil cargo being carried on or by the vehicle, and

(b) shall produce the invoice or bill of lading for inspection when required to do so by an officer.

(2) The driver of a motor vehicle having liquefied petroleum gas in the fuel system of the vehicle

(a) shall have in his possession in that motor vehicle at all times an invoice covering or identifying the liquefied petroleum gas and indicating that the fuel oil tax payable pursuant to section 4 has been paid, and

(b) shall produce the invoice for inspection when required to do so by an officer.

(3) Subsection (2) does not apply when the owner or driver of the vehicle is entitled under sections 3 and 4 to purchase the liquefied petroleum gas free from the fuel oil tax payable pursuant to those sections.

(4) Any driver who fails to produce to an officer an invoice or bill of lading required pursuant to this section is guilty of an offence and is liable upon summary conviction to a fine of not more than \$50.

(5) Upon the conviction of a person for a third or subsequent offence pursuant to subsection (4), the magistrate may, by order, prohibit that person from driving a motor vehicle in Alberta for a period of not less than six months.

**16.** (1) A person who contravenes section 7 is guilty of an offence and is liable upon summary conviction to a fine of not more than \$50.

(2) Upon the conviction of a person for a third or subsequent offence pursuant to subsection (1) the Minister charged with the administration of *The Fuel Oil Licensing Act* may suspend or cancel any licence issued to the person pursuant to that Act.

**17.** (1) Any person who fails or neglects to keep a record or make a return required by this Act or the regulations is guilty of an offence and is liable upon summary conviction to a fine of not more than \$50.

(2) The Minister charged with the administration of *The Fuel Oil Licensing Act* may suspend or cancel a licence issued pursuant to that Act to a person convicted of an offence under subsection (1).

**18.** A prosecution for a contravention of this Act may be commenced within two years from the date of the contravention, but not thereafter.



**15.** Invoices and bills of lading to be carried.

**16.** Offence under section 7.

**17.** Offence not to keep required records.

**18.** Time limit on prosecutions.

**19.** In any proceedings under section 14

- (a) it is immaterial whether or not the defendant knew or believed that the fuel oil in respect of which the proceedings were instituted was marked fuel, and
- (b) the burden of proving that the fuel oil was not marked fuel is on the defendant.

**20.** In a prosecution under this Act

- (a) a certificate of the Deputy Minister of the Department administering *The Fuel Oil Licensing Act* or a person lawfully acting on his behalf, stating whether the defendant is or is not licensed pursuant to *The Fuel Oil Licensing Act*, or was or was not so licensed at a time or during a period of time specified therein,
- (b) a certificate
  - (i) of the chief chemist of the gasoline and oil laboratory of The Research Council of Alberta, or
  - (ii) of the Provincial Analyst, stating the results of the examination of any substance referred to therein and stating whether that substance is or is not, in whole or in part, fuel oil or stating whether that substance does or does not contain a colouring matter or identifying substance authorized to be used under section 6,
- (c) a certificate of the Minister stating that a person named therein is an officer for the purposes of this Act,

shall be admitted in evidence as *prima facie* proof of the matters stated therein without any proof that the certificate was signed by the person purporting to sign it or of the official position of the person signing it.

**21.** This Act repeals and replaces *The Fuel Oil Tax Act*, being chapter 125 of the Revised Statutes.

**22.** This Act comes into force on June 1, 1968.

**19. Burden of proof.**

**20. Certificate as evidence.**