

1987 BILL 47

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 47

FUEL TAX ACT

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 47

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1987

FUEL TAX ACT

(Assented to , 1987)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation and application

1(1) In this Act

- (a) “agent-collector” means a seller designated as an agent of the Provincial Treasurer for the collection of tax under an agreement entered into pursuant to the regulations;
- (b) “agent-dealer” means a person designated as an agent of the Provincial Treasurer for the delivery of an allowance referred to in section 8 under an agreement entered into pursuant to the regulations;
- (c) “blended fuel” means marked fuel that is blended or mixed with any other substance or thing;
- (d) “bulk dealer” means a person who is licensed as a wholesale dealer in fuel under the Fuel Oil Licensing Regulation (Alta. Reg. 234/78);
- (e) “commercial fisherman” means a person who holds a commercial fishing bail licence or a commercial fishing lake licence under the *Fisheries Act* (Canada) to fish for commercial purposes;
- (f) “Court” means the Court of Queen’s Bench;
- (g) “documents” includes money, securities and any of the following, whether computerized or not: books, records, letters, telegrams, vouchers, invoices, accounts and statements, financial or otherwise;
- (h) “domestic purposes” means the use in a principal private dwelling;
- (i) “domestic heating oil allowance” means the domestic heating oil allowance referred to in section 8;
- (j) “dwelling-house” means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes
 - (i) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered or enclosed passageway, and

- (ii) a unit that is designed to be mobile and to be used as a permanent or temporary residence that is being used as a permanent or temporary residence;
- (k) “farm fuel distribution allowance” means the farm fuel distribution allowance referred to in section 8;
- (l) “farm machinery” means any vehicle, implement, machine or equipment designated or deemed by the regulations to be farm machinery for the purposes of this Act;
- (m) “farm truck” means a truck used in farming operations;
- (n) “farming operations” means the production, or any step in the production, of
 - (i) plants, including peat moss, whether or not in a greenhouse and whether edible or not, or
 - (ii) animals, except undomesticated animals, whether or not the product is the animal or derived from the animal,
 and, without limiting the generality of the foregoing, includes any operation designated by the regulations as a farming operation;
- (o) “fuel oil” means any hydrocarbon substance capable of being used for the generation of power in an internal combustion engine, but does not include liquid petroleum gases, natural gas, oxygenates, marked fuel or, where the hydrocarbon substance is a mixed fuel, the portion of the mixed fuel that consists of an oxygenate;
- (p) “fuel system”, with reference to anything powered by an internal combustion engine, includes a fuel tank, carburetor, fuel pump, fuel filter, fuel injection system, pipes and any other thing in physical association with the engine that contains fuel or through which fuel passes during the operation of the engine;
- (q) “interjurisdictional carrier on the prorated system” means a person
 - (i) who owns or operates a public vehicle as defined under the *Motor Transport Act* or a fleet of public vehicles engaged in interprovincial or international travel, and
 - (ii) who is registered under the Canadian Agreement on Vehicle Registration or a similar international agreement to which Alberta is a party;
- (r) “judge” means a judge of the Court;
- (s) “liquid petroleum gas” means a substance that is composed predominantly of any of the following hydrocarbons, or a mixture of them:
 - (i) propane;
 - (ii) propylene;
 - (iii) butane (normal or isobutane);
 - (iv) butylene;

- (t) “locomotive” means a railway locomotive of which a railway company is the owner, and includes an electric power generation car of which a railway company is the owner;
 - (u) “marked fuel” means fuel that is coloured or identified in accordance with the regulations;
 - (v) “mixed fuel” means fuel that consists of a combination of fuel oil and oxygenate;
 - (w) “motor vehicle” means a vehicle powered by an internal combustion engine but does not include an aircraft or a boat;
 - (x) “officer” means
 - (i) a member of the Royal Canadian Mounted Police,
 - (ii) a police officer,
 - (iii) a special constable appointed under the *Police Act*, and
 - (iv) any other person appointed by the Provincial Treasurer as an officer for the purposes of this Act;
 - (y) “owner” means the legal owner or a person in lawful possession;
 - (z) “oxygenate” means methyl alcohol, ethyl alcohol, normal butyl alcohol, isobutyl alcohol, sec-butyl alcohol, tert-butyl alcohol, normal propyl alcohol, isopropyl alcohol, methyl tertiary butyl ether, tertiary amyl methyl ether, and any other substance prescribed as an oxygenate in the regulations;
 - (aa) “person” includes a partnership, an Indian band and a Metis settlement association;
 - (bb) “purchase” means to purchase or otherwise obtain fuel
 - (i) for the use of the person who is purchasing or otherwise obtaining it, or
 - (ii) on behalf of another for the other’s use;
 - (cc) “reduced price” means the total amount, including tax, otherwise payable per litre of fuel oil less the amount of tax and the amount set as the farm fuel distribution allowance or the domestic heating oil allowance, as the case may be;
 - (dd) “seller” means a person who sells fuel oil in Alberta.
- (2) When a person
- (a) is a resident of Alberta and has farming operations in respect of land outside Alberta, or
 - (b) holds land in Alberta and land outside Alberta and combines or integrates his farming operations in respect of the land in Alberta with his farming operations in respect of the land outside Alberta,
- the farming operations in respect of the land outside Alberta shall be deemed to be farming operations in Alberta for the purposes of this Act.

PART 1
FUEL TAX

Fuel tax

2(1) Subject to this section, a consumer shall pay a tax to the Provincial Treasurer at a rate of \$0.05 per litre on

- (a) all fuel oil purchased by him in Alberta, other than for use in a locomotive of which he is the owner,
- (b) subject to clause (d), all fuel oil purchased by him outside Alberta, brought into Alberta and put, in Alberta, into the fuel system of an internal combustion engine, other than a locomotive, without it first having been sold or resold in Alberta,
- (c) all fuel oil consumed within Alberta by a locomotive of which he is the owner,
- (d) if the consumer is an interjurisdictional carrier on the prorate system, all fuel oil purchased outside Alberta and consumed within Alberta in a public vehicle of which he is the owner, and
- (e) all marked fuel used by him for a purpose other than a purpose referred to in section 5.

(2) Subject to section 3, the tax is payable at the time and in the manner prescribed in the regulations.

(3) No tax is payable under this Act on

- (a) fuel oil purchased in Alberta from an agent-collector who delivers it outside Alberta if the fuel oil is consumed outside Alberta,
- (b) fuel oil brought into Alberta that is intended to be delivered and consumed outside Alberta if the fuel oil is actually delivered and consumed outside Alberta, or
- (c) fuel oil brought into Alberta for its own use by a country or state other than Canada, a political subdivision of that country or state, an agency of that country, state or political subdivision, or an accredited person representing that country, state or political subdivision in Canada.

(4) If the Crown in right of Alberta purchases fuel oil in Alberta, it shall pay an amount equal to the tax it would pay if it were a natural person, which amount shall be treated as an amount of tax paid under this Act.

Collection and
remittance of tax

3(1) The seller shall collect, as an agent of the Provincial Treasurer for the collection of tax, a tax payable under section 2(1)(a) from the consumer when the purchase is made.

(2) Where the seller referred to in subsection (1) is an agent-collector, he shall remit the tax collected to the Provincial Treasurer.

(3) Where the seller referred to in subsection (1) is not an agent-collector, he shall remit the tax collected under subsection (1)

- (a) to the agent-collector from whom he bought the fuel oil, or

(b) to the Provincial Treasurer, if he bought the fuel oil from someone other than an agent-collector or if the Provincial Treasurer so directs.

(4) An agent-collector who receives any tax pursuant to subsection (3)(a) shall remit it to the Provincial Treasurer.

(5) A person who is required to remit tax under this section shall do so in accordance with the regulations.

Rebate of tax

4(1) Subject to subsections (2) and (3), a person who has paid a tax under this Act may apply to the Provincial Treasurer, in accordance with the regulations, for a rebate of the tax paid.

(2) An application for a rebate must be made not later than 3 years after the end of the year in which the fuel oil to which the application relates was purchased.

(3) The Provincial Treasurer may, in accordance with the regulations, grant a rebate of the tax paid on the following:

(a) fuel oil used by a commercial fisherman in Alberta in a commercial fishing boat for commercial fishing purposes;

(b) fuel oil used by the applicant in a motor vehicle used for commercial purposes and operated on a licence of occupation road, a private road on private or Crown land, a highway under construction that is not open to or accessible to the public or any area that is not a highway as defined in the *Highway Traffic Act*;

(c) fuel oil used by an applicant that is a city, town, village, summer village, municipal district, county or school board in a motor vehicle used by the applicant and operated on a licence of occupation road, a private road on private or Crown land, a highway under construction that is not open to or accessible to the public or any area that is not a highway as defined in the *Highway Traffic Act*;

(d) fuel oil used by the applicant in circumstances in which this Act would have permitted the use of marked fuel, where marked fuel was not reasonably available in the Provincial Treasurer's opinion;

(e) if the applicant is an interjurisdictional carrier on the prorated system, fuel oil purchased by the applicant in Alberta and consumed outside Alberta in a public vehicle of which he is the owner;

(f) fuel oil purchased by the applicant from a bulk dealer who delivers it outside Alberta if the fuel oil is consumed outside Alberta;

(g) fuel oil purchased in Alberta for its own use by a country or state other than Canada, a political subdivision of that country or state, an agency of that country, state or political subdivision, or an accredited person representing that country, state or political subdivision in Canada;

(h) fuel oil used by the applicant for other purposes in accordance with the regulations.

(4) Where the Provincial Treasurer refuses in whole or in part an application for a rebate, he shall cause to be given to the applicant a notice of disallowance specifying the amount of the disallowance and the reasons for it.

Possession of
marked fuel

5(1) No person shall be in possession of marked fuel unless

(a) he has been issued a certificate under subsection (2), and

(i) he is in possession of the marked fuel for commercial purposes in an engine of which he is the owner or operator, other than an engine that drives a motor vehicle, boat or aircraft, and then only if the fuel is in the fuel system of the engine or is being transported or kept in storage by him for use in such an engine,

(ii) he is in possession of the marked fuel for commercial purposes in a motor vehicle that is not required to be licensed or registered under any federal or provincial enactment in respect of its operation, and then only if the fuel is in the fuel system of the motor vehicle or is being transported or kept in storage by him for use in such a motor vehicle,

(iii) the person is a city, town, village, summer village, municipal district, county or school board and is in possession of the marked fuel for use in an engine of which it is an owner or operator other than an engine that drives a motor vehicle, boat or aircraft, and then only if the fuel is in the fuel system of the engine or is being transported or kept in storage by the person for use in such an engine,

(iv) the person is a city, town, village, summer village, municipal district, county or school board and is in possession of the marked fuel for use in a motor vehicle that is not required to be licensed or registered under any federal or provincial enactment in respect of its operation, and then only if the fuel is in the fuel system of the motor vehicle or is being transported or kept in storage for use in such a motor vehicle,

(v) he is in possession of the marked fuel for use in farming operations in Alberta carried on by him, and then only if the fuel is in the fuel system of a farm truck or farm machinery of which he is the owner or operator or is being transported or kept in storage by him for use in farming operations,

(vi) he is in possession of the marked fuel for use for any purpose other than burning it in an internal combustion engine, or

(vii) he is in possession of the marked fuel for a use prescribed by regulation,

(b) he is a purchaser of a farm truck or farm machinery, and then only if the marked fuel is in the fuel system of the farm truck or farm machinery at the time of its delivery to the purchaser,

(c) he is a refiner or agent-dealer and the marked fuel is part of his inventory for sale,

(d) he is an officer or other person employed or engaged in the administration or enforcement of this Act, and then only for purposes related to the administration or enforcement of this Act, or

(e) he is in possession of the marked fuel for the purpose only of transporting it to a person referred to in clause (a) or (c), and then only in a container that is not connected to any fuel system of an internal combustion engine in or on the vehicle or railway car transporting the marked fuel in a way that permits the marked fuel to enter or be used as fuel in that fuel system.

(2) A consumer may apply to the Provincial Treasurer, in accordance with the regulations, for a certificate identifying him as a person who is entitled to be in possession of marked fuel.

(3) If the Provincial Treasurer refuses to issue a certificate under subsection (2), he shall cause to be given to the applicant a notice of refusal specifying the reason for the refusal.

Colouring and
identifying fuel

6(1) Unless he is authorized or required to do so under any other Act, no person shall do any of the following:

(a) unless he is authorized to do so by the Provincial Treasurer in writing, introduce into any fuel a substance or thing for the purpose of, or having the effect of, colouring or identifying the fuel as marked fuel;

(b) add any substance or thing to marked fuel, or subject marked fuel to any process, if doing so affects or changes the marked fuel so that it is no longer coloured or identified as marked fuel in accordance with the regulations;

(c) sell or be in possession of blended fuel;

(d) sell or pass off as marked fuel any fuel that is not marked fuel.

(2) A person authorized to colour or identify fuel as marked fuel pursuant to subsection (1)(a) shall not colour or identify fuel as marked fuel except in accordance with the regulations.

Prohibited sale

7(1) Subject to section 10(5), no person shall sell marked fuel in Alberta unless he is a refiner or an agent-dealer.

(2) An agent-dealer shall not sell marked fuel to a consumer

(a) unless he has obtained from the consumer the evidence required by the regulations for that purpose, or

(b) when he has obtained the evidence required under clause (a), but knows or ought to know that the evidence is false in a material way or that the marked fuel will not be used as permitted under section 5.

(3) If an agent-dealer sells marked fuel in contravention of subsection (2), the agent-dealer and the consumer are jointly and severally liable to pay the Provincial Treasurer an amount equal to the amount of tax the consumer should have paid under section 2 had the marked fuel been fuel oil.

PART 2
FARM FUEL DISTRIBUTION ALLOWANCES,
DOMESTIC HEATING OIL ALLOWANCES

Allowances

8(1) The Provincial Treasurer may provide farm fuel distribution allowances in accordance with this Act and the regulations in respect of marked fuel used in farming operations in Alberta.

(2) The Provincial Treasurer may provide domestic heating oil allowances in accordance with this Act and the regulations in respect of marked fuel used for domestic purposes in Alberta.

(3) The allowances under subsections (1) and (2) shall be in the amount per litre prescribed in the regulations.

(4) A consumer may apply to the Provincial Treasurer, in accordance with the regulations, for a certificate identifying him as a person who is entitled to purchase marked fuel at the reduced price.

(5) If the Provincial Treasurer refuses to issue a certificate under subsection (4), he shall cause to be given to the applicant a notice of refusal specifying the reasons for the refusal.

(6) If a consumer used fuel oil in circumstances in which this Act would have permitted the use of marked fuel purchased at the reduced price because marked fuel was not reasonably available in the Provincial Treasurer's opinion, the Provincial Treasurer may, on application by the consumer in accordance with the regulations and in addition to any rebate under section 4, provide to the consumer a grant in the amount per litre prescribed in the regulations as the farm fuel distribution allowance or the domestic heating oil allowance, as the case may be.

(7) If the Provincial Treasurer refuses in whole or in part an application for a grant under subsection (6), he shall cause to be given to the applicant a notice of disallowance specifying the amount of the disallowance and the reasons for it.

(8) Payments made by the Provincial Treasurer under this section shall be made from money voted by the Legislature for the purpose.

Sale at
reduced price

9(1) When an agent-dealer sells marked fuel

(a) to a person for use in farming operations in Alberta, or

(b) to a person for domestic purposes in Alberta,

the price at which he sells it shall be the reduced price.

(2) Subject to the regulations, subsection (1) does not apply when the point of delivery of the marked fuel is a place outside Alberta.

(3) No person shall sell marked fuel at the reduced price to the Government of Canada or any agent of that Government.

Prohibited use

10(1) An agent-dealer shall not sell marked fuel at the reduced price to a consumer

(a) unless he has obtained from that consumer the evidence required by the regulations for that purpose, or

(b) when he has obtained the evidence required under clause (a) but knows or ought to know that the evidence is false in a material way or that the marked fuel will not be used in farming operations or for domestic purposes in Alberta, as the case may be.

(2) If an agent-dealer sells marked fuel in contravention of subsection (1), the agent-dealer and the consumer are jointly and severally liable to pay to the Provincial Treasurer an amount equal to the farm fuel distribution allowance or the domestic heating oil allowance, as the case may be, on the marked fuel sold.

(3) If an agent-dealer does not contravene subsection (1) in selling marked fuel but the buyer does not use the marked fuel in farming operations or for domestic purposes in Alberta, the buyer is liable to pay to the Provincial Treasurer an amount equal to the farm fuel distribution allowance or domestic heating oil allowance, as the case may be, on the marked fuel not so used.

(4) If an agent-dealer sells marked fuel for use in farming operations or for domestic purposes in Alberta without contravening subsection (1) but at a price higher than the reduced price, the dealer is liable to pay to the Provincial Treasurer, with respect to each litre sold, an amount equal to the amount by which the actual price exceeds the reduced price.

(5) A consumer who buys marked fuel for use in farming operations or for domestic purposes in Alberta at the reduced price shall not sell or otherwise dispose of that marked fuel to another consumer for use other than for use in farming operations or for domestic purposes, as the case may be, in Alberta.

(6) If a sale or other disposition of marked fuel is made in contravention of subsection (5), the person who sells or disposes of the marked fuel and the buyer or person to whom the marked fuel was delivered, as the case may be, are jointly and severally liable to pay to the Provincial Treasurer an amount equal to the farm fuel distribution allowance or domestic heating oil allowance, as the case may be, for each litre so sold or otherwise disposed of.

PART 3

GENERAL

Assessment of
amount owing

11(1) The Provincial Treasurer may assess or reassess any amount payable by an agent-dealer or consumer under this Act within 3 years from the day the amount became payable, except that if the person has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed a fraud, in making a return or in supplying any information under this Act or the regulations or in omitting to disclose any information, the Provincial Treasurer may assess or reassess the amount owing at any time he considers reasonable.

(2) Liability for an amount owing under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(3) The Provincial Treasurer is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding a return or information so delivered, or if no return or information has been delivered, assess an amount payable under this Act.

Assessment
of penalty

12(1) The Provincial Treasurer may assess against a seller who fails to collect or remit tax that he is required by this Act to collect and remit a penalty in an amount equal to the amount of tax he failed to collect or remit.

(2) No penalty imposed under subsection (1) shall be imposed in respect of tax that should have been collected and remitted earlier than 3 years immediately preceding the day of the assessment under subsection (1), except that if a seller has made a misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed a fraud in making a return or in supplying any information under this Act or the regulations or in omitting to disclose any information, the Provincial Treasurer may impose the penalty provided for in subsection (1) for tax that should have been collected and remitted earlier than 3 years prior to the date of the assessment under subsection (1).

Effect of
assessment

13(1) A notice of an assessment made under section 11 or 12 may be served by sending it to the person against whom the assessment is made at his last address known to the Provincial Treasurer or by serving the notice on him personally.

(2) Unless it is varied or vacated on an objection or appeal,

(a) an assessment made under section 11 or 12 is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it, and

(b) the amount assessed in an assessment made under section 11 or 12 shall, for the purposes of collection and recovery, be deemed to be a tax owing under this Act and to be conclusively established as a debt due to Her Majesty in right of Alberta.

(3) Every person assessed under section 11 or 12 shall, within 30 days of the service of the notice of assessment, pay the amount assessed against him whether or not an objection to or appeal from the assessment is outstanding.

Interest

14 Interest is payable

(a) by a person in respect of an amount of tax or penalty that he fails to pay or remit in accordance with this Act and the regulations,

(b) by a person who receives a rebate under section 4, in respect of any amount that he was not entitled to receive,

(c) by a person who receives a grant under section 8(6), in respect of any amount that he was not entitled to receive, and

(d) by an agent-dealer or consumer in respect of an amount he is liable to pay under section 7 or 10,

and the interest is payable over the period of time, at the rate and in the manner prescribed in the regulations.

Certificate
of payment

15(1) A trustee in bankruptcy, assignee, liquidator, administrator, receiver, receiver-manager or any other similar person, in this section referred to as the “responsible representative”, administering, winding up, controlling or otherwise dealing with a property or business of a person who is an agent-collector shall, before distributing any property over which he has control in his capacity as the responsible representative, obtain a certificate from the Provincial Treasurer certifying that all amounts

(a) for which the agent-collector is liable under this Act up to the date of the certificate, and

(b) for the payment of which the responsible representative is or can reasonably be expected to become liable in his capacity as the responsible representative

have been paid or that security for the payment of the amounts has been accepted by the Provincial Treasurer.

(2) If a responsible representative distributes property over which he has control in his capacity as the responsible representative without obtaining a certificate under subsection (1) in respect of the amounts referred to in that subsection, the responsible representative is personally liable for the payment of those amounts to the extent of the value of the property distributed, and the Provincial Treasurer may assess the responsible representative for the amounts in the same manner and with the same effect as if it were an assessment under this Part of the agent-collector for whose property or business he is responsible.

Amounts
recoverable
as debts

16 Taxes, penalties and interest payable under this Act and overpayments of a rebate under section 4, a grant under section 8(6), a farm fuel distribution allowance or a domestic heating oil allowance are recoverable by Her Majesty in right of Alberta in an action in debt.

Notice of
objection

17(1) A person who objects to

(a) a notice of assessment under section 11 or 12,

(b) a notice of disallowance of rebate under section 4(4),

(c) a notice of disallowance of a grant under section 8(7), or

(d) a notice of refusal under section 5 or 8,

may, within 90 days of the day of mailing of the notice, serve on the Provincial Treasurer a notice of objection in the prescribed form setting out the reasons for the objection and the relevant facts.

(2) A notice of objection under this section shall be served by being sent by certified mail or registered letter addressed to the Provincial Treasurer.

(3) The Provincial Treasurer may accept a notice of objection under this section notwithstanding that it was not served in the manner required by subsection (2).

(4) On receipt of a notice of objection, the Provincial Treasurer shall with all due dispatch reconsider the assessment, disallowance or refusal and shall

(a) vacate, confirm or vary the assessment or disallowance and notify the objector of his decision by certified mail or registered letter,

(b) serve a new notice of assessment or cause a new notice of disallowance to be given, or

(c) issue a certificate under section 5 or 8 or cause a new notice to be given confirming his refusal to issue a certificate.

Notice of appeal

18(1) A person who has served a notice of objection under section 17(1) may appeal to the Court to have the assessment or disallowance vacated or varied or the certificate under section 5 or 8 issued after

(a) the Provincial Treasurer has confirmed the assessment or disallowance or served a new notice of assessment or caused a new notice of disallowance to be given under section 17(4),

(b) the Provincial Treasurer caused a new notice to be given confirming his refusal to issue a certificate under section 5 or 8, or

(c) 90 days have elapsed after service of the notice of objection and the Provincial Treasurer has not acted under section 17(4),

but no appeal under this section may be instituted after the expiration of 90 days from the day a notification or notice under section 17(4) was mailed to the objector.

(2) An appeal to the Court shall be instituted by serving on the Provincial Treasurer a notice of appeal and by filing a copy of the notice of appeal with the clerk of the Court.

(3) A notice of appeal shall be served on the Provincial Treasurer by being sent by certified mail or registered letter addressed to the Provincial Treasurer.

(4) The notice of appeal shall be attached to the notice of objection and, for the purposes of section 21, shall be deemed to be a statement of claim.

Reply to notice
of appeal

19(1) The Provincial Treasurer shall, within 60 days from the day the notice of appeal is received or within any further time that the Court may either before or after the expiration of that time allow, serve on the appellant and file in the Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of any further allegations of fact and of any applicable statutory provisions and any reasons he intends to rely on.

(2) The Court may strike out a notice of appeal or any part of the notice for failure to comply with section 18 and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(3) The Court may

- (a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply, or
- (b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time that it considers appropriate.

(4) If a notice of appeal is struck out for failure to comply with section 18 and a new notice of appeal is not filed as and when permitted by the Court, the Court may dismiss the appeal.

(5) If a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the Court within the time ordered, the Court may dispose of the appeal ex parte or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true.

Powers of Court

20(1) On the filing of the material referred to in sections 18 and 19(1), (2) and (3) the matter shall be deemed to be an action in the Court.

(2) A fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in any manner and on any terms that the Court may direct.

(3) The Court may

- (a) dismiss the appeal, or
- (b) allow the appeal, and
 - (i) vacate the assessment or disallowance,
 - (ii) vary the assessment or disallowance,
 - (iii) restore the assessment or disallowance,
 - (iv) refer the assessment or disallowance back to the Provincial Treasurer for reconsideration, or
 - (v) order the Provincial Treasurer to issue a certificate under section 5 or 8.

(4) The Court may, in delivering judgment on an appeal, order payment or repayment of tax, a rebate under section 4, a grant under section 8(6) or the amount of an allowance referred to in section 8, interest, penalties or costs by the appellant or the Provincial Treasurer.

Practice and
procedure

21 Except as provided in the regulations, the practice and procedure of the Court, including the right of appeal and the practice and procedure relating to appeals to the Court of Appeal or the Supreme Court of Canada, apply to every matter deemed to be an action under section 20, and every judgment and order given or made in each such action may be enforced in the same manner and by like process as a judgment or order given or made in an action commenced in the Court.

Irregularities

22 An assessment or disallowance shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of a person in the observation of a directory provision of this Act.

Demand for information

23(1) The Provincial Treasurer may, for any purpose related to the administration or enforcement of this Act or the regulations, by a notice served personally or by registered letter or certified mail

(a) demand that a seller or agent-dealer, or

(b) when a seller or agent-dealer is a partnership or corporation, demand that a partner or the president or another officer, manager or secretary or any director, agent or representative of the partnership or corporation,

provide or produce any information or additional information or any document within a reasonable period of time stipulated in the notice.

(2) The Provincial Treasurer may, for any purpose related to the administration or enforcement of this Act or the regulations, by a notice served personally or by registered letter or certified mail, demand that

(a) a person holding an amount for or paying or liable to pay any amount to a seller or agent-dealer, or

(b) a partner, president or another officer, director, or agent of a person holding an amount for or paying or liable to pay any amount to a seller or agent-dealer

provide or produce any information or additional information or any document within a reasonable period of time stipulated in the notice.

(3) The Provincial Treasurer may, by a notice served personally or by registered letter or certified mail, require the production by any person, or by his agent, of any document in the possession or in the control of that person or his agent within a reasonable period of time stipulated in the notice, for the purpose of determining

(a) what amount, if any, is payable or collectible under Part 1 by any person, or

(b) eligibility to or the amount of a rebate under Part 1 or an allowance or grant referred to in section 8.

(4) If a person is served with a notice under subsection (1), (2) or (3) and he does not comply with the notice, the Provincial Treasurer, on 2 days' notice to the person, may apply to a judge and the judge may order the person to provide or produce the information or documents, subject to the conditions the judge considers appropriate, if he is satisfied that

(a) the information or documents demanded are in the possession of or under the control of the person, and

(b) the information or documents demanded are relevant to the administration or enforcement of this Act or the regulations.

Enforcement powers of officers

24 An officer may, for any purpose related to the administration or enforcement of this Act, examine any internal combustion engine or

its fuel system or any other thing that contains fuel oil, marked fuel or a substance that he believes to be fuel oil or marked fuel, and take and remove from it samples of fuel oil, marked fuel or any substance he believes to be fuel oil or marked fuel.

Powers of
Provincial
Treasurer

25 The Provincial Treasurer may

- (a) require any person, in a particular case,
 - (i) to keep any record,
 - (ii) to make any return,
 - (iii) to comply with a specified method of accounting, or
 - (iv) to make an inventory of fuel oil, marked fuel or mixed fuel as of a specified time,
- for a purpose related to the administration of this Act or the regulations;
- (b) prescribe the duties of agent-dealers and agent-collectors;
- (c) prescribe the form of any agreement or other document or form used in the administration of this Act;
- (d) extend the time for making a return under this Act.

Records

26(1) A seller and agent-dealer shall keep records, including inventory records, in accordance with the regulations.

(2) A consumer of marked fuel and every applicant for a rebate under section 4 or a grant under section 8(6) shall keep records in accordance with the regulations.

(3) A locomotive owner and interjurisdictional carrier on the prorated system shall keep records in accordance with the regulations.

Inspection
and audit

27(1) An officer may, at all reasonable times, for any purpose related to the administration of this Act,

- (a) inspect, audit or examine the records of a seller or person required to keep records under this Act and any document of the seller or that person or of any other person that relates or may relate to the information that is or should be in the records of the seller or person required to keep records under this Act or to any amount payable by or to him under this Act, and
- (b) require the production for inspection, audit or examination of all records or documents that are or may be relevant to the inspection, audit or examination,

and for those purposes the officer may, if he has reasonable grounds to believe that records or documents described in clause (a) or (b) are likely to be found in any premises or place,

- (c) subject to subsection (3), enter into the premises or place, and
- (d) require the owner or manager of the premises or place and any other person on the premises or at the place to give him all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and,

for that purpose, require the owner or manager to attend at the premises or place with him.

(2) If, on an ex parte application by the Provincial Treasurer, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that there are in any premises or place, other than a dwelling-house, records or documents described in subsection (1)(a) or (b), and

(b) entry into the premises or place is necessary for the administration of this Act,

he may issue a warrant authorizing an officer named in the warrant to enter the premises or place and to exercise any of the powers referred to in subsection (1), subject to the conditions specified in the warrant.

(3) If the premises or place referred to in subsection (1)(c) is a dwelling-house, an officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (4).

(4) If, on an ex parte application by the Provincial Treasurer, a judge is satisfied by information on oath

(a) that there are reasonable grounds to believe that a dwelling-house is the premises or a place referred to in subsection (1)(c),

(b) that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, and

(c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry into it will be refused,

he may issue a warrant authorizing an officer named in the warrant to enter that dwelling-house subject to the conditions specified in the warrant but, if the judge is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration of this Act, he shall

(d) order the occupant of the dwelling-house to provide reasonable access to the officer to any records or documents that are being or should be kept in the dwelling-house, and

(e) make any other order that is appropriate in the circumstances to carry out the purposes of this Act

to the extent that access has been or may be expected to be refused and that the records or documents are being kept or may be expected to be kept in the dwelling-house.

(5) In executing a warrant issued under this section, the officer named in the warrant shall not use force unless he is specifically authorized to do so in the warrant.

Search warrant

28(1) A judge may, on ex parte application by the Provincial Treasurer, issue a warrant in writing authorizing any person named in the warrant to enter and search any building, receptacle or place for any document or thing that may afford evidence as to the commission of

an offence under this Act and to seize and, as soon as practicable, bring the document or thing before, or make a report in respect of it to, a judge, who shall deal with it in accordance with this section.

(2) An application under subsection (1) shall be supported by information on oath establishing the facts on which the application is based.

(3) A judge shall issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act has been committed,

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found, and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

(4) A warrant issued under subsection (1) shall refer to the offence for which it is issued, shall identify the building, receptacle or place to be searched and the person alleged to have committed the offence and shall be reasonably specific as to the document or thing to be searched for and seized.

(5) Any person who executes a warrant under subsection (1) may seize, in addition to the document or thing referred to in subsection (1), any other document or thing that he believes on reasonable grounds affords evidence of the commission of an offence under this Act and shall as soon as practicable bring the document or thing before, or make a report in respect of it to, a judge, who shall deal with it in accordance with this section.

(6) Subject to subsection (7), if any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of it is made to a judge, the judge shall, unless the Provincial Treasurer waives retention, order that it be retained by the Provincial Treasurer, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

(7) If any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of it is made to a judge, the judge may, of his own motion or on summary application by a person with an interest in the document or thing, on 3 clear days' notice of the application to the Deputy Attorney General, order that the document or thing be returned to the person from whom it was seized or to the person who is otherwise legally entitled to it, if the judge is satisfied that

(a) the document or thing will not be required for an investigation or a criminal proceeding, or

(b) the document or thing was not seized in accordance with the warrant or this section.

(8) The person from whom a document or thing is seized pursuant to this section is entitled, at all reasonable times and subject to any reasonable conditions that are imposed by the Provincial Treasurer,

to inspect the document or thing and to obtain 1 copy of the document at the expense of the Provincial Treasurer.

Copies

29(1) If any book, record, paper or other document has been seized, examined or produced under section 23, 27 or 28, the person by whom it is seized or examined or to whom it is produced or any officer of the Treasury Department may make, or cause to be made, 1 or more copies.

(2) A document purporting to be certified by the Provincial Treasurer or a person authorized by the Provincial Treasurer to be a copy made pursuant to this section shall be admitted in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Hindering officer

30 No person shall hinder, molest or interfere with any person doing anything that he is authorized by or pursuant to section 23, 24, 27 or 28 to do or prevent or attempt to prevent any person doing that thing and, notwithstanding any other law to the contrary, a person shall, unless he is unable to do so, do everything he is required by or pursuant to section 23, 24, 27 or 28 to do.

Administration of Act

31 The Provincial Treasurer shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act.

Security for amounts owing

32(1) The Provincial Treasurer may, if he considers it advisable in a particular case, accept security for payment of debts due to Her Majesty in right of Alberta under this Act by way of mortgage or other charge of any kind on property of the person liable for the debt or any other person or by way of guarantee from other persons.

(2) If a person who has furnished security under subsection (1) requests in writing that the Provincial Treasurer surrender the security, the Provincial Treasurer shall surrender the security to the extent that the value of the security exceeds the aggregate of amounts payable under this Act by that person at that time.

Offence re documents and records

33 Any person who

(a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, statement, record or document delivered or made under this Act or the regulations,

(b) destroys, alters, mutilates or disposes of the records of a person required to keep records under this Act,

(c) makes, or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in the omitting of material particular in the records of a person required to keep records under this Act,

(d) wilfully evades or attempts to evade compliance with this Act or the regulations, or

(e) conspires with any person to commit an offence described in clauses (a) to (d)

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable to a fine of not more than 300% of the

tax sought to be evaded or evaded, the difference between the amount that should have been remitted and the amount remitted, the rebate sought to be obtained or obtained or the allowance or grant referred to in section 8 sought to be obtained or obtained or to that fine and imprisonment for not more than 2 years.

Failure to
file return

34 A person who fails to deliver a return or provide or produce information or a document as and when required by this Act or the regulations is guilty of an offence and liable to a fine in an amount determined by the judge for each day of default.

Failure to pay
or remit tax

35(1) A person who contravenes section 2 or 3 is guilty of an offence and, in addition to any other penalty provided by this Act, is liable to a fine of not more than 300% of the tax required to be paid, collected or remitted, as the case may be, under section 2 or 3.

(2) A person who contravenes section 9 or 10(1) or (5) is guilty of an offence and, in addition to any other penalty provided by this Act, is liable to a fine with respect to each litre sold of not more than 300% of the difference between the reduced price and the price at which it was sold or should have been sold.

General offence

36 A person who contravenes a provision of this Act or the regulations for which a penalty is not otherwise provided is guilty of an offence and is liable

- (a) for a first offence, to a fine of not more than \$1000,
- (b) for a 2nd offence, to a fine of not more than \$2500, and
- (c) for a 3rd or subsequent offence, to a fine of not more than \$5000.

Limitation on
prosecution

37 A prosecution for an offence under this Act or the regulations may be commenced within 4 years from the date of the contravention, but not afterwards.

Certificate as
evidence

38 In a prosecution for an offence under this Act or the regulations,

- (a) a certificate of the Deputy Minister of the Minister charged with the administration of 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 in it,
- (b) a certificate of the chief chemist or the deputy chief chemist of the gasoline and oil laboratory of the Alberta Research Council stating the results of the examination of any substance referred to in the certificate and stating whether that substance
 - (i) is or is not a hydrocarbon substance, a liquid petroleum gas, natural gas or an oxygenate,
 - (ii) is or is not marked fuel, blended fuel or mixed fuel, or
 - (iii) does or does not contain a colouring matter or identifying substance authorized to be used under the regulations,

or

(c) a certificate of the Provincial Treasurer stating that a person named in the certificate is an officer for the purposes of this Act,

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

Regulations

39(1) The Lieutenant Governor in Council may make regulations

(a) respecting the collection and remission of tax under this Act;

(b) authorizing the Provincial Treasurer to enter into an agreement with any person under which that person is designated as an agent-collector or an agent-dealer;

(c) prescribing any commission or the manner of calculating the commission to be paid to agent-collectors, agent-dealers or bulk dealers for services related to the collection and remission of tax and the delivery of allowances under section 8 or to persons authorized to colour or identify fuel under section 6;

(d) authorizing the Provincial Treasurer to require the bonding of agent-collectors to secure the collection of tax under this Act and to prescribe the amount and form of the bonds, and providing for any other matter in connection with the bonds;

(e) authorizing the Provincial Treasurer to give accountable advances to agent-dealers in respect of allowances referred to in section 8 and to prescribe the terms and conditions under which the accountable advances may be given;

(f) respecting the farm fuel distribution allowance;

(g) respecting the domestic heating oil allowance;

(h) respecting grants under section 8(6);

(i) prescribing the evidence to be furnished to an agent-dealer under sections 7(1) and 10(1);

(j) designating any operation as a farming operation;

(k) designating any operation as not being a farming operation;

(l) respecting the colouring and identifying of fuel as marked fuel;

(m) prescribing a substance as an oxygenate;

(n) designating a vehicle, implement, machine or equipment as farm machinery, and prescribing the circumstances under which a vehicle, implement, machine or equipment is deemed to be farm machinery;

(o) prescribing a vehicle, implement, machine or equipment as not being farm machinery, and prescribing the circumstances under which a vehicle, implement, machine or equipment is deemed not to be farm machinery;

- (p) prescribing the rate of interest and the manner of calculation of interest payable for the purposes of section 14;
 - (q) prescribing permitted uses for marked fuel for the purposes of section 5(1);
 - (r) respecting records to be kept under this Act;
 - (s) respecting returns to be made to the Provincial Treasurer, including the person required to make them;
 - (t) respecting the application for and granting of rebates under section 4;
 - (u) for the purposes of section 4(3)(h), respecting other purposes for which fuel oil may be used;
 - (v) respecting certificates to be issued by the Provincial Treasurer under this Act;
 - (w) authorizing a reduction in the price of marked fuel by the amount of the farm fuel distribution allowance when the point of delivery of the marked fuel is a place outside Alberta, and respecting any terms and conditions on which the reduction may be made;
 - (x) prescribing anything required by this Act to be prescribed by regulation;
 - (y) defining any word used in the Act or regulations and not defined in the Act.
- (2) A regulation made under this Act shall, if it so provides, be effective with reference to a period before it was made.

PART 4

CONSEQUENTIAL, REPEAL AND COMMENCEMENT

Amends
RSA 1980 cF-22

40 *The Fuel Oil Licensing Act is amended*

(a) in section 11(1)(a) by striking out “or under the *Fuel Oil Tax Act*” and substituting “, the *Fuel Oil Tax Act* or the *Fuel Tax Act*”;

(b) in the following provisions by striking out “*Fuel Oil Administration Act*” wherever it occurs and substituting “*Fuel Tax Act*”:

section 11(1)(b) and (c);
section 18(3);

(c) in section 23(b) by striking out “or of the *Fuel Oil Administration Act*”.

Amends
RSA 1980 cM-20

41 *The Motor Transport Act is amended in section 24(1) by adding “, the *Fuel Tax Act*” after “*Fuel Oil Administration Act*”.*

Amends
RSA 1980 cM-22

42 *The Motor Vehicle Administration Act is amended in section 57(1)(a) by adding “or of the *Fuel Tax Act*” after “*Fuel Oil Administration Act*”.*

Repeals
RSA 1980 cF-21

Coming
into force

43 *The Fuel Oil Administration Act is repealed.*

44(1) *This Act is deemed to have come into force on June 1, 1987.*

(2) Notwithstanding subsection (1), the Fuel Oil Administration Act continues to apply to all transactions and matters arising under that Act before the coming into force of this Act as if this Act had not come into force.