

1990 BILL 20

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 20

**CONSUMPTION TAX STATUTES
AMENDMENT ACT, 1990**

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 20

1990

CONSUMPTION TAX STATUTES AMENDMENT ACT, 1990

(Assented to _____, 1990)

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

Fuel Tax Act

1(1) The Fuel Tax Act is amended by this section.

(2) Section 1 is amended

(a) in subsection (1)

(i) by adding the following after clause (b):

(b.1) “assess” includes reassess;

(ii) in clause (m) by striking out “truck used in farming operations” and substituting “farm truck as defined in the regulations”;

(iii) in clause (o) by adding “or a turbine engine” after “internal combustion engine”;

(iv) by repealing clause (r);

(v) in clause (s) by adding the following after subclause (iv):

(v) any other hydrocarbon prescribed by regulation;

(vi) in clause (t) by adding “or steam” after “electric power”;

(vii) by adding the following after clause (cc):

Explanatory Notes

Fuel Tax Act

1(1) This section will amend chapter F-22.5 of the Statutes of Alberta, 1987.

(2) Section 1(1)(b), (m), (o), (r), (s), (t) and (dd) and (2) presently read:

1(1) In this Act

(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;

(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;

(m) "farm truck" means a truck used in farming operations;

(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;

(cc.1) “sell” means to sell or otherwise supply fuel oil or liquid petroleum gas;

(viii) *in clause (dd) by adding “or liquid petroleum gas” after “fuel oil”;*

(b) by repealing subsection (2).

(3) Section 2 is amended

(a) in subsection (1)

(i) by striking out “\$0.05” and substituting “\$0.07”;

(ii) as to clause (a) by adding “or in an aircraft” after “owner”;

(iii) as to clause (b) by adding “or an aircraft” after “locomotive”;

(b) by adding the following after subsection (1):

(1.1) Subject to this section, a consumer shall pay a tax to the Provincial Treasurer at a rate of \$0.05 per litre on liquid petroleum gas purchased by him for use as motive fuel.

(1.2) Subject to this section, a consumer shall pay a tax to the Provincial Treasurer at a rate of \$0.05 per litre on fuel oil purchased by him for use in an aircraft.

(c) in subsection (3)(a), (b) and (c) by adding “or liquid petroleum gas” after “fuel oil” wherever it occurs;

(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;

(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.

(3) Section 2 presently reads:

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 prorated 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.

(d) in subsection (4) by adding “or liquid petroleum gas” after “fuel oil”.

(4) Section 3 is amended

(a) in subsection (1) by adding “, (1.1) or (1.2)” after “2(1)(a)”;

(b) in subsection (3)

(i) as to clause (a), by striking out “bought the fuel oil” and substituting “purchased the fuel oil or liquid petroleum gas”;

(ii) as to clause (b), by striking out “bought the fuel oil” and substituting “purchased the fuel oil or liquid petroleum gas”.

(5) The following is added after section 3:

3.1 Where a person has possession of or control over funds that are collected as taxes under this Act, that person holds those funds in trust for the Provincial Treasurer.

(6) Section 4 is amended

(a) in subsection (2) by adding “or liquid petroleum gas” after “fuel oil”;

(b) in subsection (3)

(i) as to clauses (a) and (b) by adding “or liquid petroleum gas” after “fuel oil” wherever it occurs;

(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.

(4) Section 3(1) and (3) presently read:

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.

(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.

(5) Funds to be held in trust.

(6) Section 4 presently reads:

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 2 years after the end of the year in which the fuel oil to which the application relates was purchased.

(ii) as to clause (c)

(A) by adding “or liquid petroleum gas” after “fuel oil”;

*(B) by striking out “or school board” and substituting
“, school board, college established under the *Colleges Act*
or university established under the *Universities Act*”;*

*(iii) as to clauses (g) and (h) by adding “or liquid petroleum
gas” after “fuel oil” wherever it occurs;*

(iv) by adding the following after clause (h):

*(i) liquid petroleum gas used for farming operations in
Alberta.*

(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 prorate 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.

(7) Section 5(1)(a)(iii) and (iv) are amended by striking out “or school board” and substituting “, school board, college established under the Colleges Act or university established under the Universities Act”.

(8) Section 6(1)(a) is amended by striking out “as marked fuel”.

(9) The following is added after section 10:

10.1 No person shall mix marked fuel on which a farm fuel distribution allowance or a domestic heating oil allowance has been provided with any other fuel in respect of which a farm fuel

(7) Section 5(1)(a)(iii) and (iv) presently read:

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

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

(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,

(8) Section 6 presently reads:

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.

(9) Prohibition against mixing fuels.

(10) Section 11(1) presently reads:

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.

(11) Section 13(1) presently reads:

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.

(12) Penalty.

distribution allowance or a domestic heating oil allowance has not been provided.

(10) Section 11(1) is amended

(a) by striking out “or reassess” wherever it occurs;

(b) by striking out “an agent-dealer” and substituting “a seller, agent-dealer”.

(11) Section 13(1) is repealed.

(12) The following is added after section 13:

13.1(1) In this section, “amount owing” means,

(a) in the case of fuel tax, the fuel tax owing to the Crown that has not been paid, and

(b) in the case of an allowance under Part 2, the amount owing to the Crown under Part 2 that has not been paid.

(2) Where

(a) a person owes an amount to the Crown under Part 1 or Part 2, and

(b) the Provincial Treasurer is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to

(i) neglect, carelessness or wilful default by or on behalf of that person, or

(ii) fraud or evasion committed by or on behalf of that person,

the Provincial Treasurer may determine the amount owing by that person and assess against the person a penalty in the amount of 25% of the amount owing.

(3) Any penalty assessed under this section is in addition to a penalty, if any, assessed under section 12.

(4) On assessing a penalty under subsection (2), the Provincial Treasurer may demand payment of the amount owing and the amount of the penalty assessed under this section from the person to whom the demand is directed.

(5) Evidence that a demand has been made under subsection (4) is prima facie proof that the amount owing and the amount of the penalty assessed under this section are owing to the Crown from the person to whom the demand is directed in the amounts stated in the demand.

(13) The following is added after section 16:

16.1(1) Where

(a) an amount that is payable under this Act has not been paid, or

(b) part of an amount that is payable under this Act has not been paid,

the Provincial Treasurer may issue a certificate stating the amount or the part of the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court.

(3) When a certificate issued under subsection (1) is filed in the Court,

(a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate, together with interest to the day of payment, and

(b) proceedings may be taken to enforce payment of the amount owing in respect of the certificate in the same manner as if the certificate were a judgment of the Court.

(4) All reasonable costs and charges payable in respect of the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.

16.2(1) If the Provincial Treasurer has knowledge or suspects that a person is or will be indebted or liable to make any payment to another person who owes an amount under this Act, the Provincial Treasurer may, by a notice served on that person,

(13) Procedure for the collection of tax when tax is not otherwise paid.

require that person to pay the money otherwise payable to that other person in whole or in part to the Provincial Treasurer on account of the amount owing under this Act.

(2) Where a notice is given to a person under subsection (1), that notice applies to any indebtedness or liability to make any payment that exists at the time of the giving of the notice, or that arises within 90 days from the day the notice is given, by that person to the other person who owes an amount under this Act.

(3) The receipt of the Provincial Treasurer for money paid under this section is a good and sufficient discharge of the original liability to the extent of that payment.

(4) A person who, after receiving notice pursuant to subsection (1), has discharged any liability to the other person who owes an amount under this Act without complying with a requirement under this section is liable to pay to Her Majesty in right of Alberta

(a) an amount equal to the liability discharged, or

(b) the amount that he was required under this section to pay to the Provincial Treasurer,

whichever is the lesser.

16.3(1) If a person is liable for the payment of an amount assessed under this Act, in this subsection referred to as the "unpaid amount", the Provincial Treasurer shall not, for the purpose of collecting the unpaid amount,

(a) commence legal proceedings in the Court,

(b) certify the unpaid amount under section 16.1, or

(c) require a person to make a payment under section 16.2,

within 90 days after the day on which the notice of assessment is sent.

(2) If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Provincial Treasurer shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) within 90 days after the day on which the notice in which the Provincial Treasurer has confirmed or varied the assessment is sent to the person.

(3) If a person has appealed to the Court from an assessment of an amount payable under this Act, the Provincial Treasurer shall

not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before

- (a) the day on which the judgment of the Court takes effect, or
- (b) the day on which the person discontinues the appeal,

whichever is the earlier.

(4) Notwithstanding any other provision in this section, if a person

- (a) has
 - (i) served a notice of objection under this Act to an assessment, or
 - (ii) appealed to the Court from the assessment,

and

- (b) agrees in writing with the Provincial Treasurer to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Court, the Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same issue as that raised in the objection or appeal of the person,

the Provincial Treasurer may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of the amount, determined in a manner consistent with the decision or judgment made in the other action, at any time after the Provincial Treasurer notifies the person in writing that

- (c) the decision has been made by the Court in that action,
- (d) the decision has been made by the Court of Appeal in that action, or
- (e) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

16.4(1) Notwithstanding section 16.3, if

- (a) the Provincial Treasurer on reasonable grounds is of the opinion that collection of an amount assessed in respect of a person would be jeopardized by a delay in the collection of the amount, and

(b) the Provincial Treasurer has, by notice served on the person, so advised the person and directed the person to pay forthwith the amount assessed or any part of the amount,

the Provincial Treasurer may forthwith take any of the actions described in section 16.3(1) with respect to that amount or the part of that amount.

(2) Where the Provincial Treasurer has under subsection (1) directed a person to forthwith pay the amount assessed or any part of that amount, the person may by an originating notice apply to the Court for an order fixing a day that is not earlier than 14 days nor later than 28 days after the date of the order and a place to hold a hearing for the purposes of determining whether the Provincial Treasurer was justified in taking action under subsection (1).

(3) An originating notice commenced under subsection (2)

(a) may be returnable on the 3rd day following the day on which it was issued, and

(b) must be served on the Deputy Attorney General at least 3 days prior to its being heard by the Court.

(4) Except where the Court is of the opinion that circumstances warrant otherwise, an originating notice under this section must be issued within 30 days after the day that the notice given under subsection (1) was served on the person.

(5) Where

(a) an order is made under subsection (2), and

(b) a copy of that order is served on the Deputy Attorney General within 6 days after the day on which it is made,

the person may by a notice of motion apply at the time and place set by the Court under subsection (2) to have the Court determine whether the Provincial Treasurer was justified in taking action under subsection (1).

(6) The hearing held pursuant to an application made under subsection (5) may, on the application of the person, be held in private if the person satisfies the Court that the circumstances justify conducting the hearing in private.

(7) In determining at the hearing held pursuant to an application made under subsection (5) whether the Provincial Treasurer was justified in taking action under subsection (1), the burden of justifying the action is on the Provincial Treasurer.

(8) On conducting a hearing pursuant to an application made under subsection (5) into whether the action of the Provincial Treasurer requiring the person to forthwith pay the amount assessed or any part of that amount was justified, the Court shall determine the matter summarily and may

(a) confirm, vary or vacate the decision of the Provincial Treasurer, or

(b) make such other order as the Court considers appropriate in the circumstances.

(9) The Court shall not award costs in respect of matters coming under this section.

(14) Section 17 is amended

(a) in subsection (1) by striking out “or” at the end of clause (c), by adding “or” at the end of clause (d) and by adding the following after clause (d):

(e) a notice of cancellation pursuant to the regulations,

(b) in subsection (4)

(i) by striking out “or refusal” and substituting “, refusal or cancellation”;

(ii) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):

(d) remove the cancellation or issue a new certificate or cause a notice to be given confirming the cancellation of the certificate.

(15) Section 18(1) is amended by striking out “or” at the end of clause (b) and by adding the following after clause (b):

(b.1) the Provincial Treasurer has caused a notice to be given confirming his cancellation of a certificate, or

(14) Section 17(1) and (4) presently read:

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.

(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.*

(15) Section 18(1) presently reads:

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

(16) Section 20(3)(b) is amended by striking out “or” at the end of subclause (iv), by adding “or” at the end of subclause (v) and by adding the following after subclause (v):

(vi) order the Provincial Treasurer to remove the cancellation of a certificate or issue a new certificate.

(17) Section 23(4) is repealed and the following is substituted:

(4) If a person is served with a demand under this section and he does not comply with the demand, an officer may apply to the Court for an order directing the person to comply with the demand.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days’ notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(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.

(16) Section 20(3) presently reads:

(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.

(17) Section 23(4) presently reads:

(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.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

(a) direct the person to provide or produce the information, additional information or document where the Court is satisfied that

(i) the information, additional information or document demanded is in the possession of or under the control of the person, and

(ii) the information, additional information or document demanded is relevant to the administration or enforcement of this Act or the regulations;

(b) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(c) award costs in respect of the matter.

(18) Section 25 is amended

(a) in clause (a)(iv) by adding "liquid petroleum gas," after "fuel oil,";

(b) by adding the following after clause (d):

(e) enter into agreements with other jurisdictions with respect to the collection of taxes and penalties.

(19) Section 27 is repealed and the following is substituted:

(18) Section 25 presently reads:

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.

(19) Section 27 presently reads:

27(1) For the purposes of ensuring that this Act and the regulations are being complied with, an officer may, at any reasonable time,

(a) inspect, audit or examine

(i) the records of a person who is required to keep records under this Act or the regulations, and

(ii) any document of that person or of any other person that relates or may relate

(A) to the information that is or should be in the records of the person who is required to keep records under this Act or the regulations, or

(B) to any amount payable under this Act by or to the person referred to in subclause (i),

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.

(2) Where an officer on reasonable grounds believes that the records or documents referred to in subsection (1) are located in any premises or place, the officer may, at any reasonable time,

(a) subject to subsection (3), enter the premises or place, and

(b) 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.

(3) When the premises or place referred to in subsection (2) is a dwelling-house, the officer shall not enter the dwelling-house without the consent of the occupant of the dwelling-house.

(4) If an officer

(a) is refused entry into premises or a place referred to in subsection (2),

(b) is not given consent to enter a dwelling-house,

(c) has reasonable grounds to believe that

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

(i) he will be refused entry into premises or a place referred to in subsection (2), or

(ii) he will not be given consent to enter a dwelling-house,

or

(d) is impeded or has reasonable grounds to believe that he will be impeded in the carrying out of an inspection, audit or examination of any record or document,

he may apply to the Court for an order authorizing him to

(e) enter the premises, place or dwelling-house, and

(f) carry out his inspection, audit or examination.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

(a) authorize the officer to enter the premises, place or dwelling-house and carry out his duties;

(b) direct any occupant to assist the officer in any manner as the Court prescribes;

(c) restrain any person from impeding the officer from entering the premises, place or dwelling-house or from carrying out his duties;

(d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(e) award costs in respect of the matter.

(20) *Section 28 is repealed.*

(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.

(20) Section 28 presently reads:

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*

(21) Section 29(1) is amended by striking out “, 27 or 28” and substituting “or 27 or pursuant to a search warrant”.

(22) Section 30 is amended by striking out “, 27 or 28” wherever it occurs and substituting “or 27”.

(23) The following is added after section 32:

32.1(1) Where a notice or other document is to be served on or is to be sent or given to a person by the Provincial Treasurer or an officer under this Act, the notice or document may be served on or sent or given to

(a) a person other than a corporation,

(i) by being mailed to the person by ordinary, certified or registered mail addressed to the person to whom the notice or document is directed at that person’s last address known to the Provincial Treasurer, or

(ii) by personal service,

and

(b) a corporation,

(i) in accordance with section 247 of the *Business Corporations Act*, or

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.

(21) Section 29(1) presently reads:

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.

(22) Changes a cross reference.

(23) Service, etc.

(ii) by registered mail addressed to the corporation at the corporation's last address known to the Provincial Treasurer.

(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than his own name, the notice or document,

(a) for the purposes of being mailed, may be addressed to the name or style under which he carries on business, and

(b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

(a) for the purposes of being mailed, may be addressed to the partnership name, and

(b) for the purposes of personal service, is deemed to have been served if it

(i) has been served on one of the partners, or

(ii) is left with an adult person employed at the place of business of the partnership.

(24) The following is added after section 35:

35.1 If a person acting or purporting to act on behalf of a corporation

(a) knowingly, or

(b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act,

makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, certificate, statement or answer filed or made as required by or under this Act or a regulation, as a result of which the tax or refund that would have been payable by or to the corporation, if the tax or refund had been assessed or determined on the basis of the information provided in the return, application, certificate, statement or answer, is less or more, as the case may be, than the

(24) Offences re corporation.

tax or refund payable by or to the corporation, the corporation is guilty of an offence.

35.2(1) A corporation that wilfully evades or attempts to evade payment of tax payable by it is guilty of an offence.

(2) A corporation that wilfully claims or attempts to claim a refund greater than that to which it is entitled is guilty of an offence.

(3) Where a corporation is guilty of an offence under subsection (1), it is liable to a fine of not more than 300% of the amount of tax sought to be evaded.

(4) Where a corporation is guilty of an offence under subsection (2), it is liable to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which it is entitled.

35.3(1) An individual who

(a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,

(b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation,

(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 to enter a material particular in records or books of account of a corporation,

(d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of taxes imposed by this Act, or

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

and thereby enables or assists or attempts to enable or assist or causes or could cause

(f) a corporation to evade or attempt to evade payment of tax payable by it, or

(g) a corporation to claim or attempt to claim a refund greater than that to which it is entitled

is guilty of an offence.

(2) Where, with respect to a corporation referred to in subsection (1)(f), an individual is guilty of an offence under subsection (1), that individual is liable

(a) to a fine of not more than 300% of the amount of tax sought to be evaded, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

(3) Where, with respect to a corporation referred to in subsection (1)(g), an individual is guilty of an offence under subsection (1), that individual is liable

(a) to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

35.4 If a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

(25) Section 39(1) is amended

(a) by adding the following after clause (a):

(a.1) governing, for the purposes of this Act, the issuing of permits for public vehicles that are operated by an interjurisdictional carrier on the prorate system;

(b) by adding the following after clause (b):

(b.1) authorizing the Provincial Treasurer to prescribe conditions under which a person may be designated as an agent-collector or an agent-dealer;

(b.2) requiring surety bonds, bank guarantees or other financial arrangements to be furnished or made by any person who collects or remits tax pursuant to this Act and prescribing the form and amount of the bonds, guarantees or other financial arrangements;

(25) Section 39(1)(a), (b), (h), (i) and (u) presently read:

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;

(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);

(u) for the purposes of section 4(3)(h), respecting other purposes for which fuel oil may be used;

(b.3) prescribing hydrocarbons for the purposes of section 1(1)(s);

(c) *by repealing clause (d);*

(d) *by adding the following after clause (e):*

(e.1) authorizing the Provincial Treasurer to provide a refund of fuel tax paid in respect of fuel oil used in farming operations in Alberta;

(e.2) authorizing the Provincial Treasurer to provide farm fuel distribution allowances in respect of fuel oil used in respect of farming operations in Alberta;

(e) *by adding the following after clause (h):*

(h.1) governing the cancellation of a certificate issued pursuant to section 8;

(f) *in clause (i) by striking out “7(1)” and substituting “7(2)”;*

(g) *by adding the following after clause (i):*

(i.1) defining farm truck;

(h) *in clause (u) by adding “or liquid petroleum gas” after “fuel oil”;*

(i) *by adding the following after clause (u):*

(u.1) providing for a refund of the whole or any part of a tax paid under this Act and prescribing the records, material and information to be furnished on any application for a refund;

(u.2) governing funds that are held in trust;

(j) *by adding the following after clause (w):*

(w.1) exempting any person or class of person from the payment of tax imposed by this Act subject to any terms set out in the regulations;

(w.2) permitting, subject to any terms imposed by the Provincial Treasurer, the sale of fuel oil or liquid petroleum gas without payment of tax if the fuel oil or liquid petroleum gas is to be used for a purpose for which marked fuel may be used;

Hotel Room Tax Act

2(1) The Hotel Room Tax Act is amended by this section.

(2) Section 1 is amended

(a) by adding the following after clause (a):

(a.1) “assess” includes reassess;

(b) by repealing clause (e).

(3) Section 4(1) is amended by striking out “or reassess” wherever it occurs.

(4) The following is added after section 3:

3.1 Where a person has possession of or control over funds that are collected as taxes under this Act, that person holds those funds in trust for the Provincial Treasurer.

(5) Section 6(1) is repealed.

(6) The following is added after section 6:

6.1(1) Where

(a) a person owes an amount to the Crown under this Act, and

(b) the Provincial Treasurer is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to

(i) neglect, carelessness or wilful default by or on behalf of that person, or

Hotel Room Tax Act

2(1) This section will amend chapter H-11.5 of the Statutes of Alberta, 1987.

(2) Section 1(e) presently reads:

1 In this Act,

(e) "judge" means a judge of the Court;

(3) Section 4(1) presently reads:

4(1) The Provincial Treasurer may assess or reassess any tax payable by a purchaser under this Act within 3 years from the day the tax became payable, except that, if the purchaser 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 tax imposed by this Act at any time he considers reasonable.

(4) Funds to be held in trust.

(5) Section 6(1) presently reads:

6(1) A notice of an assessment made under section 4 or 5 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.

(6) Penalty and procedure for the collection of tax when tax is not otherwise paid.

- (ii) fraud or evasion committed by or on behalf of that person,

the Provincial Treasurer may determine the amount owing by that person and assess against the person a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Provincial Treasurer may demand payment of the amount owing and the amount of the penalty from the person to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is prima facie proof that the unpaid amount and the penalty assessed under this section are owing to the Crown from the person to whom the demand is directed in the amounts stated in the demand.

6.2(1) Where

- (a) an amount that is payable under this Act has not been paid, or

- (b) part of an amount that is payable under this Act has not been paid,

the Provincial Treasurer may issue a certificate stating the amount or the part of the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court.

(3) When a certificate issued under subsection (1) is filed in the Court,

- (a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate, together with interest to the day of payment, and

- (b) proceedings may be taken to enforce payment of the amount owing in respect of the certificate in the same manner as if the certificate were a judgment of the Court.

(4) All reasonable costs and charges payable in respect of the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.

6.3(1) If the Provincial Treasurer has knowledge or suspects that a person is or will be indebted or liable to make any payment to

another person who owes an amount under this Act, the Provincial Treasurer may, by a notice served on that person, require that person to pay the money otherwise payable to that other person in whole or in part to the Provincial Treasurer on account of the amount owing under this Act.

(2) Where a notice is given to a person under subsection (1), that notice applies to any indebtedness or liability to make any payment that exists at the time of the giving of the notice, or that arises within 90 days from the day the notice is given, by that person to the other person who owes an amount under this Act.

(3) The receipt of the Provincial Treasurer for money paid under this section is a good and sufficient discharge of the original liability to the extent of that payment.

(4) A person who, after receiving notice pursuant to subsection (1), has discharged any liability to the other person who owes an amount under this Act without complying with a requirement under this section is liable to pay to Her Majesty in right of Alberta

(a) an amount equal to the liability discharged, or

(b) the amount that he was required under this section to pay to the Provincial Treasurer,

whichever is the lesser.

6.4(1) If a person is liable for the payment of an amount assessed under this Act, in this subsection referred to as the "unpaid amount", the Provincial Treasurer shall not, for the purpose of collecting the unpaid amount,

(a) commence legal proceedings in the Court,

(b) certify the unpaid amount under section 6.2, or

(c) require a person to make a payment under section 6.3,

within 90 days after the day on which the notice of assessment is sent.

(2) If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Provincial Treasurer shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) within 90 days after the day on which the notice in which the Provincial Treasurer has confirmed or varied the assessment is sent to the person.

(3) If a person has appealed to the Court from an assessment of an amount payable under this Act, the Provincial Treasurer shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before

(a) the day on which the judgment of the Court takes effect, or

(b) the day on which the person discontinues the appeal,

whichever is the earlier.

(4) Notwithstanding any other provision in this section, if a person

(a) has

(i) served a notice of objection under this Act to an assessment, or

(ii) appealed to the Court from the assessment,

and

(b) agrees in writing with the Provincial Treasurer to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Court, the Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same issue as that raised in the objection or appeal of the person,

the Provincial Treasurer may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of the amount, determined in a manner consistent with the decision or judgment made in the other action, at any time after the Provincial Treasurer notifies the person in writing that

(c) the decision has been made by the Court in that action,

(d) the decision has been made by the Court of Appeal in that action, or

(e) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

6.5(1) Notwithstanding section 6.4, if

(a) the Provincial Treasurer on reasonable grounds is of the opinion that collection of an amount assessed in respect of a

person would be jeopardized by a delay in the collection of the amount, and

(b) the Provincial Treasurer has, by notice served on the person, so advised the person and directed the person to pay forthwith the amount assessed or any part of the amount,

the Provincial Treasurer may forthwith take any of the actions described in section 6.4(1) with respect to that amount or the part of that amount.

(2) Where the Provincial Treasurer has under subsection (1) directed a person to forthwith pay the amount assessed or any part of that amount, the person may by an originating notice apply to the Court for an order fixing a day that is not earlier than 14 days nor later than 28 days after the date of the order and a place to hold a hearing for the purposes of determining whether the Provincial Treasurer was justified in taking action under subsection (1).

(3) An originating notice commenced under subsection (2)

(a) may be returnable on the 3rd day following the day on which it was issued, and

(b) must be served on the Deputy Attorney General at least 3 days prior to its being heard by the Court.

(4) Except where the Court is of the opinion that circumstances warrant otherwise, an originating notice under this section must be issued within 30 days after the day that the notice given under subsection (1) was served on the person.

(5) Where

(a) an order is made under subsection (2), and

(b) a copy of that order is served on the Deputy Attorney General within 6 days after the day on which it is made,

the person may by a notice of motion apply at the time and place set by the Court under subsection (2) to have the Court determine whether the Provincial Treasurer was justified in taking action under subsection (1).

(6) The hearing held pursuant to an application made under subsection (5) may, on the application of the person, be held in private if the person satisfies the Court that the circumstances justify conducting the hearing in private.

(7) In determining at the hearing held pursuant to an application made under subsection (5) whether the Provincial Treasurer was justified in taking action under subsection (1), the burden of justifying the action is on the Provincial Treasurer.

(8) On conducting a hearing pursuant to an application made under subsection (5) into whether the action of the Provincial Treasurer requiring the person to forthwith pay the amount assessed or any part of that amount was justified, the Court shall determine the matter summarily and may

(a) confirm, vary or vacate the decision of the Provincial Treasurer, or

(b) make such other order as the Court considers appropriate in the circumstances.

(9) The Court shall not award costs in respect of matters coming under this section.

(7) *Section 7(c) is repealed and the following is substituted:*

(c) by an operator or any other person in respect of a penalty that he is liable to pay under this Act and that he fails to pay in accordance with this Act and the regulations,

(8) *Section 16(4) is repealed and the following is substituted:*

(4) If a person is served with a demand under this section and he does not comply with the demand, an officer may apply to the Court for an order directing the person to comply with the demand.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and

(7) Section 7 presently reads:

7 Interest is payable

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

(b) by a purchaser in respect of an amount of tax assessed against him under section 4 and that he fails to pay in accordance with this Act and the regulations, and

(c) by an operator in respect of a penalty he is liable to pay under section 5 and that he fails to pay in accordance with this Act and the regulations,

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

(8) Section 16(4) presently reads:

(4) If a person is served with a demand under subsection (1), (2) or (3) and he does not comply with the demand, 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 document, 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

make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

(a) direct the person to provide or produce the information, additional information or document where the Court is satisfied that

(i) the information or document demanded is in the possession of or under the control of the person, and

(ii) the information or document demanded is relevant to the administration or enforcement of this Act or the regulations;

(b) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(c) award costs in respect of the matter.

(9) *Section 19 is repealed and the following is substituted:*

19(1) For the purposes of ensuring that this Act and the regulations are being complied with, an officer may, at any reasonable time,

(a) inspect, audit or examine

(i) the records of a person who is required to keep records under this Act or the regulations, and

(ii) any document of that person or of any other person that relates or may relate

(A) to the information that is or should be in the records of the person who is required to keep records under this Act or the regulations, or

(B) to any amount payable under this Act by or to the person referred to in subclause (i),

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.

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

(9) Section 19 presently reads:

19(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 person required to keep records under this Act and any document of 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 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

(2) Where an officer on reasonable grounds believes that the records or documents referred to in subsection (1) are located in any premises or place, the officer may, at any reasonable time,

(a) subject to subsection (3), enter the premises or place, and

(b) 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.

(3) When the premises or place referred to in subsection (2) is a dwelling-house, the officer shall not enter the dwelling-house without the consent of the occupant of the dwelling-house.

(4) If an officer

(a) is refused entry into premises or a place referred to in subsection (2),

(b) is not given consent to enter a dwelling-house,

(c) has reasonable grounds to believe that

(i) he will be refused entry into premises or a place referred to in subsection (2), or

(ii) he will not be given consent to enter a dwelling-house,

or

(d) is impeded or has reasonable grounds to believe that he will be impeded in the carrying out of an inspection, audit or examination of any record or document,

he may apply to the Court for an order authorizing him to

(e) enter the premises, place or dwelling-house, and

(f) carry out his inspection, audit or examination.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and

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 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 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.

make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

(a) authorize the officer to enter the premises, place or dwelling-house and carry out his duties;

(b) direct any occupant to assist the officer in any manner as the Court prescribes;

(c) restrain any person from impeding the officer from entering the premises, place or dwelling-house or from carrying out his duties;

(d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(e) award costs in respect of the matter.

(10) *Section 20 is repealed.*

(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.

(10) Section 20 presently reads:

20(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,

(11) Section 21(1) is amended by striking out “, 19 or 20” and substituting “or 19 or pursuant to a search warrant”.

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 the document or thing

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

(b) 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.

(11) Section 21(1) presently reads:

21(1) If any book, record, paper or other document has been seized, examined or produced under section 16, 19 or 20, 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.

(12) *Section 22 is amended by striking out “or 19 to 21” wherever it occurs and substituting “, 19 or 21”.*

(13) *The following is added after section 24:*

24.1(1) Where a notice or other document is to be served on or is to be sent or given to a person by the Provincial Treasurer or an officer under this Act, the notice or document may be served on or sent or given to

(a) a person other than a corporation,

(i) by being mailed to the person by ordinary, certified or registered mail addressed to the person to whom the notice or document is directed at that person's last address known to the Provincial Treasurer, or

(ii) by personal service,

and

(b) a corporation,

(i) in accordance with section 247 of the *Business Corporations Act*, or

(ii) by registered mail addressed to the corporation at the corporation's last address known to the Provincial Treasurer.

(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than his own name, the notice or document,

(a) for the purposes of being mailed, may be addressed to the name or style under which he carries on business, and

(b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

(a) for the purposes of being mailed, may be addressed to the partnership name, and

(12) Changes cross references.

(13) Service, etc.

(b) for the purposes of personal service, is deemed to have been served if it

(i) has been served on one of the partners, or

(ii) is left with an adult person employed at the place of business of the partnership.

(14) The following is added after section 27:

27.1 If a person acting or purporting to act on behalf of a corporation

(a) knowingly, or

(b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act,

makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, certificate, statement or answer filed or made as required by or under this Act or a regulation, as a result of which the tax or refund that would have been payable by or to the corporation, if the tax or refund had been assessed or determined on the basis of the information provided in the return, application, certificate, statement or answer, is less or more, as the case may be, than the tax or refund payable by or to the corporation, the corporation is guilty of an offence.

27.2(1) A corporation that wilfully evades or attempts to evade payment of tax payable by it is guilty of an offence.

(2) A corporation that wilfully claims or attempts to claim a refund greater than that to which it is entitled is guilty of an offence.

(3) Where a corporation is guilty of an offence under subsection (1), it is liable to a fine of not more than 300% of the amount of tax sought to be evaded.

(4) Where a corporation is guilty of an offence under subsection (2), it is liable to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which it is entitled.

27.3(1) An individual who

(a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return,

(14) Offences re corporation.

certificate, statement or answer filed or made as required by or under this Act or a regulation,

(b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation,

(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 to enter a material particular in records or books of account of a corporation,

(d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of taxes imposed by this Act, or

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

and thereby enables or assists or attempts to enable or assist or causes or could cause

(f) a corporation to evade or attempt to evade payment of tax payable by it, or

(g) a corporation to claim or attempt to claim a refund greater than that to which it is entitled

is guilty of an offence.

(2) Where, with respect to a corporation referred to in subsection (1)(f), an individual is guilty of an offence under subsection (1), that individual is liable

(a) to a fine of not more than 300% of the amount of tax sought to be evaded, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

(3) Where, with respect to a corporation referred to in subsection (1)(g), an individual is guilty of an offence under subsection (1), that individual is liable

(a) to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

27.4 If a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

(15) Section 30(1) is amended

(a) by adding the following after clause (a):

(a.1) providing for a refund of the whole or any part of a tax paid under this Act and prescribing the records, material and information to be furnished on any application for a refund;

(a.2) governing funds that are held in trust;

(b) by repealing clause (f) and substituting the following:

(f) requiring surety bonds, bank guarantees or other financial arrangements to be furnished or made by any person who collects the tax imposed by this Act and prescribing the form and amount of the bonds, guarantees or other financial arrangements;

Parl Mutuel Tax Act

3(1) The Pari Mutuel Tax Act is amended by this section.

(2) Section 1 is amended

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

(a) “assess” includes reassess;

(b) by repealing clauses (b) and (c) and substituting the following:

(b) “Court” means the Court of Queen’s Bench;

(b.1) “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;

(c) “officer” means

(15) Section 30(1)(a) and (f) presently read:

30(1) The Lieutenant Governor in Council may make regulations

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

(f) authorizing the Provincial Treasurer to require the bonding of operators 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;

Pari Mutuel Tax Act

3(1) This section will amend chapter P-1.1 of the Statutes of Alberta, 1985.

(2) Section 1(b) and (c) presently read:

1 In this Act,

(b) "Court" means the Court of Queen's Bench;

(c) "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;

- (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;

(3) Section 3(2), (3) and (4) are amended by striking out "Minister" wherever it occurs and substituting "Provincial Treasurer".

(4) Sections 4 to 11 are repealed and the following is substituted:

4 Where a person has possession of or control over funds that are collected as taxes under this Act, that person holds those funds in trust for the Provincial Treasurer.

5(1) The Provincial Treasurer may assess any tax payable by a person under this Act within 3 years from the day the tax 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 tax imposed by this Act at any time he considers reasonable.

(2) Liability for tax imposed by 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 the tax payable under this Act.

6(1) The Provincial Treasurer may assess against an operator 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 that 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 an operator has made a misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed a fraud in

(3) Changes reference from “Minister” to “Provincial Treasurer”.

(4) Sections 4 to 11 presently read:

4(1) The Provincial Treasurer may assess or reassess any tax payable by a purchaser under this Act within 3 years from the day the tax became payable, except that, if the purchaser 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 tax imposed by this Act at any time he considers reasonable.

(2) Liability for tax imposed by 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 the tax payable under this Act.

5(1) The Provincial Treasurer may assess against an operator 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 that 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 an operator 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).

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).

7(1) Unless it is varied or vacated on an objection or appeal,

(a) an assessment made under section 5 or 6 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 5 or 6 is, for the purposes of collection and recovery, 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.

(2) Every person assessed under section 5 or 6 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.

8(1) Where

(a) a person owes an amount to the Crown under this Act, and

(b) the Provincial Treasurer is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to

(i) neglect, carelessness or wilful default by or on behalf of that person, or

(ii) fraud or evasion committed by or on behalf of that person,

the Provincial Treasurer may determine the amount owing by that person and assess against the person a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Provincial Treasurer may demand payment of the amount owing and the amount of the penalty assessed under this section from the person to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is prima facie proof that the unpaid amount and the penalty

6(1) A notice of an assessment made under section 4 or 5 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 4 or 5 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 4 or 5 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 4 or 5 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.

7 Interest is payable

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

(b) by a purchaser in respect of an amount of tax assessed against him under section 4 and that he fails to pay in accordance with this Act and the regulations, and

(c) by an operator in respect of a penalty he is liable to pay under section 5 and that he fails to pay in accordance with this Act and the regulations,

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

8(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 operator 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 operator is liable under this Act up to the date of the certificate, and

assessed under this section are owing to the Crown from the person to whom the demand is directed in the amounts stated in the demand.

9(1) Where

(a) an amount that is payable under this Act has not been paid, or

(b) part of an amount that is payable under this Act has not been paid,

the Provincial Treasurer may issue a certificate stating the amount or the part of the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court.

(3) When a certificate issued under subsection (1) is filed in the Court,

(a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate together with interest to the day of payment, and

(b) proceedings may be taken to enforce payment of the amount owing in respect of the certificate in the same manner as if the certificate were a judgment of the Court.

(4) All reasonable costs and charges payable in respect of the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.

10(1) If the Provincial Treasurer has knowledge or suspects that a person is or will be indebted or liable to make any payment to another person who owes an amount under this Act, the Provincial Treasurer may, by a notice served on that person, require that person to pay the money otherwise payable to that other person in whole or in part to the Provincial Treasurer on account of the amount owing under this Act.

(2) Where a notice is given to a person under subsection (1), that notice applies to any indebtedness or liability to make any payment that exists at the time of the giving of the notice, or that arises within 90 days from the day the notice is given, by that person to the other person who owes an amount under this Act.

(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 Act of the operator for whose property or business he is responsible.

9 Taxes, penalties and interest payable under this Act are recoverable by Her Majesty in right of Alberta in an action in debt.

10(1) A person who objects to a notice of assessment under section 4 or 5 may, within 90 days of the day of mailing of the notice of assessment, 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 and shall

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

(b) serve a new notice of assessment.

11(1) A person who has served a notice of objection under section 10 may appeal to the Court to have the assessment vacated or varied after

(a) the Provincial Treasurer has confirmed the assessment or served a new notice of assessment under section 10(4), or

(3) The receipt of the Provincial Treasurer for money paid under this section is a good and sufficient discharge of the original liability to the extent of that payment.

(4) A person who, after receiving notice pursuant to subsection (1), has discharged any liability to the other person who owes an amount under this Act without complying with a requirement under this section is liable to pay to Her Majesty in right of Alberta

(a) an amount equal to the liability discharged, or

(b) the amount that he was required under this section to pay to the Provincial Treasurer,

whichever is the lesser.

11(1) If a person is liable for the payment of an amount assessed under this Act, in this subsection referred to as the “unpaid amount”, the Provincial Treasurer shall not, for the purpose of collecting the unpaid amount,

(a) commence legal proceedings in the Court,

(b) certify the unpaid amount under section 9, or

(c) require a person to make a payment under section 10,

within 90 days after the day on which the notice of assessment is sent.

(2) If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Provincial Treasurer shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) within 90 days after the day on which the notice in which the Provincial Treasurer has confirmed or varied the assessment is sent to the person.

(3) If a person has appealed to the Court from an assessment of an amount payable under this Act, the Provincial Treasurer shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before

(a) the day on which the judgment of the Court takes effect, or

(b) the day on which the person discontinues the appeal,

whichever is the earlier.

(b) 90 days have elapsed after service of the notice of objection and the Provincial Treasurer has not acted under section 10(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 10(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 14, shall be deemed to be a statement of claim.

(4) Notwithstanding any other provision in this section, if a person

(a) has

(i) served a notice of objection under this Act to an assessment, or

(ii) appealed to the Court from the assessment,

and

(b) agrees in writing with the Provincial Treasurer to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Court, the Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same issue as that raised in the objection or appeal of the person,

the Provincial Treasurer may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of the amount, determined in a manner consistent with the decision or judgment made in the other action, at any time after the Provincial Treasurer notifies the person in writing that

(c) the decision has been made by the Court in that action,

(d) the decision has been made by the Court of Appeal in that action, or

(e) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

12(1) Notwithstanding section 11, if

(a) the Provincial Treasurer on reasonable grounds is of the opinion that collection of an amount assessed in respect of a person would be jeopardized by a delay in the collection of the amount, and

(b) the Provincial Treasurer has, by notice served on the person, so advised the person and directed the person to pay forthwith the amount assessed or any part of the amount,

the Provincial Treasurer may forthwith take any of the actions described in section 11(1) with respect to that amount or the part of that amount.

(2) Where the Provincial Treasurer has under subsection (1) directed a person to forthwith pay the amount assessed or any part of that amount, the person may by an originating notice apply to the Court for an order fixing a day that is not earlier than 14 days nor later than 28 days after the date of the order and a place to hold a hearing for the purposes of determining whether the Provincial Treasurer was justified in taking action under subsection (1).

(3) An originating notice commenced under subsection (2)

(a) may be returnable on the 3rd day following the day on which it was issued, and

(b) must be served on the Deputy Attorney General at least 3 days prior to its being heard by the Court.

(4) Except where the Court is of the opinion that circumstances warrant otherwise, an originating notice under this section must be issued within 30 days after the day that the notice given under subsection (1) was served on the person.

(5) Where

(a) an order is made under subsection (2), and

(b) a copy of that order is served on the Deputy Attorney General within 6 days after the day on which it is made,

the person may by a notice of motion apply at the time and place set by the Court under subsection (2) to have the Court determine whether the Provincial Treasurer was justified in taking action under subsection (1).

(6) The hearing held pursuant to an application made under subsection (5) may, on the application of the person, be held in private if the person satisfies the Court that the circumstances justify conducting the hearing in private.

(7) In determining at the hearing held pursuant to an application made under subsection (5) whether the Provincial Treasurer was justified in taking action under subsection (1), the burden of justifying the action is on the Provincial Treasurer.

(8) On conducting a hearing pursuant to an application made under subsection (5) into whether the action of the Provincial Treasurer requiring the person to forthwith pay the amount assessed or any part of that amount was justified, the Court shall determine the matter summarily and may

(a) confirm, vary or vacate the decision of the Provincial Treasurer, or

(b) make such other order as the Court considers appropriate in the circumstances.

(9) The Court shall not award costs in respect of matters coming under this section.

13 Interest is payable

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

(b) by a person in respect of an amount of tax assessed against him under section 5 that he fails to pay in accordance with this Act and the regulations, and

(c) by an operator or any other person in respect of a penalty that he is liable to pay under this Act and that he fails to pay in accordance with this Act and the regulations,

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

14(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 operator 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 operator 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 Act of the operator for whose property or business he is responsible.

15 Taxes, penalties and interest payable under this Act are recoverable by Her Majesty in right of Alberta in an action in debt.

16(1) A person who objects to a notice of assessment under section 5 or 6 may, within 90 days of the day of mailing of the notice of assessment, 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 and shall

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

(b) serve a new notice of assessment.

17(1) A person who has served a notice of objection under section 16 may appeal to the Court to have the assessment vacated or varied after

(a) the Provincial Treasurer has confirmed or varied the assessment or served a new notice of assessment under section 16(4), or

(b) 90 days has elapsed after service of the notice of objection and the Provincial Treasurer has not acted under section 16(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 16(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 20, shall be deemed to be a statement of claim.

18(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

(a) admitting or denying the facts alleged, and

(b) containing a statement

(i) of any further allegations of fact, and

(ii) 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 17 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 17 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.

19(1) On the filing of the material referred to in sections 17 and 18(1), (2) and (3), the matter is 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,

(ii) vary the assessment,

(iii) restore the assessment, or

(iv) refer the assessment back to the Provincial Treasurer for reconsideration.

(4) The Court may, in delivering judgment on an appeal, order payment or repayment of tax, interest, penalties or costs by the appellant or the Provincial Treasurer.

20 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 19, 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.

21 An assessment 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 observance of a directory provision of this Act.

22(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 an operator, or

(b) when an operator is a partnership or corporation, demand that a partner or the president or another officer or the

manager, 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 an operator, or

(b) a partner, president or other officer, director or agent of any person holding an amount for or paying or liable to pay any amount to an operator

provide or produce any information or additional information or any document within the 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 what tax, if any, is payable or collectible under this Act by any person.

(4) If a person is served with a demand under this section and he does not comply with the demand, an officer may apply to the Court for an order directing the person to comply with the demand.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

(a) direct the person to provide or produce the information, additional information or document where the Court is satisfied that

(i) the information, additional information or document demanded is in the possession of or under the control of the person, and

(ii) the information, additional information or document demanded is relevant to the administration or enforcement of this Act or the regulations;

(b) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(c) award costs in respect of the matter.

23 The Provincial Treasurer may

(a) require an operator or purchaser, in a particular case,

(i) to keep any record,

(ii) to make any return, or

(iii) to comply with a specified method of accounting,

for a purpose related to the administration of this Act or the regulations;

(b) prescribe the form of any agreement or other document or form used in the administration of this Act;

(c) extend the time for making a return under this Act.

24 Every operator shall keep records in accordance with the regulations.

25(1) For the purposes of ensuring that this Act and the regulations are being complied with, an officer may, at any reasonable time,

(a) inspect, audit or examine

(i) the records of a person who is required to keep records under this Act or the regulations, and

(ii) any document of that person or of any other person that relates or may relate

(A) to the information that is or should be in the records of the person who is required to keep records under this Act or the regulations, or

(B) to any amount payable under this Act by or to the person referred to in subclause (i),

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.

(2) Where an officer on reasonable grounds believes that the records or documents referred to in subsection (1) are located in any premises or place, the officer may, at any reasonable time,

(a) subject to subsection (3), enter the premises or place, and

(b) 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.

(3) When the premises or place referred to in subsection (2) is a dwelling-house, the officer shall not enter the dwelling-house without the consent of the occupant of the dwelling-house.

(4) If an officer

(a) is refused entry into premises or a place referred to in subsection (2),

(b) is not given consent to enter a dwelling-house,

(c) has reasonable grounds to believe that

(i) he will be refused entry into premises or a place referred to in subsection (2), or

(ii) he will not be given consent to enter a dwelling-house,

or

(d) is impeded or has reasonable grounds to believe that he will be impeded in the carrying out of an inspection, audit or examination of any record or document,

he may apply to the Court for an order authorizing him to

- (e) enter the premises, place or dwelling-house, and
- (f) carry out his inspection, audit or examination.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

- (a) authorize the officer to enter the premises, place or dwelling-house and carry out his duties;
- (b) direct any occupant to assist the officer in any manner as the Court prescribes;
- (c) restrain any person from impeding the officer from entering the premises, place or dwelling-house or from carrying out his duties;
- (d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

26(1) If any book, record, paper or other document has been seized, examined or produced under section 22 or 25 or pursuant to a search warrant, 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, one 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.

27 No person shall hinder, molest or interfere with any person doing anything that he is authorized to do by or pursuant to section 22, 25 or 26, 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 22, 25 or 26 to do.

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

29(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.

30(1) Where a notice or other document is to be served on or is to be sent or given to a person by the Provincial Treasurer or an officer under this Act, the notice or document may be served on or sent or given to

(a) a person other than a corporation,

(i) by being mailed to the person by ordinary, certified or registered mail addressed to the person to whom the notice or document is directed at that person's last address known to the Provincial Treasurer, or

(ii) by personal service,

and

(b) a corporation,

(i) in accordance with section 247 of the *Business Corporations Act*, or

(ii) by registered mail addressed to the corporation at the corporation's last address known to the Provincial Treasurer.

(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than his own name, the notice or document,

(a) for the purposes of being mailed, may be addressed to the name or style under which he carries on business, and

(b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

(a) for the purposes of being mailed, may be addressed to the partnership name, and

(b) for the purposes of personal service, is deemed to have been served if it

(i) has been served on one of the partners, or

(ii) is left with an adult person employed at the place of business of the partnership.

31 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 other document delivered or made under this Act or the regulations,

(b) destroys, alters, mutilates, secretes or otherwise 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 a material particular in those records,

(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 to that fine and imprisonment for not more than 2 years.

32 A person who fails to deliver a return or to 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 Court for each day of default.

33 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.

34 If a person acting or purporting to act on behalf of a corporation

(a) knowingly, or

(b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act,

makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, certificate, statement or answer filed or made as required by or under this Act or a regulation, as a result of which the tax or refund that would have been payable by or to the corporation, if the tax or refund had been assessed or determined on the basis of the information provided in the return, application, certificate, statement or answer, is less or more, as the case may be, than the tax or refund payable by or to the corporation, the corporation is guilty of an offence.

35(1) A corporation that wilfully evades or attempts to evade payment of tax payable by it is guilty of an offence.

(2) A corporation that wilfully claims or attempts to claim a refund greater than that to which it is entitled is guilty of an offence.

(3) Where a corporation is guilty of an offence under subsection (1), it is liable to a fine of not more than 300% of the amount of tax sought to be evaded.

(4) Where a corporation is guilty of an offence under subsection (2), it is liable to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which it is entitled.

36(1) An individual who

- (a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,
- (b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation,
- (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 to enter a material particular in records or books of account of a corporation,
- (d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of taxes imposed by this Act, or
- (e) conspires with any person to commit an offence described in clauses (a) to (d)

and thereby enables or assists or attempts to enable or assist or causes or could cause

- (f) a corporation to evade or attempt to evade payment of tax payable by it, or
- (g) a corporation to claim or attempt to claim a refund greater than that to which it is entitled

is guilty of an offence.

(2) Where, with respect to a corporation referred to in subsection (1)(f), an individual is guilty of an offence under subsection (1), that individual is liable

- (a) to a fine of not more than 300% of the amount of tax sought to be evaded, or
- (b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

(3) Where, with respect to a corporation referred to in subsection (1)(g), an individual is guilty of an offence under subsection (1), that individual is liable

- (a) to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

37 If a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

38 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.

39 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 afterward.

40(1) The Lieutenant Governor in Council may make regulations

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

(b) providing for a refund of the whole or any part of a tax paid under this Act and prescribing the records, material and information to be furnished on any application for a refund;

(c) authorizing the Provincial Treasurer to enter into agreements with operators for the purpose of collecting tax under this Act;

(d) prescribing the rate of interest and the manner of calculation of interest payable for the purposes of section 13;

(e) prescribing any commission to be paid to operators for services related to the collection and remission to the Provincial Treasurer of tax under this Act;

(f) requiring surety bonds, bank guarantees or other financial arrangements to be furnished or made by any person who

collects the tax imposed by this Act and prescribing the form and amount of the bonds, guarantees or other financial arrangements;

(g) prescribing duties of operators in relation to the collection of tax under this Act;

(h) respecting returns to be made to the Provincial Treasurer, including the person required to make them;

(i) respecting records to be kept under this Act;

(j) governing funds that are held in trust;

(k) prescribing anything required by this Act to be prescribed by regulation;

(l) defining any word used in this Act or the regulations and not defined in this Act.

(2) A regulation made under this Act shall, if it so provides, be effective with reference to a period before it was made.

Tobacco Tax Act

4(1) The Tobacco Tax Act is amended by this section.

(2) Section 1 is amended

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

(a) “assess” includes reassess;

(b) by adding the following after clause (a.1):

(a.2) “Court” means the Court of Queen’s Bench;

(c) by repealing clause (c.1);

(d) by repealing clause (e) and substituting the following:

(e) “Minister” means the Provincial Treasurer;

(e) by adding the following after clause (h):

(h.1) “sell” means to sell or otherwise supply tobacco or tobacco products;

Tobacco Tax Act

4(1) This section will amend chapter T-5.1 of the Statutes of Alberta, 1983.

(2) Section 1 presently reads in part:

1 In this Act,

(a) "consumer" means a person who

*(i) purchases or receives delivery of tobacco in Alberta,
or*

*(ii) in the case of a person ordinarily resident in Alberta
or carrying on business in Alberta, brings into Alberta
tobacco acquired outside Alberta*

(c.1) "judge" means a judge of the Court of Queen's Bench;

*(e) "Minister" means the member of the Executive Council
charged by the Lieutenant Governor in Council with the
administration of this Act;*

(3) Section 3(1) is repealed and the following is substituted:

3(1) Every consumer shall pay to Her Majesty in right of Alberta a tax computed at the following rates:

- (a) on every cigarette purchased by that consumer, \$0.056;
- (b) on every cigar purchased by that consumer, 70% of the retail price of the cigar as determined before the inclusion of the tax imposed by this Act, with the tax payable on each cigar being not less than \$0.12 per cigar nor more than \$2.00 per cigar;
- (c) on every gram or part of a gram of any tobacco, other than cigarettes or cigars, purchased by that consumer, \$0.03.

(4) Section 4(2) is repealed and the following is substituted:

(2) A person who collects tax under this Act shall remit the tax

- (a) to a tax collector where
 - (i) the person acquires from another person who is a tax collector the tobacco or tobacco product that is being taxed, and
 - (ii) the Minister has not directed otherwise, or
- (b) in a case other than that provided for under clause (a), to the Minister.

(5) The following is added after section 4:

(3) Section 3(1) presently reads:

3(1) Every consumer shall pay to Her Majesty in right of Alberta a tax computed at the rate of

- (a) \$0.048 on every cigarette purchased by him;*
- (b) \$0.12 on every cigar purchased by him for a retail price of not more than \$0.20;*
- (c) \$0.24 on every cigar purchased by him for a retail price of more than \$0.20 and not more than \$0.40;*
- (d) \$0.36 on every cigar purchased by him for a retail price of more than \$0.40 and not more than \$0.60;*
- (e) \$0.60 on every cigar purchased by him for a retail price of more than \$0.60 and not more than \$1;*
- (f) \$0.90 on every cigar purchased by him for a retail price of more than \$1 and not more than \$1.50;*
- (g) \$1.20 on every cigar purchased by him for a retail price of more than \$1.50;*
- (h) \$0.02 on every gram or part of a gram of any tobacco, other than cigarettes and cigars, purchased by him.*

(4) Section 4 presently reads:

4(1) The Minister may appoint any tax collectors required for the purposes of this Act.

(2) A person who collects tax under this Act shall remit the tax

(a) to the Minister where

- (i) the person is a tax collector,*
- (ii) the tobacco has not at any time been sold by a person who is a tax collector, or*
- (iii) the Minister so directs,*

or

(b) to a tax collector where the person acquires the tobacco from a person who is a tax collector.

(5) Funds to be held in trust.

4.1 Where a person has possession of or control over funds that are collected as taxes under this Act, that person holds those funds in trust for the Minister.

(6) Section 6 is amended by striking out “or” at the end of clause (b) and by repealing clause (c) and substituting the following:

(c) contravenes this Act or the regulations or a statute or regulation in another province that governs the sale of tobacco in that other province,

(d) has any director, officer or employee who has contravened this Act or the regulations or a statute or regulation in another province that governs the sale of tobacco in that other province, or

(e) breaches the terms of a tax collection agreement to which that person is a party.

(7) The following is added after section 6:

6.1(1) Where the Minister issues a licence under this Act, he may make that licence subject to any conditions that he considers appropriate in the circumstances.

(2) The Minister may

(a) refuse to renew a licence to a person, or

(b) suspend or cancel a licence issued to a person,

where the person has not, in the opinion of the Minister, complied with the conditions to which that person’s licence is subject.

6.2 Where the Minister

(a) refuses to issue a licence or to renew a licence to a person,

(b) suspends or cancels a licence of a person,

(c) makes an assessment of tax payable by a person, or

(d) refuses to issue a refund to a person,

the Minister shall notify that person in writing of the action or decision taken by the Minister.

(6) Section 6 presently reads:

6 The Minister may refuse to issue a licence to a person or may suspend or cancel the licence of a person who, in the opinion of the Minister,

(a) refuses or neglects to account for and pay as required under the regulations money received by him as proceeds of the tax,

(b) refuses or neglects to furnish a surety bond or bank guarantee or make other financial arrangements when so required, or

(c) contravenes the Act or the regulations or breaches the terms of a tax collection agreement to which he is a party.

(7) Section 6.1 will permit licences to be subject to conditions. Section 6.2 will require written notification to be given when the Minister takes certain action.

(8) Sections 7 and 8 are repealed and the following is substituted:

7(1) A person who objects

- (a) to not being issued a licence,
- (b) to his licence not being renewed,
- (c) to his licence being suspended or cancelled,
- (d) to an assessment of tax, or
- (e) to not being issued a refund,

may, within 90 days of the day of mailing of the notice, serve on the Minister 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 Minister.

(3) The Minister 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 Minister shall with all due dispatch reconsider the action or decision taken by him and shall vacate, confirm or vary that action or decision and notify the objector of his decision by certified mail, registered letter or personal service.

7.1(1) A person who has served a notice of objection under section 7(1) may appeal to the Court to have the action or decision taken by the Minister vacated or varied

- (a) where the Minister has, under section 7(4), confirmed or varied the action or decision taken by him, or
- (b) after 90 days has elapsed after service of the notice of objection and the Minister has not acted under section 7(4),

but no appeal under this section may be instituted after the expiration of 90 days from the day a notification under section 7(4) was mailed to or personally served on the objector.

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

(8) Sections 7 and 8 presently read:

7(1) No person shall be refused a licence or have his licence suspended or cancelled without prior written notice served on him personally or by registered or certified mail or without being given an opportunity to be heard and to show cause why the licence should not be refused, suspended or cancelled, as the case may be.

(2) A person who has been refused a licence or has had his licence suspended or cancelled under section 6 may appeal the refusal, cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being notified of the refusal, cancellation or suspension and, in the case of a cancellation or suspension of a licence, a wholesaler or importer may continue as a wholesaler or importer until all appeals have been disposed of.

(3) The Minister shall, within 30 days of being served with a notice of appeal, appoint an appeal board to hear the appeal.

(4) The Minister shall set the time within which the appeal board is to hear the appeal and render its decision and he may extend that time.

(5) An appeal board that hears an appeal under this section may, by order,

- (a) confirm the refusal, cancellation or suspension,*
- (b) direct that a licence be issued,*
- (c) reinstate a cancelled licence, or*
- (d) remove or vary a suspension.*

(6) An appeal board appointed under this section shall consist of

- (a) 1 person appointed as chairman of the board by the Minister, and*
- (b) not fewer than 2 and not more than 4 other persons appointed by the Minister*

but the Minister shall not appoint employees of the Treasury Department as members of the appeal board.

(7) The Minister may pay fees and living and travelling expenses to the members of an appeal board.

8 The Minister, or a person whose appeal is heard by an appeal board, may appeal the decision of the appeal board on a question

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

(4) The notice of appeal shall be attached to the notice of objection and, for the purposes of section 8, shall be deemed to be a statement of claim.

7.2(1) The Minister shall, within 60 days from the day that 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

(a) admitting or denying the facts alleged, and

(b) containing a statement

(i) of any further allegations of fact, and

(ii) 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 7.1 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 7.1 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.

7.3(1) On the filing of the material referred to in sections 7.1 and 7.2(1), (2) and (3), the matter is deemed to be an action in the Court.

of law or jurisdiction by filing an originating notice with the Court of Appeal within 30 days of being notified of the decision, and the Court of Appeal may make any order that an appeal board may make pursuant to section 7(5).

(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, in hearing an appeal,

(a) dismiss the appeal, or

(b) allow the appeal and

(i) in the case of the refusal, suspension or cancellation affecting a licence, direct, as the case may be, that

(A) the licence be issued,

(B) the licence be renewed,

(C) the suspension be removed, or

(D) the licence be reinstated,

subject to any terms or conditions as the Court considers appropriate,

(ii) in the case of an assessment, quash or vary the assessment, or

(iii) in the case of a refusal to issue a refund, direct that a refund be issued in an amount as the Court may direct.

8 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 7.3, 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.

8.1 A refusal, suspension or cancellation under section 6 or 6.1 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 observance of a directory provision of this Act.

(9) *The following is added after section 9:*

9.1(1) Where

(a) an amount that is payable under this Act has not been paid, or

(9) Procedure for the collection of tax when tax is not otherwise paid.

(b) part of an amount that is payable under this Act has not been paid,

the Minister may issue a certificate stating the amount or the part of the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court.

(3) When a certificate issued under subsection (1) is filed in the Court,

(a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate together with interest to the day of payment, and

(b) proceedings may be taken to enforce payment of the amount owing in respect of the certificate in the same manner as if the certificate were a judgment of the Court.

(4) All reasonable costs and charges payable in respect of the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.

9.2(1) If the Minister has knowledge or suspects that a person is or will be indebted or liable to make any payment to another person who owes an amount under this Act, the Minister may, by a notice served on that person, require that person to pay the money otherwise payable to that other person in whole or in part to the Minister on account of the amount owing under this Act.

(2) Where a notice is given to a person under subsection (1), that notice applies to any indebtedness or liability to make any payment that exists at the time of the giving of the notice, or that arises within 90 days from the day the notice is given, by that person to the other person who owes an amount under this Act.

(3) The receipt of the Minister for money paid under this section is a good and sufficient discharge of the original liability to the extent of that payment.

(4) A person who, after receiving notice pursuant to subsection (1), has discharged any liability to the other person who owes an amount under this Act without complying with a requirement under this section is liable to pay to Her Majesty in right of Alberta

(a) an amount equal to the liability discharged, or

- (b) the amount that he was required under this section to pay to the Minister,

whichever is the lesser.

9.3(1) If a person is liable for the payment of an amount assessed under this Act, in this subsection referred to as the “unpaid amount”, the Minister shall not, for the purpose of collecting the unpaid amount,

- (a) commence legal proceedings in the Court,
- (b) certify the unpaid amount under section 9.1, or
- (c) require a person to make a payment under section 9.2,

within 90 days after the day on which the notice of assessment is sent.

(2) If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) within 90 days after the day on which the notice in which the Minister has confirmed or varied the assessment is sent to the person.

(3) If a person has appealed to the Court from an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before

- (a) the day on which the judgment of the Court takes effect, or
- (b) the day on which the person discontinues the appeal,

whichever is the earlier.

(4) Notwithstanding any other provision in this section, if a person

- (a) has
 - (i) served a notice of objection under this Act to an assessment, or
 - (ii) appealed to the Court from the assessment,

and

(b) agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Court, the Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same issue as that raised in the objection or appeal of the person,

the Minister may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of the amount, determined in a manner consistent with the decision or judgment made in the other action, at any time after the Minister notifies the person in writing that

(c) the decision has been made by the Court in that action,

(d) the decision has been made by the Court of Appeal in that action, or

(e) judgment has been delivered by the Supreme Court of Canada in that action,

as the case may be.

9.4(1) Notwithstanding section 9.3, if

(a) the Minister on reasonable grounds is of the opinion that collection of an amount assessed in respect of a person would be jeopardized by a delay in the collection of the amount, and

(b) the Minister has, by notice served on the person, so advised the person and directed the person to pay forthwith the amount assessed or any part of the amount,

the Minister may forthwith take any of the actions described in section 9.3(1) with respect to that amount or the part of that amount.

(2) Where the Minister has under subsection (1) directed a person to forthwith pay the amount assessed or any part of that amount, the person may by an originating notice apply to the Court for an order fixing a day that is not earlier than 14 days nor later than 28 days after the date of the order and a place to hold a hearing for the purposes of determining whether the Minister was justified in taking action under subsection (1).

(3) An originating notice commenced under subsection (2)

(a) may be returnable on the 3rd day following the day on which it was issued, and

(b) must be served on the Deputy Attorney General at least 3 days prior to its being heard by the Court.

(4) Except where the Court is of the opinion that circumstances warrant otherwise, an originating notice under this section must be issued within 30 days after the day that the notice given under subsection (1) was served on the person.

(5) Where

(a) an order is made under subsection (2), and

(b) a copy of that order is served on the Deputy Attorney General within 6 days after the day on which it is made,

the person may by a notice of motion apply at the time and place set by the Court under subsection (2) to have the Court determine whether the Minister was justified in taking action under subsection (1).

(6) The hearing held pursuant to an application made under subsection (5) may, on the application of the person, be held in private if the person satisfies the Court that the circumstances justify conducting the hearing in private.

(7) In determining at the hearing held pursuant to an application made under subsection (5) whether the Minister was justified in taking action under subsection (1), the burden of justifying the action is on the Minister.

(8) On conducting a hearing pursuant to an application made under subsection (5) into whether the action of the Minister requiring the person to forthwith pay the amount assessed or any part of that amount was justified, the Court shall determine the matter summarily and may

(a) confirm, vary or vacate the decision of the Minister, or

(b) make such other order as the Court considers appropriate in the circumstances.

(9) The Court shall not award costs in respect of matters coming under this section.

(10) *Section 10 is amended by adding the following after subsection (3):*

(4) If a person is served with a demand under this section and he does not comply with the demand, an officer may apply to the Court for an order directing the person to comply with the demand.

(10) Section 10 presently reads:

10(1) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, by a demand served personally or by registered letter or certified mail

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

(a) direct the person to provide or produce the information, additional information or document where the Court is satisfied that

(i) the information or document demanded is in the possession of or under the control of the person, and

(ii) the information or document demanded is relevant to the administration or enforcement of this Act or the regulations;

(b) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(c) award costs in respect of the matter.

(11) Section 11 is amended

(a) in subsection (1) by striking out "sections 12 and" and substituting "section";

(b) by repealing subsections (2) to (7) and substituting the following:

(2) For the purposes of ensuring that this Act and the regulations are being complied with, an officer may, at any reasonable time,

(a) inspect, audit or examine

(a) require from a wholesaler, importer or retailer, or

(b) when a wholesaler, importer or retailer is a partnership or corporation, require from a partner or the president, manager, secretary or any director, officer, agent or representative of the partnership or corporation,

any information or additional information or production of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents within a reasonable time that is stipulated in the demand.

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

(a) from any person holding an amount for or paying or liable to pay any amount to a wholesaler, importer or retailer, or

(b) from any partner, director, officer or agent of any person holding an amount for or paying or liable to pay any amount to a wholesaler, importer or retailer

the production of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents within a reasonable time that is stipulated in the demand.

(3) The Minister may, by a demand served personally or by registered letter or certified mail, require the production by any person, or by his agent, of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents in the possession or in the control of that person or his agent, for the purpose of determining what tax, if any, is collectible or payable under this Act by any person, or whether a licence or report is required under this Act, and production thereof shall be made within a reasonable time that is stipulated in the demand.

(11) Section 11 presently reads:

11(1) In this section and sections 12 and 12.1,

(a) "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;

(b) "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) the records of a person who is required to keep records under this Act or the regulations, and

(ii) any document of that person or of any other person that relates or may relate

(A) to the information that is or should be in the records of the person who is required to keep records under this Act or the regulations, or

(B) to any amount payable under this Act by or to the person referred to in subclause (i),

(b) inspect and examine any property that in the opinion of the officer may assist him in determining or ascertaining

(i) the accuracy of an inventory,

(ii) any information that is or should be in the books and records,

(iii) the amount of any tax imposed by this Act, or

(iv) whether or not a licence or report is required under this Act,

and

(c) 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.

(3) Where an officer on reasonable grounds believes that the records or documents referred to in subsection (2) are located in any premises or place, the officer may, at any reasonable time,

(a) subject to subsection (4), enter the premises or place, and

(b) 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.

(i) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and 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.

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

(a) inspect, audit or examine the books and records of a wholesaler, importer or retailer and any document of the wholesaler, importer or retailer or of any other person that relates or may relate to the information that is or should be in the books or records of the wholesaler, importer or retailer or to any amount payable by or to him under this Act, and

(b) require the production for inspection, audit or examination of all books, 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 books, records or documents described in clause (a) or (b) are likely to be found in any premises or place,

(c) subject to subsection (5), 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.

(3) Subject to subsection (5), an officer may at any reasonable time enter into any premises or place where any business is carried on or any property is kept and examine any property that may, in his opinion, assist him in determining or ascertaining

(a) the accuracy of an inventory,

(b) any information that is or should be in the books and records,

(c) the amount of any tax imposed by this Act, or

(d) whether or not a licence or report is required under this Act.

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

(4) When the premises or place referred to in subsection (3) is a dwelling-house, the officer shall not enter the dwelling-house without the consent of the occupant of the dwelling-house.

(5) If an officer

(a) is refused entry into premises or a place referred to in subsection (3),

(b) is not given consent to enter a dwelling-house,

(c) has reasonable grounds to believe that

(i) he will be refused entry into premises or a place referred to in subsection (2), or

(ii) he will not be given consent to enter a dwelling-house,

or

(d) is impeded or has reasonable grounds to believe that he will be impeded in the carrying out of an inspection, audit or examination of any record, document, item or thing,

he may apply to the Court for an order authorizing him to

(e) enter the premises, place or dwelling-house, and

(f) carry out his inspection, audit or examination.

(6) An application under this section shall be by way of an originating notice.

(7) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(8) An interim order under subsection (7) may be made ex parte if the Court considers it appropriate in the circumstances.

(9) On hearing an application, the Court may do one or more of the following:

(a) there are reasonable grounds to believe that there are in any premises or place other than a dwelling-house books, records or documents described in subsection (2)(a) or (b) or property described in subsection (3), 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 subsections (2) and (3), subject to the conditions specified in the warrant.

(5) If the premises or place referred to in subsection (2) or (3) 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 (6).

(6) If, on an ex parte application by the Minister, 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 (2) or (3),

(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 books, records, documents or property 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 books, records, documents or property are being kept or may be expected to be kept in the dwelling-house.

(7) 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.

- (a) authorize the officer to enter the premises, place or dwelling-house and carry out his duties;
- (b) direct any occupant to assist the officer in any manner as the Court prescribes;
- (c) restrain any person from impeding the officer from entering the premises, place or dwelling-house or from carrying out his duties;
- (d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

(12) The following is added after section 11:

11.1(1) If an officer is of the opinion that tobacco is being sold or offered for sale

- (a) without the person who is selling the tobacco or offering the tobacco for sale being licensed to do so, or
- (b) without the tax being paid, collected or remitted in accordance with this Act and the regulations,

the officer may apply to the Court for an order directing an officer to seize, detain and dispose of the tobacco in accordance with the order.

(2) An application under this section shall be by way of an originating notice.

(3) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate in the circumstances.

(5) On hearing an application, the Court may do one or more of the following:

- (a) direct an officer to seize and detain the tobacco;
- (b) direct an officer to dispose of the tobacco;
- (c) give directions respecting the seizure, detention or disposal of the tobacco;

(12) Seizure of tobacco.

(d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(e) award costs in respect of the matter.

(13) *Section 12 is repealed.*

(13) Section 12 presently reads:

12(1) A judge may, on ex parte application by the Minister, 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 Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence

(14) Section 12.1(1) is amended by striking out “sections 10 to 12” and substituting “section 10 or 11 or pursuant to a search warrant”.

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 the document or thing

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

(b) 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 Minister, to inspect the document or thing and to obtain 1 copy of the document at the expense of the Minister.

(9) Where cigarettes or other tobacco products are seized under this section, they shall be held and disposed of in accordance with subsections (10), (11) and (12).

(10) Subject to subsection (11), cigarettes or other tobacco products that are seized shall be forfeited to Her Majesty in right of Alberta to be disposed of as the Minister directs.

(11) If, within 30 days after the seizure, the person who had control over the cigarettes or other tobacco products furnishes security to the Minister for indebtedness under this Act, the cigarettes or other tobacco products shall be returned to that person on payment by him of any costs incurred by the Minister in seizing, taking away and holding the cigarettes or other tobacco products.

(12) If the Minister directs that the cigarettes or other tobacco products be disposed of by sale, the proceeds of that sale remaining after payment of the costs incurred by the Minister in seizing, taking away, holding and disposing of the cigarettes or other tobacco products shall be applied against the indebtedness under this Act of the person in whose control the cigarettes or other tobacco products were prior to seizure, and any remaining proceeds shall be paid to that person.

(14) Section 12.1(1) presently reads:

(15) The following is added after section 14:

14.1(1) The Provincial Treasurer may assess any tax payable by a person under this Act within 3 years from the day the tax 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 tax imposed by this Act at any time he considers reasonable.

(2) Liability for tax imposed by 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 the tax payable under this Act.

14.2(1) The Provincial Treasurer may assess against an operator 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 that 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 an operator 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).

14.3(1) Unless it is varied or vacated on an objection or appeal,

12.1(1) If any book, record, paper or other document has been seized, examined or produced under sections 10 to 12, 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.

(15) Sections 14.1 to 14.4 provide for the assessment of amounts owing and penalties. Section 14.5 provides for the sending or serving of notices and other documents.

(a) an assessment made under section 14.1 or 14.2 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 14.1 or 14.2 is, for the purposes of collection and recovery, 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.

(2) Every person assessed under section 14.1 or 14.2 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.

14.4(1) Where

(a) a person owes an amount to the Crown under this Act, and

(b) the Minister is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to

(i) neglect, carelessness or wilful default by or on behalf of that person, or

(ii) fraud or evasion committed by or on behalf of that person,

the Minister may determine the amount owing by that person and assess against the person a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Minister may demand payment of the amount owing and the amount of the penalty assessed under this section from the person to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is prima facie proof that the unpaid amount and the penalty assessed under this section are owing to the Crown from the person to whom the demand is directed in the amounts stated in the demand.

(4) When a demand is made under this section, the amount owing and the amount of the penalty that remain unpaid bear interest at the rate prescribed by regulation from the date that the demand is made.

(5) Any amount owing, penalty and interest that remain unpaid are recoverable by the Crown by an action in debt.

14.5(1) Where a notice or other document is to be served on or is to be sent or given to a person by the Minister or an officer under this Act, the notice or document may be served on or sent or given to

(a) a person other than a corporation,

(i) by being mailed to the person by ordinary, certified or registered mail addressed to the person to whom the notice or document is directed at that person's last address known to the Minister, or

(ii) by personal service,

and

(b) a corporation,

(i) in accordance with section 247 of the *Business Corporations Act*, or

(ii) by registered mail addressed to the corporation at the corporation's last address known to the Minister.

(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than his own name, the notice or document,

(a) for the purposes of being mailed, may be addressed to the name or style under which he carries on business, and

(b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

(a) for the purposes of being mailed, may be addressed to the partnership name, and

(b) for the purposes of personal service, is deemed to have been served if it

(i) has been served on one of the partners, or

(ii) is left with an adult person employed at the place of business of the partnership.

(16) Section 15 is amended by striking out “or” at the end of clause (c) and by adding the following after clause (c):

(c.1) sells or promotes the sale of tobacco to a retailer without being licensed under this Act, or

(17) Section 16(3) is amended by striking out “12(1)” and substituting “13(1)”.

(18) The following is added after section 16:

16.1 If a person acting or purporting to act on behalf of a corporation

(a) knowingly, or

(b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act,

makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, certificate, statement or answer filed or made as required by or under this Act or a regulation, as a result of which the tax or

(16) Section 15 presently reads:

15 Any person who

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

(b) destroys, alters, mutilates or disposes of the books or records of a wholesaler, importer, retailer or consumer,

(c) makes, participates in, assents to or acquiesces in the making of false or deceptive entries in the books or records of a wholesaler, importer, retailer or consumer or omits or assents to or acquiesces in the omission of material particular to those books or records, or

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

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 \$5000 or to imprisonment for not more than 2 years or to both the fine and imprisonment.

(17) Section 16(3) presently reads:

(3) Any person who contravenes section 12(1), (2) or (4) is guilty of an offence and is liable to a fine of \$50 for each day during which the contravention continues.

(18) Offences re corporation.

refund that would have been payable by or to the corporation, if the tax or refund had been assessed or determined on the basis of the information provided in the return, application, certificate, statement or answer, is less or more, as the case may be, than the tax or refund payable by or to the corporation, the corporation is guilty of an offence.

16.2(1) A corporation that wilfully evades or attempts to evade payment of tax payable by it is guilty of an offence.

(2) A corporation that wilfully claims or attempts to claim a refund greater than that to which it is entitled is guilty of an offence.

(3) Where a corporation is guilty of an offence under subsection (1), it is liable to a fine of not more than 300% of the amount of tax sought to be evaded.

(4) Where a corporation is guilty of an offence under subsection (2), it is liable to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which it is entitled.

16.3(1) An individual who

(a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,

(b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation,

(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 to enter a material particular in records or books of account of a corporation,

(d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of taxes imposed by this Act, or

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

and thereby enables or assists or attempts to enable or assist or causes or could cause

(f) a corporation to evade or attempt to evade payment of tax payable by it, or

(g) a corporation to claim or attempt to claim a refund greater than that to which it is entitled

is guilty of an offence.

(2) Where, with respect to a corporation referred to in subsection (1)(f), an individual is guilty of an offence under subsection (1), that individual is liable

(a) to a fine of not more than 300% of the amount of tax sought to be evaded, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

(3) Where, with respect to a corporation referred to in subsection (1)(g), an individual is guilty of an offence under subsection (1), that individual is liable

(a) to a fine of not more than 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled, or

(b) to a fine referred to in clause (a) and to imprisonment for a term not exceeding 2 years.

16.4 If a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

(19) *Section 19(c) is amended by adding “or any person who sells tobacco to any wholesaler, importer, manufacturer or retailer of tobacco” after “of tobacco”.*

(20) *Section 20 is amended*

(a) *in clause (e) by adding “subject to any terms set out in the regulation” after “this Act”;*

(b) *in clause (g) by striking out “on tax” and substituting “on any tax or penalty or either of them”;*

(19) Section 19(c) presently reads:

19 The Minister may

(c) prescribe the returns and statements to be made by wholesalers, importers, manufacturers and retailers of tobacco, the information to be given in those returns and statements, by whom and in what manner they are to be made and the time within which those returns and statements shall be filed,

(20) Section 20(e), (g) and (h) presently read:

20 The Lieutenant Governor in Council may make regulations

(e) exempting any person or class of persons from the payment of the tax imposed by this Act;

(c) by adding the following after clause (g):

(g.1) governing funds that are held in trust;

(d) by adding the following after clause (h):

(i) requiring packages containing tobacco or tobacco products to be marked and governing the marking of those packages.

Commencement

5(1) Subject to subsections (2) to (5), this Act comes into force on Proclamation.

(2) Section 1(2)(a)(iii) and (vi) are deemed to have come into force on June 1, 1987.

(3) Section 1(3)(a)(i) is deemed to have come into force on March 23, 1990.

(4) Section 1(3)(b)

(a) as to the enactment of section 2(1.1) of the Fuel Tax Act, is deemed to have come into force on June 1, 1990, and

(b) as to the enactment of section 2(1.2) of the Fuel Tax Act, is deemed to have come into force on March 23, 1990.

(5) Section 4(3) is deemed to have come into force on March 23, 1990.

(g) prescribing the rate of interest payable on tax owing;

(h) prescribing terms and conditions in respect of the appointment of tax collectors for the purposes of section 4 and respecting any agreements that may be entered into with those tax collectors.

Commencement

5 Coming into force.