

1994 BILL 32

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 32

**FUEL AND TOBACCO TAX STATUTES
AMENDMENT ACT, 1994**

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 32

1994

FUEL AND TOBACCO TAX STATUTES AMENDMENT ACT, 1994

(Assented to , 1994)

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

PART 1

FUEL TAX ACT

SA 1987
F-22.5

1 The Fuel Tax Act is amended by this Part.

2 Section 1(1) is amended

(a) by repealing clause (o) and substituting the following:

- (o) "fuel oil" means any hydrocarbon substance or mixed fuel capable of being used for the generation of power in an internal combustion engine or a turbine engine, but does not include
 - (i) liquid petroleum gases, natural gas, ethyl alcohol, marked fuel or any substance prescribed in the regulations, or
 - (ii) in the case of a mixed fuel, the portion of the mixed fuel that is ethyl alcohol or any substance prescribed in the regulations;

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

- (v) "mixed fuel" means fuel that consists of a combination of any hydrocarbon substance and any other substance;

(c) by repealing clause (z).

Explanatory Notes

Fuel Tax Act

1 Amends chapter F-22.5 of the Statutes of Alberta, 1987.

2 Section 1 presently reads in part:

1(1) In this Act

- (o) *"fuel oil" means any hydrocarbon substance capable of being used for the generation of power in an internal combustion engine or a turbine 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;*
- (v) *"mixed fuel" means fuel that consists of a combination of fuel oil and oxygenate;*
- (z) *"oxygenate" means methyl alcohol, ethyl alcohol, normal butyl alcohol, isobutyl alcohol, sec-butyl alcohol, tert-butyl alcohol, normal propyl alcohol, isopropyl alcohol, methyl tertiary butyl ether, tertiary amyl methyl ether, and any other substance prescribed as an oxygenate in the regulations;*

3 *Section 38(b)(i) is amended by striking out “or an oxygenate” and substituting “, ethyl alcohol or any substance prescribed under section 39(1)(m) for the purposes of section 1(1)(a)(i)”.*

4 *Section 39(1)(m) is repealed and the following is substituted:*

(m) prescribing substances for the purposes of section 1(1)(a)(i);

PART 2

TOBACCO TAX ACT

5 *The Tobacco Tax Act is amended by this Part.*

6 *Section 1 is amended*

(a) *by repealing clause (b);*

(b) *by repealing clause (c) and substituting the following:*

(c) “importer” means a person who imports or brings tobacco into Alberta for sale to a consumer;

(c) *in clause (d) by striking out “products”;*

(d) *by repealing clause (h) and substituting the following:*

(h) “retailer” means a person who sells or offers for sale tobacco to a consumer;

(e) *in clause (h.1) by striking out “or tobacco products”;*

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

(j.1) “vehicle” means a device in or by which a person or thing may be transported, and includes a watercraft and an aircraft;

(g) *by repealing clause (k) and substituting the following:*

3 Section 38(b)(i) presently reads:

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

(b) a certificate of the chief chemist or the deputy chief chemist of the gasoline and oil laboratory of the Alberta Research Council stating the results of the examination of any substance referred to in the certificate and stating whether that substance

(i) is or is not a hydrocarbon substance, a liquid petroleum gas, natural gas or an oxygenate,

4 Section 39(1)(m) presently reads:

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

(m) prescribing a substance as an oxygenate;

Tobacco Tax Act

5 Amends chapter T-5.1 of the Statutes of Alberta, 1983.

6 Section 1 presently reads in part:

1 In this Act,

(b) "Director" means the Director of Revenue Administration, Treasury Department;

(c) "importer" means a person who manufactures tobacco products or purchases tobacco outside Alberta and imports or brings tobacco into Alberta for sale or resale, as the case may be;

(d) "manufacturer" means a person who manufactures tobacco products;

(h) "retailer" means a person who

(i) purchases tobacco from a manufacturer, wholesaler or importer, or

(ii) brings tobacco into Alberta

and sells that tobacco to a consumer;

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

- (k) "wholesaler" means a person who sells or offers for sale tobacco to a retailer or to another wholesaler, and includes a manufacturer who sells or offers for sale tobacco to a retailer.

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

Computation
of tax payable

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

- (a) on every cigarette purchased by that consumer, \$0.07;
- (b) on every cigar purchased by that consumer, 80% of the retail price of the cigar, with the tax payable on each cigar being not less than \$0.15 per cigar nor more than \$2.50 per cigar;
- (c) on every gram or part of a gram of any tobacco, other than cigarettes or cigars, purchased by that consumer, \$0.04.

8 The following is added after section 3:

Tobacco
marked from
another
jurisdiction

3.1(1) No wholesaler, importer or retailer shall purchase, possess, store, sell or offer for sale in Alberta tobacco the packaging of which is marked for sale in another jurisdiction unless

- (a) he intends to transport that tobacco out of Alberta for resale, and
- (b) he has written permission from the Minister.

(2) No consumer shall possess more than

- (a) 400 cigarettes, or
- (b) 400 grams of fine cut tobacco,

the packaging of which is marked for sale in another jurisdiction.

9 The following is added after section 3.1:

(k) *"wholesaler" means a person who*

*(i) purchases tobacco from a manufacturer or importer,
or*

(ii) brings tobacco into Alberta

*and sells that tobacco to a retailer and includes a
manufacturer who sells tobacco to a retailer.*

7 Section 3(1) presently reads:

*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, \$0.07;

*(b) on every cigar purchased by that consumer, 80% 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 \$0.15 per
cigar nor more than \$2.50 per cigar;*

*(c) on every gram or part of a gram of any tobacco, other
than cigarettes or cigars, purchased by that consumer,
\$0.04.*

8 Tobacco marked from another jurisdiction.

9 Tobacco not marked from another jurisdiction.

Tobacco not
marked in
Alberta

3.2(1) In this section, "tobacco products" means cigarettes and fine cut tobacco.

(2) No wholesaler or importer shall purchase, possess, store, sell or offer for sale in Alberta tobacco products, the packaging of which is not marked for sale in Alberta, unless

- (a)** he sells or intends to sell those tobacco products to an exempt sale retailer or he intends to transport those tobacco products out of Alberta for resale, and
- (b)** he has written permission from the Minister.

(3) No retailer shall purchase, possess, store, sell or offer for sale in Alberta tobacco products, the packaging of which is not marked for sale in Alberta, unless he is an exempt sale retailer and those tobacco products are sold or are intended for sale in accordance with the regulations.

(4) No consumer shall possess more than

- (a)** 400 cigarettes, or
- (b)** 400 grams of fine cut tobacco,

the packaging of which is not marked for sale in Alberta.

(5) On the coming into force of this section, section 3.1 is repealed.

10 Section 4(2)(a)(i) is amended by striking out "or tobacco product".

11 Section 5 is amended by adding the following after subsection (2):

(3) Unless authorized by the Minister, no retailer shall acquire tobacco in Alberta for resale except from a person who holds a subsisting wholesaler's or importer's licence.

10 Section 4(2)(a) presently reads:

(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

11 Prohibition.

12 Section 6(c) and (d) are repealed and the following is substituted:

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

13 Section 6.2(c) is amended by adding “, interest or penalty” after “tax”.

14 Section 7(1) is amended

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

(d) to an assessment of tax, interest or penalty, or

(b) by striking out “prescribed form” and substituting “form provided by the Minister”.

15 Sections 9.3 and 9.4 are repealed.

12 Section 6 presently reads in part:

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,

- (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*

13 Section 6.2 presently reads:

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.

14 Section 7(1) presently reads:

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.

15 Sections 9.3 and 9.4 presently read:

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

16 Section 11 is amended

- (a) in subsection (1) by striking out “12.1” and substituting “11.1”;*
- (b) in subsection (5) by striking out “the Court” and substituting “a judge of the Provincial Court of Alberta”;*
- (c) by repealing subsections (6) to (8);*
- (d) in subsection (9) by striking out “Court” wherever it occurs and substituting “judge”.*

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.

16 Section 11 presently reads in part:

11(1) In this section and section 12.1,

(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

(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.*

(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) 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;*

17 *Section 11.1 is repealed and the following substituted:*

Without
warrant

11.1(1) An officer who on reasonable and probable grounds believes

- (a) that a contravention of this Act or the regulations is being or has been committed, and
- (b) that obtaining a warrant would cause a delay that could result in the loss or destruction of evidence

may without warrant and, if necessary, by reasonable force stop a vehicle or enter any premises or place, other than a dwelling-house, and search it for anything that he believes on reasonable and probable grounds affords evidence of the contravention.

(2) If an officer stops a vehicle or enters any premises or place, other than a dwelling-house, the person in charge of the vehicle or the owner or occupant of the premises or place must

- (a) give the officer all reasonable assistance in connection with the entry and search, and
- (b) make reasonable efforts to provide all information that the officer may reasonably require for purposes of the administration and enforcement of this Act and the regulations.

(3) An officer who, in making a search under subsection (1),

- (a) finds anything that he believes on reasonable and probable grounds affords evidence of a contravention of this Act or the regulations may seize the thing, and
- (b) when a vehicle is searched, if he believes on reasonable and probable grounds that the vehicle was used in contravention of this Act or the regulations, may seize that vehicle.

(4) Following a seizure under subsection (3) the officer shall, within a reasonable time,

- (a) furnish a judge of the Provincial Court with an affidavit stating that he has reasonable and probable grounds to believe that the person named in the affidavit has committed an offence under this Act or the regulations, or

(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.

17 Section 11.1 presently reads:

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;

(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.

(b) return the vehicle and any things seized to the person from whom they were seized.

(5) The judge on receipt of an affidavit under subsection (4) may order that the affidavit be served on the person referred to in the affidavit and set down a date to hear the matter and may order that the vehicle and any other thing seized be

(a) retained by the Crown until final disposition of the charge, or

(b) returned to the person from whom they were seized.

(6) If a vehicle or any other thing seized is returned under subsection (5)(b), the judge may order the person to whom it is returned

(a) to hold it as bailee for the Crown until final disposition of the charge, and

(b) to produce it if it is required with respect to proceedings related to the charge.

(7) If a vehicle is seized and the person charged with an offence in respect of which the vehicle was used is not the registered owner of the vehicle, the officer shall notify the registered owner as soon as possible.

**Disposition on
conviction**

11.2(1) On the conviction of any person for an offence under this Act or the regulations any thing seized in respect of which the offence was committed shall, as part of the penalty for the conviction, be forfeited to the Crown in right of Alberta.

(2) Notwithstanding subsection (1) and subject to subsection (3), the judge making the conviction may declare that the things seized or any part of them be returned to the convicted person.

(3) If the judge makes a declaration under subsection (2) and the time for appeal has expired, the things seized shall be returned to the convicted person on the person's application to the clerk of the court where the conviction was made.

(4) If the person described in subsection (3) does not make an application within 30 days of the expiration of the time for appeal or, if an appeal is entered, within 30 days of the final disposition of the appeal, the things seized are forfeited to the Crown in right of Alberta.

Application by
claimant for
return of
seized
property

(5) On the conviction of the occupant or person in charge of a vehicle for an offence under this Act or the regulations, the judge making the conviction may declare, as part of the penalty for the conviction, that the things seized are forfeited to the Crown in right of Alberta and that the occupant or person must pay all costs incurred by the Crown for storage of the things seized while they are retained by the Crown.

11.3(1) If a thing is forfeited to the Crown, any person, other than a person charged with or convicted of the offence that resulted in the forfeiture, who claims an interest in it as owner, mortgagee, lien-holder or holder of any similar interest in the forfeited property may, within 30 days after the forfeiture or any longer time that the judge may allow, apply by originating notice to a judge of the Court of Queen's Bench for an order under subsection (4).

(2) The judge to whom an application is made under subsection (1) shall fix a day for the hearing that is not less than 30 days after the date of filing of the application.

(3) The applicant shall serve a notice of the application and of the hearing on the Minister of Justice and Attorney General at least 15 days before the day fixed for the hearing.

(4) If, on the hearing of an application, it is made to appear to the satisfaction of the judge

(a) that the applicant is innocent of any complicity in the offence or alleged offence that resulted in the forfeiture and of any collusion in relation to that offence or alleged offence with any person who may have committed the offence or alleged offence, and

(b) that the applicant exercised all reasonable care in respect of the person permitted to obtain the property to satisfy himself that it was not likely to be used in contravention of this Act or the regulations or, in the case of a mortgagee or lien-holder, that he exercised such care with respect to the mortgagor or the person giving the lien,

the applicant is entitled to an order declaring that the applicant's interest is not affected by the forfeiture and declaring the nature and extent of his interest.

Return of
seized things

11.4(1) If a person charged with an offence under this Act or the regulations is found not guilty and the judge has not made an order with respect to the things seized relating to that charge, that person is entitled to the things seized

(a) after the time for the filing of an appeal has expired,
or

(b) if an appeal has been filed, after the final disposition
of the appeal.

(2) If a person is charged with an offence under this Act or
the regulations and the charge is withdrawn, the person is
entitled to the things seized relating to that charge after the
expiry of the time for re-laying a charge for which the things
seized are required as evidence.

(3) If within 30 days of the date described in subsection (1)
or (2), as the case may be, a person described in subsection
(1) or (2), as the case may be, does not collect them, the
things seized are forfeited to the Crown in right of Alberta.

Disposition of
things forfeited

11.5 Things seized that are forfeited to the Crown in right
of Alberta under this Act shall be disposed of or destroyed
under the direction of the Minister of Justice and Attorney
General.

*18 Section 13(6) is amended by striking out “7(2) or 8” and
substituting “7.1”.*

19 Section 14.1 is amended

(a) by repealing subsection (1) and substituting the following:

Assessment of
tax

14.1(1) The Minister may, at any time he considers
reasonable, assess

(a) any tax that any person, as agent of the Minister,
has collected and has failed to remit, and

(b) interest on that tax calculated in the manner
prescribed in the regulations.

*(b) in subsection (3) by striking out “Provincial Treasurer” and
substituting “Minister”.*

20 Section 14.2 is repealed and the following substituted:

18 Section 13(6) presently reads:

(6) Where a person required by this section to keep records and books of account is a party to an appeal under section 7(2) or 8, that person shall retain every record, book of account, account and voucher necessary for dealing with the appeal until the appeal is disposed of and until any further appeal is disposed of or the time for filing any further appeal has expired.

19 Section 14.1 presently reads in part:

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.

(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.

20 Section 14.2 presently reads:

Assessment of
penalty

14.2(1) Subject to subsection (2), the Minister may, within 4 years from the end of the calendar year in which tax was to have been collected and remitted, assess against a person who failed to collect tax in accordance with this Act, a penalty equal to the tax that he failed to collect.

(2) If the Minister establishes that the failure of a person to collect tax in accordance with this Act is attributable to neglect, carelessness or wilful default, or to any fraud that the person committed in making a return or in supplying any information under this Act or in omitting to disclose any information that is to be disclosed under this Act, the Minister may at any time assess a penalty equal to the tax that the person failed to collect.

(3) For the purposes of section 14.1(1) and subsection (1) of this section, if the tax remitted by a person is less than the tax that should have been collected by that person, in the absence of evidence to the contrary, the person is deemed to have collected but not remitted the deficiency.

21 Section 15 is amended

- (a) by adding "or" at the end of clause (c) and by repealing clause (c.1);*
- (b) by striking out "\$5000" and substituting "\$10 000".*

22 The following is added after section 15:

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).

21 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,*
- (c.1) sells or promotes the sale of tobacco to a retailer without being licensed under this Act, 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.

22 Offences.

Offences

15.1(1) A consumer who contravenes section 3(1) or 3.1(2) is guilty of an offence and is liable

- (a) for a first offence, to a fine of not more than \$1000 or to a term of imprisonment of not more than 30 days or to both fine and imprisonment, and
- (b) on a subsequent offence, to a fine of not more than \$5000 or to a term of imprisonment of not more than 6 months or to both fine and imprisonment.

(2) A person who contravenes section 3(2), 3.1(1), 4(2) or 5 is guilty of an offence and is liable

- (a) for a first offence, to a fine of not more than \$10 000 or to a term of imprisonment of not more than 6 months or to both a fine and imprisonment,
- (b) for a 2nd offence, to a fine of not more than \$25 000 or to a term of imprisonment of not more than one year or to both a fine and imprisonment, and
- (c) in addition to the penalties in clauses (a) and (b), to a penalty of not more than 3 times the amount of tax that,
 - (i) in the case of an offence under section 3(2) or 4(2), should have been collected and remitted by the person,
 - (ii) in the case of an offence under section 3.1(1), would have been payable under section 3 were the cigarettes not marked for sale in another jurisdiction and were they sold to a consumer in Alberta, and
 - (iii) in the case of an offence under section 5, would have been payable under section 3 were the tobacco sold to a consumer.

(3) Every person who

- (a) marks tobacco without holding a permit issued under the regulations, or
- (b) being the holder of a permit to mark tobacco, refuses or neglects to mark packages of tobacco in accordance with the regulations

is guilty of an offence and is liable to a fine of not more than \$1 000 000 or to imprisonment for a term not exceeding 3 years, or to both a fine and imprisonment.

(4) Every person who, being the holder of a permit to mark tobacco, contravenes any condition or restriction contained in the permit or any other requirement specified in the regulations is guilty of an offence and is liable to a fine of not more than \$10 000.

(5) Every person who has received permission from the Minister to purchase and sell tobacco that is marked for sale in another jurisdiction and who contravenes this Act or the regulations or any condition or restriction contained in the authorization is guilty of an offence and is liable to a fine of not more than \$10 000.

23 Sections 16 to 16.3 are repealed and the following is substituted:

Failure to
maintain
records

16(1) Any person who fails to maintain records and books of account when required to do so under section 13(7) is guilty of an offence and is liable to a fine of \$50 for each day from the day the demand under section 13(7) was received by him until he complies with the demand.

(2) Any person who fails to file a return or to provide or produce information as required by this Act or the regulations is guilty of an offence and is liable to a fine of \$50 for each day of default.

23 Sections 16 to 16.3 presently read:

16(1) Any person who contravenes section 3(2) or 4(2) is guilty of an offence and, in addition to any other penalty provided by this Act, shall pay a penalty of not more than 3 times the tax required to be collected under section 3(2) or required to be remitted under section 4(2), as the case may be.

(2) Any person who contravenes section 5 is guilty of an offence and, in addition to any other penalty provided by this Act, shall pay a penalty of not more than 3 times the tax paid or payable on the tobacco sold.

(3) Any person who contravenes section 13(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.

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 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.

24 Section 17(b) is amended by striking out “\$2000” and substituting “\$5000”.

25 The following is added after section 17:

Application of
fines

17.1(1) Subject to subsection (2), any fine imposed in respect of a conviction for an offence under section 15.1(1) and (2) belongs to the Crown in right of Alberta.

(2) Subject to any administration fee determined by the Minister, any fine imposed in respect of a conviction for an offence under section 15.1(1) and (2), where the offence occurred in

- (a) a city, town or village, other than on a primary highway, enures to the benefit of the city, town or village,
- (b) a county, municipal district, improvement district or special area, other than on a primary highway, enures to the benefit of the county, municipal district, improvement district or special area,
- (c) a Metis settlement, other than on a primary highway, enures to the benefit of the Metis settlement, and
- (d) an Indian reserve, other than on a primary highway or on a road designated as a secondary road under the *Public Highways Development Act*, enures to the benefit of the band.

26 Section 18 is amended by striking out “3” and substituting “6”.

(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.

24 Section 17 presently reads:

17 Any person who contravenes a provision of this Act or the regulations for which no other penalty is provided is guilty of an offence and is liable

(a) for a first offence, to a fine of not more than \$1000 or to a term of imprisonment of not more than 30 days, or to both the fine and imprisonment, and

(b) for any subsequent offence, to a fine of not more than \$2000 or to a term of imprisonment of not more than 6 months, or to both the fine and imprisonment.

25 Application of fines.

26 Section 18 presently reads:

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

- (d) assess tax and penalties owing under this Act and any interest on them,

28 *Section 20 is amended*

- (a) *in clause (d) by striking out “products”;*
- (b) *by repealing clause (g) and substituting the following:*
 - (g) *prescribing the rates of interest payable and the time over which interest is payable on any tax or penalty or either of them owing;*
 - (g.01) *exempting any retailer from collecting the tax imposed by this Act, subject to any terms or conditions prescribed in the regulations;*
- (c) *in clause (i) by striking out “or tobacco products”.*

29 *On the coming into force of section 9 of this Act, section 15.1 of the Tobacco Tax Act as enacted by section 20 of this Act is amended*

- (a) *in subsection (1) by striking out “3.1(2)” and substituting “3.2(4)”;*
- (b) *in subsection (2)*
 - (i) *by striking out “3.1(1)” and substituting “3.2(2) or (3)”;*
 - (ii) *by repealing clause (c)(ii) and substituting the following:*
 - (ii) *in the case of an offence under section 3.2(2) or (3), would have been payable under section 3 were the cigarettes or fine cut tobacco, as the case may be, marked for sale in Alberta and sold to a consumer in Alberta, and*
- (c) *in subsection (5) by striking out “marked for sale in another jurisdiction” and substituting “not marked for sale in Alberta”.*

18 An information or complaint in respect of a contravention of this Act or the regulations may only be laid or made within 3 years from the day the matter of the information or complaint arose.

27 Section 19(d) presently reads:

19 The Minister may

(d) assess and reassess tax owing under this Act and any interest on it,

28 Section 20 presently reads in part:

20 The Lieutenant Governor in Council may make regulations

(d) excluding any class or form of tobacco products from this Act;

(g) prescribing the rate of interest payable on any tax or penalty or either of them owing;

(i) requiring packages containing tobacco or tobacco products to be marked and governing the marking of those packages.

29 Amends section 15.1 of the Tobacco Tax Act.

30 *Section 9 comes into force on Proclamation.*

30 Coming into force.