

1997 BILL 28

First Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA,

BILL 28

FUEL TAX AMENDMENT ACT, 1997

MR. KLAPSTEIN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 28
Mr. Klapstein

BILL 28

1997

FUEL TAX AMENDMENT ACT, 1997

(Assented to , 1997)

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

Amends SA
1987 cF-22.5

1 The *Fuel Tax Act* is amended by this Act.

2 Section 1(1) is amended

(a) by repealing clauses (l), (m) and (n);

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

(u.1) "Minister" means the Provincial Treasurer except

- (i) in section 8, where it means the Minister of Agriculture, Food and Rural Development, and
- (ii) in sections 5(3), 20(3)(b)(v) and (vi), 29(2), 31, 32.1 and 39(1)(e.2) and for the purposes of exercising a power under section 25(c), where it means the Provincial Treasurer or the Minister of Agriculture, Food and Rural Development, as the circumstances require;

3 Section 2 is amended

(a) in subsection (1)

Explanatory Notes

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

2 Section 1 presently reads in part:

1(1) In this Act

(l) "farm machinery" means any vehicle, implement, machine or equipment designated or deemed by the regulations to be farm machinery for the purposes of this Act;

(m) "farm truck" means a farm truck as defined in the regulations;

(n) "farming operations" means the production, or any step in the production, of

(i) plants, including peat moss, whether or not in a greenhouse and whether edible or not, or

(ii) animals, except undomesticated animals, whether or not the product is the animal or derived from the animal,

and, without limiting the generality of the foregoing, includes any operation designated by the regulations as a farming operation;

3 Section 2 presently reads in part:

2(1) Subject to this section, a consumer shall pay a tax to the Provincial Treasurer at a rate of \$0.09 per litre on

- (i) in clause (a) by striking out “or in an aircraft”;
 - (ii) in clause (b) by striking out “or an aircraft”;
- (b) in subsection (1.2) by striking out “\$0.05” and substituting “\$0.015”.

4 Section 2.1 is amended

(a) in subsection (1)

(i) in clause (c) by striking out “, fuel oil or liquid petroleum gas” and substituting “or fuel oil”;

(ii) in clause (d) by adding “, liquid petroleum gas” after “fuel oil”;

(b) by adding the following after subsection (4):

(4.1) If the Minister refuses to issue or suspends or cancels a registration, the Minister shall cause to be given to the applicant a notice of refusal, suspension or cancellation specifying the reason for the refusal, suspension or cancellation.

5 Section 4(3) is amended by adding the following after clause (k):

(l) fuel oil purchased in Alberta by the applicant and transported to a jurisdiction outside Alberta by the applicant, if tax is payable on the fuel oil in that jurisdiction and the applicant has paid the tax owing.

6 Section 5(2) is repealed and the following is substituted:

- (a) *all fuel oil purchased by him in Alberta, other than for use in a locomotive of which he is the owner or in an aircraft,*
- (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 or an aircraft, 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, all fuel oil purchased by the consumer outside Alberta and consumed within Alberta in a public vehicle of which he is the owner that meets the specifications of a qualified motor vehicle under the International Fuel Tax Agreement, and*
- (e) *all marked fuel used by him for a purpose other than a purpose referred to in section 5.*

(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 aviation fuel purchased by him.

4 Section 2.1 presently reads in part:

2.1(1) No person shall

- (c) *sell or offer for sale aviation fuel, fuel oil or liquid petroleum gas that is exempt from tax under this Act or the regulations,*
- (d) *import into Alberta fuel oil or aviation fuel for sale to consumers, or*

unless the person is registered under this section.

5 Section 4(3) presently reads in part:

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

6 Section 5(2) presently reads:

(2) A consumer may apply in accordance with the regulations

- (a) to the Minister of Agriculture, Food and Rural Development for a certificate identifying the consumer as a person who is entitled to be in possession of marked fuel for a purpose referred to in subsection (1)(a)(v), or
- (b) to the Provincial Treasurer for a certificate identifying the consumer as a person who is entitled to be in possession of marked fuel for a purpose other than a purpose referred to in subsection (1)(a)(v).

7 The following is added after section 5:

Prohibited use
of marked fuel

5.1 A person shall not use marked fuel obtained under a certificate issued under section 5(2)(a) for a purpose other than a purpose referred to in section 5(1)(a)(v).

8 Section 7(2) is repealed and the following is substituted:

- (2) A person shall not sell marked fuel to a consumer
- (a) unless the person has obtained from the consumer the evidence required by the regulations for that purpose, and
 - (b) when the person has obtained the evidence required under clause (a), but knows or ought to know that the evidence is false in a material way or that the marked fuel will not be used for a purpose for which marked fuel is permitted to be used by the consumer.

9 Section 8 is amended

(a) by repealing subsections (4) and (5) and substituting the following:

(4) A consumer who holds a certificate issued under section 5(2)(a) is entitled to purchase marked fuel at the reduced price.

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

7 Prohibited use of marked fuel.

8 Section 7(2) presently reads:

(2) A person shall not sell marked fuel to a consumer

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

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

(i) in the case of a sale by a person described in subsection (1)(a), as permitted under section 5, or

(ii) in the case of a sale by a person described in subsection (1)(b), as permitted under section 5(1)(a)(i) and (ii).

9 Section 8 presently reads in part:

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

(b) by repealing subsection (6) and substituting the following:

(6) If a consumer

- (a) who holds a certificate issued under section 5(2)(a) used fuel oil in circumstances in which this Act would have permitted the use of marked fuel purchased at the reduced price because marked fuel was not reasonably available in the Minister's opinion,**
- (b) who holds a certificate issued under section 5(2)(b) used marked fuel in farming operations in circumstances in which this Act would have permitted the use of marked fuel purchased at the reduced price because marked fuel at the reduced price was not reasonably available in the Minister's opinion, or**
- (c) who holds a certificate issued under section 5(2)(a) or (b) purchased fuel oil in Alberta for use in a farm truck that is a qualified motor vehicle under the International Fuel Tax Agreement,**

the Minister may, on application by the consumer in accordance with the regulations, provide to the consumer in addition to any rebate under section 4 a grant in the amount per litre prescribed in the regulations as the farm fuel distribution allowance.

10 Section 11 is amended

- (a) in subsection (3) by adding "under this section" after "owing";**
- (b) in subsection (4)(a) and (b) by adding "under this section" after "owing".**

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

(6) If a consumer used fuel oil in circumstances in which this Act would have permitted the use of marked fuel purchased at the reduced price because marked fuel was not reasonably available in the Provincial Treasurer's opinion, or purchased in Alberta fuel oil for use in a farm truck that is a qualified motor vehicle under the International Fuel Tax Agreement, the Provincial Treasurer may, on application by the consumer in accordance with the regulations and in addition to any rebate under section 4, provide to the consumer a grant in the amount per litre prescribed in the regulations as the farm fuel distribution allowance.

10 Section 11 presently reads in part:

(3) If the seller

(a) has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or

(b) 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 the amount of tax owing at any time he considers reasonable.

(4) If the seller has filed a waiver within 4 years of the end of the year in which the tax was to have been collected and remitted and

11 Section 12(1)(e) is amended by adding “7 or” after “section”.

12 Section 14(6)(c) is amended by adding “7 or” after “section”.

13 Section 16.2 is repealed and the following is substituted:

Payment by
third party

16.2(1) If the Minister has knowledge or suspects that a person is or will be, within one year, liable to make any payment to a person who owes an amount under this Act (in this section referred to as the debtor), the Minister may, by written notice, require the person to pay the money otherwise payable to the debtor in whole or in part to the Minister on account of the amount owing by the debtor under this Act.

(2) Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

(a) a bank, credit union, trust corporation, loan corporation or other similar person (in this section referred to as the “institution”) will lend or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or

(b) a person other than an institution will lend or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or

- (a) *the waiver is still in effect, the Provincial Treasurer may assess the amount of tax owing, in accordance with the terms of the waiver, at any time, or*
- (b) *the waiver has been revoked, the Provincial Treasurer may assess the amount of tax owing, in accordance with the terms of the waiver, within 6 months after the Provincial Treasurer receives a notice of the revocation.*

11 Section 12(1)(e) presently reads:

12(1) In this section, "amount owing" by a person means

- (e) *the amount a person is liable for under section 10.*

12 Section 14(6)(c) presently reads:

(6) For the purposes of subsection (4) of this section and section 12(2), an amount owing is deemed to be first owing,

- (c) *in the case of a liability under section 10, on the day of the sale or disposition of the marked fuel.*

13 Section 16.2 presently reads:

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, 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*

will be, within 90 days, so employed or engaged, or

- (ii) if that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by written notice, require the institution or person, as the case may be, to pay in whole or in part to the Minister on account of the amount owing by the debtor under this Act the money that would otherwise be so lent, advanced or paid, and any money so paid to the Minister is deemed to have been lent, advanced or paid, as the case may be, to the debtor.

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

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

- (a) an amount equal to the liability discharged, and
- (b) the amount that the person was required under this section to pay to the Minister.

(5) An institution or other person that, after receiving a notice under subsection (2), fails to comply with a requirement under this section with respect to money to be lent, advanced or paid is liable to pay to Her Majesty in right of Alberta an amount equal to the lesser of

- (a) the total of money so lent, advanced or paid, and
- (b) the amount that the institution or person was required under subsection (2) to pay to the Minister.

(6) If the person who is or is about to become liable carries on business under a name or style other than his own name, the notice under subsection (1) or (2) may be addressed to the name or style under which he carries on business and, in the case of personal service, is deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(7) If the persons who are or are about to become liable carry on business in partnership, the notice under subsection (1) or (2) may be addressed to the partnership name and, in

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

whichever is the lesser.

the case of personal service, is deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

14 The following is added after section 16.2:

Liability of
directors for
failure to remit

16.21(1) Where a corporation has failed to remit tax collected by that corporation, the directors of the corporation at the time the corporation was required to remit the tax collected are jointly and severally liable, together with the corporation, to pay that tax collected and any interest or penalties relating to it.

(2) A director is not liable under subsection (1) unless

(a) a certificate for the amount of the corporation's liability referred to in subsection (1) has been filed in the Court under section 16.1 and execution for that amount has been returned unsatisfied in whole or in part,

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within 6 months after the earlier of the date of commencement of the proceedings and the date of dissolution, or

(c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within 6 months after the date of the assignment or receiving order.

(3) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) may be commenced more than 2 years after the director last ceased to be a director of that corporation.

(4) Where execution referred to in subsection (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(5) Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings,

14 Liability of directors for failure to remit.

the director is entitled to any preference that Her Majesty in right of Alberta would have been entitled to had that amount not been so paid and, where a certificate that relates to that amount has been filed, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(6) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

15 Section 17 is amended

(a) in subsection (1)

(i) in clause (d) by striking out "or 8";

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

(d.1) a notice of disallowance of a refund paid under the regulations,

(iii) in clause (e) by adding "of a certificate" after "cancellation";

(iv) in clause (f) by adding "notice of" after "a";

(b) in subsection (4)(c) by striking out "or 8".

16 Section 18(1) is amended by striking out "or 8" wherever it occurs.

15 Section 17 presently reads in part:

17(1) A person who objects to

- (a) a notice of assessment under section 11, 12 or 12.1,*
- (b) a notice of disallowance of rebate under section 4(4),*
- (c) a notice of disallowance of a grant under section 8(7),*
- (d) a notice of refusal under section 5 or 8,*
- (e) a notice of cancellation pursuant to the regulations, or*
- (f) a refusal, cancellation or suspension of registration under section 2.1,*

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, refusal, suspension or cancellation and shall

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

16 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, the refusal, cancellation or suspension of registration removed or the certificate under section 5 or 8 issued after

- (a) the Provincial Treasurer has confirmed the assessment or disallowance or served a new notice of assessment or*

17 Section 20(3)(b)(v) is amended by striking out “or 8”.

18 Section 26(3) is amended by striking out “on the prorated system”.

19 The following is added after section 29:

Disclosure of
information

29.1(1) Subject to subsection (2), no person employed by the Government of Alberta shall communicate or allow to be communicated to any person not employed by the Government of Alberta any information obtained under this Act, or allow any person to inspect or have access to any written statement furnished under this Act.

(2) For the purposes of the administration or enforcement of a law that provides for the imposition of a tax, information obtained under this Act may be communicated, inspected or accessed pursuant to an agreement or arrangement between the Government of Alberta and

(a) the Government of Canada,

caused a new notice of disallowance to be given under section 17(4),

- (a.1) the Provincial Treasurer has confirmed his refusal, cancellation or suspension of registration,*
- (b) the Provincial Treasurer caused a new notice to be given confirming his refusal to issue a certificate under section 5 or 8,*
- (b.1) the Provincial Treasurer has caused a notice to be given confirming his cancellation of a certificate, 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.

17 Section 20(3) presently reads in part:

- (3) The Court may*
 - (a) dismiss the appeal, or*
 - (b) allow the appeal, and*
 - (v) order the Provincial Treasurer to issue a certificate under section 5 or 8, or*

18 Section 26(3) presently reads:

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

19 Disclosure of information.

- (b) the government of another province or territory of Canada,
 - (c) the government of a country or state other than Canada or of a political subdivision of that country or state,
 - (d) an agency, corporation or institution
 - (i) of the Government of Canada,
 - (ii) of the government of a province or territory of Canada, or
 - (iii) of the government of a country or state other than Canada or of a political subdivision of that country or state,
- or
- (e) an international organization of states.

20 Section 39(1) is amended

- (a) by repealing clause (a.1);**
- (b) in clause (h.1) by striking out “8” and substituting “5”;**
- (c) by repealing clauses (i.1), (j) and (k);**
- (d) in clause (v) by striking out “by the Provincial Treasurer”;**
- (e) by adding the following after clause (w.3):**
 - (w.4) exempting any seller from collecting the tax imposed by this Act, subject to any terms or conditions prescribed in the regulations;
 - (w.5) respecting the registration of sellers who sell fuel to persons who are not required to pay tax under this Act and the cancellation and suspension of those registrations;

20 Section 39 presently reads in part:

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

(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;

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

(i.1) defining farm truck;

(j) designating any operation as a farming operation;

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

(v) respecting certificates to be issued by the Provincial Treasurer under this Act;

21(1) The following provisions are amended by striking out “Provincial Treasurer” wherever it occurs and substituting “Minister”:

section 1(1)(a), (b), (x);
section 2;
section 2.1;
section 3;
section 3.1;
section 4;
section 5(3);
section 6(1)(a);
section 7(3);
section 8;
section 10;
section 11;
section 12(2);
section 12.1;
section 13(4);
section 14;
section 15;
section 16.1(1);
section 16.2;
section 17;
section 18;
section 19(1);
section 20;
section 23;
section 25;
section 29(2);
section 31;
section 32;
section 32.1(1);
section 34(2);
section 38;
section 39(1).

(2) Section 4(3)(d) is amended by striking out “Provincial Treasurer’s” and substituting “Minister’s”.

22 The *Motor Transport Act* (SA 1992 cM-20.1) is amended by repealing section 64(d).

23 The *Reinvestment Act* is amended in section 3

(a) by repealing subsection (2)(c);

(b) in subsection (7) by striking out “, (c)”.

21 Name change.

22 Consequential.

23 Consequential.

24 Sections 3(b) and 23 are deemed to have come into force on January 1, 1997.

25 Section 2(a) comes into force on Proclamation.

24 Coming into force.

25 Proclamation.