

## BILL 23

2004

### FUEL TAX AMENDMENT ACT, 2004

(Assented to \_\_\_\_\_, 2004)

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

#### Amends RSA 2000 cF-28

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

**2 Section 1 is amended by adding the following after clause (b):**

(b.1) “arm’s length” means arm’s length as defined in section 251 of the *Income Tax Act* (Canada);

**3 Section 4 is amended**

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

(g) export from Alberta fuel oil, liquid petroleum gas or aviation fuel,

**(b) by repealing subsections (3) and (4) and substituting the following:**

**(3)** The Minister may refuse to register or renew a registration if the applicant has contravened this Act or a regulation under this Act or has contravened a law in force in

Alberta or in another jurisdiction that governs the collection or payment of tax.

**(4)** The Minister may cancel or suspend a registration if the registered person has contravened this Act or a regulation under this Act or has contravened a law in force in Alberta or in another jurisdiction that governs the collection or payment of tax.

**(4.1)** The Minister may refuse to register or renew a registration if the applicant is dealing not at arm's length with a person whose registration has been suspended or cancelled or whose application to register or renew a registration has been refused.

**4 Section 6 is repealed and the following is substituted:**

**Special account**

**6** The Minister may require a person who collects taxes under this Act to deposit the amount collected into an account in the name of the Minister or an account in trust for the Minister at a financial institution specified by the Minister.

**5 Section 7 is amended**

**(a) in subsection (3) by repealing clause (m) and substituting the following:**

- (m) fuel oil or aviation fuel purchased in Alberta by the applicant and transported to a jurisdiction outside Alberta by the applicant, if tax is payable on the fuel oil or aviation fuel in that jurisdiction and the applicant has paid the tax owing;
- (n) aviation fuel purchased in Alberta by the applicant and used by the applicant for a purpose prescribed in the regulations.

**(b) by adding the following after subsection (3):**

**(3.1)** A regulation made under subsection (3)(n) may be made retroactive to the extent set out in the regulation.

**6 The following is added after section 17:**

**Overpayment of tax collected and remitted**

**17.1** Where the Minister has reason to believe that a seller has collected and remitted more tax than was required, the Minister may, within 4 years after the overpayment was made, reassess the seller for the amount that was required to be collected and remitted by serving a notice of reassessment on the seller.

**7 The following is added after section 21:**

**Liability in respect of transfers by insolvent agent-collectors**

**21.1(1)** If property is transferred at any time by an agent-collector to a person with whom the agent-collector does not deal at arm's length at that time and the agent-collector is insolvent or becomes insolvent because of the transfer or because of the transfer and one or more other transactions with that person, the person is jointly and severally liable with the agent-collector to pay the liability under this Act of the agent-collector equal to the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at the time of the consideration given for the property, but nothing in this subsection limits the liability of the agent-collector under any other provisions of this Act.

**(2)** If

- (a) property is transferred at any time from a person (in this subsection referred to as the "transferor") to another person (in this subsection referred to as the "transferee") with whom the transferor does not deal at arm's length,
- (b) the transferor is liable because of subsection (1) or this subsection to pay an amount of the liability of another person (in this subsection referred to as the "debtor") under this Act, and
- (c) it can reasonably be considered that one of the reasons of the transfer would, but for this subsection, be to prevent the enforcement of this section,

the transferee is jointly and severally liable with the transferor and the debtor to pay an amount of the debtor's liability under

this Act equal to the lesser of the amount of the liability that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at the time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any other provision of this Act.

(3) The Minister may at any time assess a person in respect of any amount payable because of this section.

(4) Where a person has become jointly and severally liable under this section with an agent-collector in respect of part or all of a liability under this Act of the agent-collector,

- (a) a payment by the person on account of that person's liability discharges the joint liability to the extent of the payment, but
- (b) a payment by the agent-collector on account of that agent-collector's liability discharges the person's liability only to the extent that the payment operates to reduce the agent-collector's liability to an amount less than the amount in respect of which the person is, by this section, made jointly and severally liable.

## **8 The following is added after section 22:**

### **Set-off**

**22.1(1)** The Minister may, instead of making a payment to a person that might otherwise be made under this Act, apply the whole or any part of the payment owing to the person to reduce or eliminate a debt the person has to Her Majesty in right of Alberta.

(2) Where the Minister makes a payment into the General Revenue Fund under subsection (1), the Minister must notify the person referred to in subsection (1) of the reduction or elimination of the debt.

**9 Section 25(2) is amended 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) a compromise or arrangement has been proposed under the *Companies’ Creditors Arrangement Act* (Canada) in respect of the corporation.

**10 Section 32(1), (2) and (3) are amended by adding “, by fax” after “personally”.**

**11 The following is added after section 34:**

**Waiver or cancellation of penalties or interest**

**34.1** Notwithstanding the *Financial Administration Act*, the Minister may at any time waive or cancel the imposition of or liability for any penalty or interest payable under this Act.

**12 Section 3(a) comes into force on Proclamation.**

**Explanatory Notes**

**1** Amends chapter F-28 of the Revised Statutes of Alberta 2000.

**2** Adds new definition.

**3** Section 4 presently reads:

*4(1) No person shall*

- (a) *carry on in Alberta the business of selling for resale fuel oil or liquid petroleum gas,*
- (b) *carry on in Alberta the business of selling marked fuel to consumers,*
- (c) *sell or offer for sale aviation fuel or fuel oil that is exempt from tax under this Act or the regulations,*
- (d) *purchase liquid petroleum gas for consumption in Alberta by the purchaser directly from a producer of liquid petroleum gas,*
- (e) *import into Alberta fuel oil, liquid petroleum gas or aviation fuel for sale to consumers, or*
- (f) *purchase fuel oil in Alberta for consumption by a locomotive of which the person is the owner,*

*unless the person is registered under this section.*

*(2) An application for registration must be made in accordance with the regulations.*

*(3) The Minister may refuse to register or renew a registration if the applicant has contravened this Act or a regulation under this Act or has contravened a law in force in another jurisdiction that governs the collection of tax on fuel in that jurisdiction.*

*(4) The Minister may cancel or suspend a registration if the registered person has contravened this Act or a regulation under this Act or has contravened a law in force in another jurisdiction that governs the collection of tax on fuel in that jurisdiction.*

*(5) 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.*

**4** Section 6 presently reads:

*6 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.*

**5** Section 7(3)(m) presently reads:

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

*(m) 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** Overpayment of tax collected and remitted.

**7** Liability in respect of transfers by insolvent agent-collectors.

**8** Set-off.

**9** Section 25(2) presently reads:

*(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 23 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.*

**10** Section 32 presently reads in part:

*32(1) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, by a notice served personally or by registered letter or certified mail*

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

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

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

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

*or liable to pay any amount to a seller or agent-dealer*

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

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

- (a) what amount, if any, is payable or collectible under Part 1 by any person, or*
- (b) eligibility to or the amount of a rebate under Part 1 or an allowance or grant referred to in section 12.*

**11** Waiver or cancellation of penalties or interest.

**12** Coming into force.