

BILL 35

2006

FUEL TAX ACT

(Assented to , 2006)

Table of Contents

- 1 Definitions
- 2 Crown bound
- 3 Conflict with IFTA

Part 1 **Tax**

Division 1 **Imposition and Recovery of Tax**

- 4 Tax payable by recipient
- 5 Tax payable on locomotive fuel
- 6 Tax payable on liquefied petroleum gas
- 7 Tax payable on blended fuel
- 8 Tax-exempt purchases
- 9 Fuel tax exemption certificate
- 10 Duty of vendor
- 11 Rate of tax
- 12 Remittance of tax
- 13 Special account
- 14 Tax recovery
- 15 Rebate of tax
- 16 Farm fuel distribution allowance
- 17 Colouring and identifying fuel
- 18 Prohibited sale
- 19 Prohibited use
- 20 Possession of marked fuel

21 Accounting for marked fuel

**Division 2
Registration**

22 Registration

**Part 2
Assessments**

23 Assessment of tax to be remitted

24 Assessment of amount owing

25 Overpayment of tax

26 Assessment of penalties

27 Effect of assessment

28 Interest

29 Certificate of payment

30 Liability in respect of transfers by insolvent person

31 Amounts recoverable as debts

32 Set-off

33 Certificate of amount not paid

34 Payment by third party

35 Amounts in jeopardy

36 Liability of directors for failure to remit

37 Delegation of duty

38 Notice of objection

39 Extension of time by Minister

40 Extension of time by Court

41 Notice of appeal

42 Reply to notice of appeal

43 Powers of Court

44 Practice and procedure

45 Irregularities

46 Documents deemed signed

**Part 3
Investigations, Enforcement and Offences**

**Division 1
Investigations and Enforcement**

47 Definition

- 48 Authority to enter on land
- 49 General powers respecting inspections
- 50 Warrant
- 51 Authority to stop and inspect motor vehicles
- 52 Searches of motor vehicles transporting fuel in bulk
- 53 Demand for records and property
- 54 Copies of records
- 55 Hindering Minister or officer

Division 2
Offences

- 56 Offences and penalties re recipients
- 57 Offences and penalties re vendors
- 58 Offences and penalties re consumers
- 59 Offences re documents and records
- 60 Failure to file returns or maintain records
- 61 General offences and penalties

Part 4
Administrative Provisions and Regulations

- 62 Records
- 63 Communication of information
- 64 Security for amounts owing
- 65 Service
- 66 Limitation on prosecution
- 67 Limitations Act
- 68 Certificates as evidence
- 69 Powers of Minister
- 70 Waiver or cancellation of penalties or interest
- 71 Regulations

Part 5
Transitional Provisions, Consequential Amendments, Repeal and Coming into Force

- 72 Transitional provisions
- 73 Transitional regulations
- 74 Consequential amendment
- 75 Repeal

76 Coming into force

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

Definitions

1 In this Act,

- (a) “additive” includes a fuel detergent, an oxidation inhibitor, a fuel antifreeze and an octane enhancer, but does not include a blend stock;
- (b) “arm’s length” means arm’s length within the meaning of section 251 of the *Income Tax Act* (Canada);
- (c) “assess” includes reassess;
- (d) “aviation fuel” means any fuel that has been refined or produced specifically for use in an aircraft;
- (e) “blend stock” means a blend stock as defined in the regulations;
- (f) “blended fuel” means a mixture of fuel and a blend stock where the blend stock comprises 5% or more of the volume of the mixture;
- (g) “consumer” means a person who purchases fuel in or imports fuel into Alberta
 - (i) for use by that person,
 - (ii) for use by another person at the first person’s expense, or
 - (iii) on behalf of, or as agent for, a principal for use by the principal or by another person at the principal’s expense;
- (h) “Court” means the Court of Queen’s Bench;
- (i) “Crown” means the Crown in right of Alberta;

- (j) “direct remitter” means a person who is required to remit tax to the Minister pursuant to section 12;
- (k) “distributor of liquefied petroleum gas” means a person who sells liquefied petroleum gas to another person for resale;
- (l) “dwelling house” means all or any part of a building or structure that is occupied as a permanent or temporary residence and includes any building that is connected to it by a doorway or by a covered or enclosed passageway;
- (m) “farm fuel distribution allowance” means the farm fuel distribution allowance referred to in section 16;
- (n) “fuel” means any combustible gas or combustible liquid that may be used to generate power by means of an internal combustion or turbine engine and includes additives to that fuel, but does not include a blend stock or any substance excluded from the definition of fuel by the regulations;
- (o) “fuel tax exemption certificate” means a certificate, permit, card or other instrument issued by the Minister under section 9 identifying the certificate holder as a person who is entitled to purchase fuel exempt from tax for a prescribed purpose or use;
- (p) “interjurisdictional carrier” means a person who
 - (i) owns or operates a commercial vehicle as defined under the *Traffic Safety Act* or a fleet of commercial vehicles engaged in interprovincial or international travel, and
 - (ii) is registered under the International Fuel Tax Agreement;
- (q) “liquefied petroleum gas” means a fuel that is composed predominantly of any of the following substances, or a mixture of them:
 - (i) propane;
 - (ii) propylene;

- (iii) butane (normal or isobutane);
- (iv) butylene;
- (v) any other prescribed substance;
- (r) “locomotive fuel” means fuel used to operate a railway locomotive or to provide heat or light to railway cars attached to a railway locomotive;
- (s) “marked fuel” means fuel that is coloured or identified in accordance with the regulations;
- (t) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (u) “motor vehicle” means a vehicle powered by an internal combustion engine, but does not include an aircraft or a boat;
- (v) “officer” means an officer as defined in the regulations;
- (w) “owner” means the legal owner or a person in lawful possession;
- (x) “person” includes a partnership, a trust and an Indian band;
- (y) “possession” means
 - (i) the state of having in one’s own personal possession, or
 - (ii) the state of knowingly having in the actual possession of another person for one’s own use or benefit or the use or benefit of another person;
- (z) “prescribed” means prescribed or otherwise provided for in the regulations;
- (aa) “purchase” means to purchase or otherwise obtain fuel with or without giving consideration;
- (bb) “rebrand” means
 - (i) to reclassify a type of fuel,

- (ii) to change a fuel to another type of fuel or to a non-taxable product, or
- (iii) to change a non-taxable product that was originally a fuel back to a fuel;
- (cc) “recipient” means
 - (i) a consumer or any other person who purchases fuel,
 - (ii) a person who imports fuel into Alberta,
 - (iii) a person who sells or removes fuel from a terminal or refinery,
 - (iv) a distributor of liquefied petroleum gas,
 - (v) a person who blends fuel,
 - (vi) a person who rebrands fuel,
 - (vii) a person who is required by this Act to pay tax on fuel used in Alberta, or
 - (viii) any other prescribed person;
- (dd) “reduced price” means the total amount, including tax, otherwise payable per litre of fuel less the amount of tax and the amount set as the farm fuel distribution allowance;
- (ee) “registrant” means a person registered under section 22;
- (ff) “sell” means to sell or otherwise supply fuel with or without receiving consideration;
- (gg) “tax-exempt fuel” means fuel that is purchased exempt from tax under section 8 and includes marked fuel;
- (hh) “terminal” means a fuel distribution facility that is designated by the Minister as a terminal;
- (ii) “vendor” means a person who sells fuel in Alberta to a consumer.

Crown bound

2 This Act binds the Crown.

Conflict with IFTA

3 If there is a conflict between the International Fuel Tax Agreement and this Act, the International Fuel Tax Agreement applies to the extent of the conflict.

**Part 1
Tax**

**Division 1
Imposition and Recovery of Tax**

Tax payable by recipient

4(1) This section does not apply to locomotive fuel or liquefied petroleum gas.

(2) Every recipient other than an interjurisdictional carrier shall pay to the Crown a tax on fuel at the time the recipient

- (a) purchases fuel in Alberta,
- (b) imports fuel into Alberta for the purpose of resale,
- (c) purchases fuel outside Alberta if the fuel is brought into Alberta and put, in Alberta, into the fuel system of an internal combustion engine, other than a railway locomotive, without first having been sold or resold in Alberta,
- (d) sells or removes fuel in Alberta from a terminal or refinery,
- (e) blends fuel in Alberta, or
- (f) rebrands fuel in Alberta.

(3) Notwithstanding subsection (2), no tax is payable under this section

- (a) at the time
 - (i) fuel is imported into Alberta for delivery to a terminal or refinery,
 - (ii) fuel is purchased by a direct remitter from another direct remitter,

(iii) fuel is exported from Alberta in bulk for use outside Alberta,

(iv) marked fuel is purchased by a registrant who sells fuel exempt from tax, or

(v) fuel is purchased exempt from tax under section 8,

or

(b) in any other prescribed circumstance.

(4) Every recipient who is an interjurisdictional carrier shall pay to the Crown a tax

(a) on fuel at the time the recipient purchases fuel in Alberta, and

(b) on fuel purchased by the recipient outside Alberta and used within Alberta in a commercial vehicle of which the recipient is the owner or operator that meets the specifications of a qualified motor vehicle under the International Fuel Tax Agreement.

(5) Any taxes paid by an interjurisdictional carrier under subsection (4) shall be adjusted by the Minister in accordance with the terms and conditions of the International Fuel Tax Agreement and any resolutions made pursuant to that Agreement.

Tax payable on locomotive fuel

5 Every recipient shall pay to the Crown a tax with respect to locomotive fuel that is

(a) purchased outside or inside Alberta, and

(b) used in a railway locomotive operated by the recipient in Alberta.

Tax payable on liquefied petroleum gas

6(1) Every recipient who is a distributor of liquefied petroleum gas shall pay to the Crown a tax on liquefied petroleum gas at the time

- (a) the distributor of liquefied petroleum gas sells the liquefied petroleum gas in Alberta to a vendor or other recipient, or
- (b) the distributor of liquefied petroleum gas delivers liquefied petroleum gas to a dispensing system in Alberta, other than a bulk storage tank, owned or operated by the distributor of liquefied petroleum gas that is used to dispense liquefied petroleum gas for use as a motive fuel.

(2) Every recipient other than a distributor of liquefied petroleum gas shall pay to the Crown a tax on liquefied petroleum gas at the time the recipient purchases the liquefied petroleum gas.

(3) Notwithstanding subsections (1) and (2), no tax is payable under this section

- (a) at the time
 - (i) liquefied petroleum gas is sold by a distributor of liquefied petroleum gas to another distributor of liquefied petroleum gas,
 - (ii) liquefied petroleum gas is exported from Alberta in bulk for use outside Alberta,
 - (iii) liquefied petroleum gas is purchased from a dispensing system other than a dispensing system used to dispense liquefied petroleum gas for use as a motive fuel, if the liquefied petroleum gas is purchased for a use other than as a motive fuel, or
 - (iv) liquefied petroleum gas is purchased exempt from tax under section 8,

or

- (b) in any other prescribed circumstance.

Tax payable on blended fuel

7 Tax is payable only on that portion of blended fuel that is not a blend stock.

Tax-exempt purchases

8(1) A consumer is exempt from paying tax on fuel if

- (a) the consumer provides at the time of purchase a valid fuel tax exemption certificate or other prescribed evidence of exemption, and
- (b) the fuel is intended for a prescribed purpose or use.

(2) Where required under the regulations, tax-exempt fuel must be marked fuel.

Fuel tax exemption certificate

9(1) A consumer may apply to the Minister in accordance with the regulations for a fuel tax exemption certificate identifying the consumer as a person who is entitled to purchase fuel exempt from tax for a prescribed purpose or use.

(2) If the Minister refuses to issue a fuel tax exemption certificate, the Minister shall give to the applicant a notice of refusal specifying the reasons for refusal.

Duty of vendor

10(1) When a vendor sells fuel to a consumer described in section 8, the vendor shall pass on the benefit of the tax exemption and, if applicable, the amount prescribed as the farm fuel distribution allowance, to the consumer.

(2) A vendor who contravenes subsection (1) is liable to pay to the Crown an amount equal to the benefit the vendor was required to pass on to the consumer.

Rate of tax

11(1) The tax required to be paid pursuant to this Act shall be paid at the following rates:

- (a) with respect to gasoline, diesel and other prescribed fuels, \$0.09 per litre;
- (b) with respect to aviation fuel and locomotive fuel, \$0.015 per litre;
- (c) with respect to liquefied petroleum gas, \$0.065 per litre.

(2) In the case of tax payable due to the rebranding of a fuel, the rate per litre is the difference between the rate, if any, on the rebranded fuel and the rate, if any, paid on the fuel or product before it was rebranded.

Remittance of tax

12(1) A recipient who is required to pay a tax under this Act and who is described in subsection (2) shall remit the tax to the Minister at the prescribed times and in the prescribed manner.

(2) Subsection (1) applies to a recipient who

- (a) imports fuel into Alberta for the purpose of resale,
- (b) is a recipient to whom section 4(2)(c) applies,
- (c) sells or removes fuel in Alberta from a terminal or refinery,
- (d) blends fuel in Alberta,
- (e) rebrands fuel in Alberta,
- (f) uses locomotive fuel in Alberta,
- (g) is a distributor of liquefied petroleum gas who carries out an activity referred to in section 6(1), or
- (h) performs any other prescribed activity.

(3) Subject to the regulations, every recipient other than one described in subsection (2) shall remit the tax to the person who supplied the recipient with the fuel.

Special account

13 The Minister may require a direct remitter to deposit the amount of tax to be remitted to the Minister 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.

Tax recovery

14(1) Subject to this section, if a recipient other than a consumer pays tax on fuel and later sells the fuel, the recipient shall recover the tax paid from the person who purchases the fuel.

(2) Subject to the regulations, the Minister may on application by a recipient provide a refund, credit or allowance for all or part of the tax paid by the recipient on fuel where the Minister is satisfied that

- (a) the recipient paid the tax, and
- (b) one of the following circumstances has occurred:
 - (i) the fuel was sold exempt from tax pursuant to section 8;
 - (ii) the fuel was exported from Alberta in bulk and used outside Alberta;
 - (iii) a verifiable quantity of the fuel was stolen or destroyed;
 - (iv) the fuel was rebranded
 - (A) to a fuel with a lower or no tax rate, or
 - (B) to a non-taxable product;
 - (v) the fuel with respect to which the tax was paid was sold to prescribed persons in the prescribed circumstances.

(3) Subject to subsection (4), subsection (2)(b) does not apply to a recipient who is a consumer.

(4) Subsection (2)(b)(ii) applies to a consumer in respect of aviation fuel exported from Alberta in bulk and used outside Alberta.

(5) Where losses of fuel are unverifiable, the Minister may

- (a) on application by a recipient, provide a refund of all or part of the tax paid by the recipient on lost fuel, or
- (b) provide an allowance for lost fuel.

(6) If the Minister refuses in whole or in part an application for a refund, credit or allowance under subsection (1) or an application for a refund under subsection (5)(a), the Minister shall give to the applicant a notice of disallowance specifying the amount of the disallowance and the reasons for it.

Rebate of tax

15(1) Subject to the regulations, the Minister may on application by a consumer who has paid a tax under this Act pay a rebate to the consumer in respect of the tax paid on fuel used for a prescribed purpose or use.

(2) If the Minister refuses in whole or in part an application for a rebate under subsection (1), the Minister shall give to the applicant a notice of disallowance specifying the amount of the disallowance and the reasons for it.

Farm fuel distribution allowance

16(1) Subject to the regulations, the Minister may provide a farm fuel distribution allowance in respect of marked fuel used for farming operations in Alberta.

(2) The farm fuel distribution allowance under subsection (1) shall be in the prescribed amount per litre.

(3) If a consumer who holds a fuel tax exemption certificate has purchased or used fuel that is not marked fuel in prescribed circumstances, the Minister may, on application by the consumer, provide to the consumer in addition to any rebate under section 15 a grant in the prescribed amount per litre for the farm fuel distribution allowance.

(4) If the Minister refuses in whole or in part an application for a grant under subsection (3), the Minister shall give to the applicant a notice of disallowance specifying the amount of the disallowance and the reasons for it.

(5) Subject to the regulations, the Minister may on application by a vendor reimburse the vendor for the amount of the benefit of any farm fuel distribution allowance the vendor has passed on to the consumer as required under section 10.

(6) If the Minister refuses in whole or in part an application for reimbursement under subsection (5), the Minister shall give to the

applicant a notice of disallowance specifying the amount of the disallowance and the reasons for it.

Colouring and identifying fuel

17(1) Unless the person is authorized to do so under the regulations, no person shall introduce into any fuel a substance or thing for the purpose of, or having the effect of, colouring or identifying the fuel.

(2) A person authorized to colour or identify fuel as marked fuel shall colour or identify the fuel only in accordance with the regulations.

(3) No person shall

- (a) 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,
- (b) sell or pass off as marked fuel any fuel that is not marked fuel, or
- (c) sell or pass off as clear fuel any fuel that is not clear fuel.

Prohibited sale

18(1) No vendor shall sell fuel exempt from tax to a consumer

- (a) who, at the time of purchase, does not provide a fuel tax exemption certificate or other prescribed evidence of exemption, or
- (b) if the vendor knows or ought to know that the fuel tax exemption certificate or other evidence is false in a material way or that the fuel will not be used for a prescribed purpose or use.

(2) If a vendor sells fuel exempt from tax to a consumer in contravention of subsection (1), the vendor and the consumer are jointly and severally liable to pay to the Crown the amount of tax the consumer would have been required to pay had the fuel not been sold exempt from tax.

(3) No vendor shall sell marked fuel at the reduced price to a consumer

- (a) who, at the time of purchase, does not provide a fuel tax exemption certificate or other prescribed evidence of exemption, or
- (b) if the vendor knows or ought to know that the fuel tax exemption certificate or other evidence is false in a material way or that the marked fuel will not be used for farming operations in Alberta.

(4) If a vendor sells marked fuel to a consumer in contravention of subsection (3), the vendor and the consumer are jointly and severally liable to pay to the Crown

- (a) the amount of tax the consumer would have been required to pay had the marked fuel not been sold at the reduced price, and
- (b) the amount of the farm fuel distribution allowance provided in respect of the amount of marked fuel so sold.

(5) A consumer who buys marked fuel for farming operations in Alberta at the reduced price shall not sell that marked fuel to another consumer for a purpose or use other than farming operations in Alberta.

(6) If a sale of marked fuel is made in contravention of subsection (5), the person who sold the marked fuel and the buyer or person to whom the marked fuel was delivered, as the case may be, are jointly and severally liable to pay to the Crown the amount of the farm fuel distribution allowance for each litre of marked fuel so sold.

Prohibited use

19(1) No consumer who purchases fuel exempt from tax shall use the fuel for any purpose or use other than a prescribed purpose or use.

(2) A consumer who purchases fuel exempt from tax and who subsequently uses or permits that fuel to be used for a purpose or use contrary to subsection (1) is liable to pay to the Crown the amount of tax with respect to the amount of fuel the Minister determines has been used for a purpose or use contrary to

subsection (1) that the consumer would have been required to pay had the fuel not been purchased exempt from tax.

(3) No consumer who purchases marked fuel at the reduced price shall use the marked fuel for any purpose or use other than farming operations in Alberta.

(4) A consumer who purchases marked fuel at the reduced price and who subsequently uses or permits that marked fuel to be used for a purpose or use contrary to subsection (3) is liable to pay to the Crown

- (a) the amount of tax with respect to the amount of marked fuel the Minister determines has been used for a purpose or use contrary to subsection (3) that the consumer would have been required to pay had the marked fuel not been purchased at the reduced price, and
- (b) the amount of the farm fuel distribution allowance provided in respect of the amount of marked fuel the Minister determines has been used for a purpose or use contrary to subsection (3).

Possession of marked fuel

20(1) No person shall be in possession of marked fuel unless

- (a) the person
 - (i) has been issued a fuel tax exemption certificate, and
 - (ii) is in possession of the marked fuel for a prescribed purpose or use or for farming operations in Alberta,
- or
- (b) the person is otherwise authorized by the regulations to be in possession of marked fuel.

(2) A person who is in possession of marked fuel contrary to subsection (1) is liable to pay to the Crown

- (a) the amount of tax with respect to the amount of marked fuel in the possession of the person that the person would have been required to pay had the fuel not been purchased exempt from tax, and

- (b) the amount of any farm fuel distribution allowance provided in respect of the amount of marked fuel in the possession of the person.

Accounting for marked fuel

21(1) A recipient specified in the regulations who purchases marked fuel shall account to the Minister for the receipt, possession and disposition of that marked fuel in accordance with the regulations.

(2) A recipient referred to in subsection (1) who fails to account for the receipt, possession and disposition of marked fuel is liable to pay to the Crown the amount of tax that the recipient would have been required to pay had the marked fuel not been purchased exempt from tax.

Division 2 Registration

Registration

22(1) Subject to the regulations, no person shall

- (a) in Alberta
 - (i) produce or refine fuel,
 - (ii) operate a terminal or act as a position holder within a terminal operated by another person,
 - (iii) sell fuel for the purpose of resale,
 - (iv) sell aviation fuel,
 - (v) sell fuel exempt from tax,
 - (vi) blend fuel,
 - (vii) mark fuel,
 - (viii) rebrand fuel, or
 - (ix) sell or remove fuel from a terminal or refinery,
- (b) import fuel into Alberta for the purpose of resale,

- (c) export fuel from Alberta in bulk,
- (d) sell fuel dye for use in Alberta,
- (e) use locomotive fuel in Alberta, or
- (f) do any other prescribed activity

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

(4) The Minister may cancel or suspend a registration if the registrant 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.

(5) 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.

(6) If the Minister refuses to register or renew or suspends or cancels a registration, the Minister shall give to the applicant a notice of refusal, suspension or cancellation specifying the reasons for the refusal, suspension or cancellation.

Part 2

Assessments

Assessment of tax to be remitted

23(1) Subject to subsections (2) and (3), the Minister may, within 4 years from the end of the calendar year in which tax was to have been remitted, assess a direct remitter for the amount of tax owing that the direct remitter failed to remit.

- (2)** If a direct remitter has
- (a) made any misrepresentation that is attributable to neglect, carelessness or wilful default, or

- (b) 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 Minister may assess the amount of tax owing under this section at any time the Minister considers reasonable.

(3) If a direct remitter has filed a waiver in a form established by the Minister within 4 years from the end of the year in which tax was to have been remitted and

- (a) the direct remitter has not revoked the waiver, the Minister may, in accordance with the terms of the waiver, assess the amount of tax owing under this section at any time, or
- (b) the direct remitter has revoked the waiver, the Minister may, in accordance with the terms of the waiver, assess the amount of tax owing under this section within 6 months after the Minister receives notice of the revocation.

(4) The Minister shall notify a direct remitter of an assessment under this section by serving a notice of assessment on the direct remitter.

(5) Evidence that an assessment has been made under this section is proof, in the absence of evidence to the contrary, that the amount of tax assessed is owing to the Crown from the direct remitter on whom the notice of assessment under subsection (4) is served.

Assessment of amount owing

24(1) In this section, “amount owing” by a person means

- (a) if the person is a recipient other than a direct remitter, the amount of tax that has not been paid by the recipient,
- (b) the amount by which a refund, credit or allowance provided to the person under section 14 exceeds the refund, credit or allowance to which the person was entitled,
- (c) the amount by which a rebate provided to the person under section 15 exceeds the rebate to which the person was entitled,

- (d) the amount by which a farm fuel distribution allowance or grant provided to the person under section 16 exceeds the farm fuel distribution allowance or grant to which the person was entitled,
- (e) the amount by which a reimbursement provided to a vendor under section 16 exceeds the amount of reimbursement to which the vendor was entitled, or
- (f) the amount a person is liable for under section 10, 18, 19, 20, 21 or 37.

(2) Subject to subsections (3) and (4), the Minister may, within 4 years from the end of the calendar year in which the amount owing was first owed by a person, assess the person for the amount owing.

(3) If a person has

- (a) made any misrepresentation that is attributable to neglect, carelessness or wilful default, or
- (b) 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 Minister may assess the amount owing at any time the Minister considers reasonable.

(4) If a person has filed a waiver in a form established by the Minister within 4 years from the end of the calendar year in which the amount owing was first owed and

- (a) the person has not revoked the waiver, the Minister may, in accordance with the terms of the waiver, assess the amount owing at any time, or
- (b) the person has revoked the waiver, the Minister may, in accordance with the terms of the waiver, assess the amount owing within 6 months after the Minister receives notice of the revocation.

(5) The Minister shall notify a person of an assessment under this section by serving a notice of assessment on the person.

(6) Evidence that an assessment has been made under this section is proof, in the absence of evidence to the contrary, that the amount assessed is owing to the Crown from the person on whom the notice of assessment under subsection (5) is served.

Overpayment of tax

25(1) Where the Minister has reason to believe that a person has paid more tax than was required, the Minister may, within 4 years after the overpayment was made, assess the person for the amount that was required to be paid.

(2) The Minister shall notify a person of an assessment under this section by serving a notice of assessment on the person.

Assessment of penalties

26(1) If an assessment is made against a person under section 23 or 24 and all or a portion of the amount assessed against that person is attributable to

- (a) neglect, carelessness or wilful default by or on behalf of that person, or
- (b) fraud or evasion committed by or on behalf of that person,

the Minister may, in addition to the amount owing under the assessment under section 23 or 24, assess a penalty against the person in the amount of 50% of the amount so attributable.

(2) Evidence that an assessment of a penalty has been made under subsection (1) is proof, in the absence of evidence to the contrary, that the amount owing and the penalty under this section are owing to the Crown from the person on whom the notice of assessment under subsection (4) is served.

(3) If a person fails to submit a return or report as and when required by this Act or the regulations, the Minister may assess a penalty against the person in the amount that is the greater of \$25 for each day of default and 5% of any unpaid tax, to a maximum penalty of \$1000.

(4) The Minister shall notify a person of an assessment under subsection (1) or (3) by serving a notice of assessment on the person.

Effect of assessment

27(1) Unless it is varied or vacated on an objection or appeal,

- (a) an assessment made under section 23, 24, 26, 29 or 30 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 23, 24, 26, 29 or 30 is, for the purposes of collection and recovery, deemed to be an amount owing under this Act and to be conclusively established as a debt due to the Crown.

(2) Every person assessed under section 23, 24, 26, 29 or 30 shall, within 30 days after the service of the notice of assessment, pay the amount assessed against the person whether or not an objection to or appeal from the assessment is outstanding.

(3) Liability for an amount owing under this Act is not affected by the fact that no assessment has been made or no notice of assessment has been served.

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

(5) Subject to subsection (6), if a notice of assessment shows an amount in favour of the person assessed, the Minister shall pay that amount to the person within 30 days of service of the notice of assessment.

(6) Notwithstanding the *Financial Administration Act*, if a notice of assessment indicates an amount owing or a refund of less than the amount prescribed under subsection (8), the Minister may

- (a) in the case of an amount owing, not collect it, or
- (b) in the case of a refund, not pay it unless specifically requested by the person to whom the amount is payable.

(7) A request under subsection (6)(b) must be made no later than the day on which all rights of objection and appeal with respect to the assessment expire.

(8) The Minister may by regulation prescribe the amount for the purpose of subsection (6).

Interest

28 Interest is payable on any amounts owing or assessed under this Act in accordance with the regulations.

Certificate of payment

29(1) A trustee in bankruptcy, assignee, liquidator, administrator, receiver, receiver-manager or any similar person (referred to in this section as the “responsible representative”) who administers, winds up, controls or otherwise deals with the property or business of a person who owes an amount under this Act (referred to in this section as the “debtor”) shall, before distributing any property over which the responsible representative has control, obtain a certificate from the Minister certifying that all amounts

- (a) for which the debtor 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 the capacity of responsible representative

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

(2) If a responsible representative distributes property in contravention of subsection (1), the responsible representative is personally liable to a penalty in an amount equal to the value of the property distributed, and the Minister may assess the responsible representative for the amounts in the same manner and with the same effect as if it were an assessment under this Part against the debtor for whose property or business the responsible representative is responsible.

(3) The Minister shall notify a person of an assessment under subsection (2) by serving a notice of assessment on the person.

Liability in respect of transfers by insolvent person

30(1) If property is transferred at any time by a person who owes an amount under this Act (referred to in this section as the “debtor”) to a person with whom the debtor does not deal at arm’s

length at that time and the debtor 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 debtor to pay the liability under this Act of the debtor 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 debtor 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 the debtor under this Act, and
- (c) it can reasonably be considered that one of the reasons for the transfer would be, but for this subsection, 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 provisions 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 a debtor in respect of part or all of a liability under this Act of the debtor,

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

(5) The Minister shall notify a person of an assessment under subsection (3) by serving a notice of assessment on the person.

Amounts recoverable as debts

31 Taxes, penalties, interest and other amounts owing under this Act are debts recoverable by the Crown in an action in debt.

Set-off

32(1) If a person to whom an amount is owing under this Act owes money to the Crown, the Minister may, instead of making a payment to that person, apply the whole or any part of the payment owing to the person to reduce or eliminate the debt the person owes to the Crown.

(2) Where the Minister applies a payment under subsection (1), the Minister shall notify the person referred to in subsection (1) of the reduction or elimination of the debt.

Certificate of amount not paid

33(1) Where an amount owing under this Act has not been paid or has been paid only in part, 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 as stated in 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.

Payment by third party

34(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 (referred to in this section as the “debtor”), the Minister may, by written notice, require the person to pay the amount otherwise payable to the debtor in whole or in part to the Minister on account of the amount owing by the debtor.

(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 (referred to in this section 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 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 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 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) The Minister shall apply any amount received under this section to the account of the debtor and shall notify the debtor of the amount received.

(5) A person who receives a notice under subsection (1) or (2) is not entitled to set off any amount payable under this section against an amount otherwise owing to that person.

(6) A person who, after receiving a notice under subsection (1), discharges any liability to the debtor without complying with a requirement under this section is liable to pay to the Crown 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.

(7) An institution or other person who, 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 the Crown an amount equal to the lesser of

- (a) the total amount 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.

(8) If the person who is or is about to become liable carries on business under a name or style other than the person's own name, the notice under subsection (1) or (2) may be addressed to the name or style under which the person 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.

(9) If the person who is or is about to become liable carries on business in a partnership, the notice under subsection (1) or (2) may be addressed to the partnership name and, in 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.

Amounts in jeopardy

35(1) In this section, “judge” means a judge of the Court.

(2) Where, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed against a person would be jeopardized by a delay in the collection of it, the judge shall, on the terms the judge considers reasonable in the circumstances, authorize the Minister to file a certificate under section 33 notwithstanding that the 30 days referred to in section 27(2) has not yet elapsed.

(3) Where a judge is satisfied that the receipt of a notice of assessment by a person in respect of an amount assessed against the person would likely jeopardize the collection of that amount, an authorization under subsection (2) may be granted by the judge notwithstanding that the notice of assessment in respect of that amount has not been served on the person at or before the time the application is made.

(4) Statements contained in an affidavit filed in support of an application under this section may be based on belief with the grounds for it.

(5) An authorization granted under this section in respect of a person must be served on the person by the Minister within 72 hours after it is granted, except

- (a) where the judge orders the authorization to be served at some other time specified in the authorization, and
- (b) where a notice of assessment must be served together with the authorization.

(6) For the purpose of subsection (5), service on a person must be effected by

- (a) personal service on the person, or
- (b) service in accordance with directions, if any, of a judge.

(7) Where service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

(8) Where a judge has granted an authorization under this section in respect of a person, the person may, on 6 clear days' notice to the Deputy Minister of Justice and Deputy Attorney General, apply to a judge to review the authorization.

(9) An application under subsection (8) must be made

- (a) within 30 days from the day on which the authorization was served on the person in accordance with this section, or
- (b) within any further time a judge may allow, on being satisfied that the application was made as soon as practicable.

(10) An application under subsection (8) may, on the application of the person, be heard in private if the person establishes to the satisfaction of the judge that the circumstances of the case justify private proceedings.

(11) On an application under subsection (8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make any other order as the judge considers appropriate.

(12) Where any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect to it, a judge may give any direction with regard to it that, in the judge's opinion, is appropriate.

(13) No appeal lies from an order of a judge made pursuant to subsection (11).

Liability of directors for failure to remit

36(1) Where a corporation has failed to remit tax payable by that corporation, the directors of that corporation at the time the corporation was required to remit the tax are jointly and severally liable, together with the corporation, to pay that tax owing and any interest and 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 33 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,
- (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, or
- (d) a compromise or arrangement has been proposed under the *Companies' Creditors Arrangement Act* (Canada) in respect of the corporation.

(3) Notwithstanding subsection (2), a director is not liable under subsection (1) if the director exercised due diligence in attempting to ensure the corporation remitted the tax.

(4) The Minister shall not take action to collect an amount owed by a director under this section until

- (a) all reasonable efforts to collect the amount from the corporation have been made by the Minister, and
- (b) the director has been notified in writing of the director's liability under this section.

(5) A notice under subsection (4)(b) may not be sent more than 2 years after the director last ceased to be a director of the corporation.

(6) 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, the director is entitled to any preference that the Crown 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.

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

Delegation of duty

37 If a person has, in accordance with the regulations, delegated the responsibility to remit tax owing under this Act or to do anything else that the person is required to do under this Act or the regulations to another person and that other person fails to remit the tax or fails to do anything required to be done under this Act or the regulations that is delegated to that person, both persons are jointly and severally liable for any taxes, penalties, interest or other amounts related to, arising from or connected with the failure to remit the tax or the failure to do anything required to be done under this Act or the regulations that is so delegated.

Notice of objection

38(1) A person who objects to

- (a) a notice of assessment under section 23, 24, 25, 26, 29 or 30,
- (b) a notice of refusal under section 9(2),
- (c) a notice of disallowance under section 14(6),
- (d) a notice of disallowance under section 15(2),
- (e) a notice of disallowance under section 16(4) or (6),
- (f) a notice of cancellation of a fuel tax exemption certificate pursuant to the regulations, or
- (g) a notice of refusal, cancellation or suspension of a registration under section 22(6)

may, within 90 days after the day the Minister gives the notice, serve on the Minister a notice of objection in a form established by the Minister setting out the reasons for the objection and the relevant facts.

(2) A notice of objection under this section must be served by being sent by registered mail 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 and shall

- (a) vacate, confirm or vary the assessment or disallowance and notify the objector of the Minister's decision,
- (b) serve a new notice of assessment or give a new notice of disallowance,
- (c) issue a fuel tax exemption certificate under section 9 or give a new notice confirming the Minister's refusal to issue a fuel tax exemption certificate,
- (d) revoke the cancellation of the fuel tax exemption certificate or issue a new fuel tax exemption certificate or give a new notice confirming the cancellation of the fuel tax exemption certificate, or
- (e) confirm the refusal, cancellation or suspension of registration, register the applicant or renew the registration or revoke the suspension or cancellation of the registration.

(5) Notwithstanding subsection (4), on receipt of a notice of objection, the Minister may, if the person indicates in the notice of objection that the person wishes to appeal immediately to the Court and waives reconsideration of the action by the Minister, file a copy of the notice of objection with the clerk of the Court and notify the person of the filing.

(6) If the Minister files a copy of the notice of objection pursuant to subsection (5),

- (a) the Minister is deemed for the purpose of section 41 not to have acted under section 38(4), and
- (b) the person is deemed to have instituted an appeal in accordance with section 41.

Extension of time by Minister

39(1) Where no notice of objection has been served under section 38 within the time limited by that section for doing so, the person may apply to the Minister for an extension of the time for serving a notice of objection.

(2) An application made under subsection (1) must set out the reasons why the notice of objection was not served within the time otherwise limited by section 38 for doing so.

(3) An application made under subsection (1) must be served by being sent by registered mail addressed to the Minister and must be accompanied with a copy of the notice of objection.

(4) The Minister may accept an application made under subsection (1) notwithstanding that it was not served in the manner required by subsection (3).

(5) On receipt of an application made under subsection (1), the Minister shall with all due dispatch consider the application and grant or refuse it and notify the person of the decision in writing.

(6) Where an application made under subsection (1) is granted, the notice of objection is deemed to have been served on the day the person is notified of the Minister's decision.

(7) No application may be granted under this section unless

- (a) the application is made within one year after the expiration of the time otherwise limited by section 38 for serving a notice of objection, and
- (b) the person demonstrates that
 - (i) within the time otherwise limited by section 38 for serving the notice, the person
 - (A) was unable to act or to instruct another to act in the person's name, or
 - (B) intended in good faith to object to the assessment,
 - (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

- (iii) the application was made as soon as circumstances permitted.

Extension of time by Court

40(1) A person who has made an application under section 39 may apply to the Court to have the application granted after

- (a) the Minister has refused the application, or
- (b) 90 days has elapsed after service of the application under section 39 and the Minister has not notified the person of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notice of the Minister's decision was mailed to the person or otherwise communicated in writing to the person.

(2) An application under subsection (1) must be made by serving on the Minister by registered mail a copy of the documents referred to in section 39(3) and the notice referred to in section 39(5), if any, and by filing a copy of each with the clerk of the Court.

(3) The Court may grant or dismiss an application made under subsection (1) and, in granting an application, may impose any terms it considers just or may order that the notice of objection is deemed to have been served on the date of its order.

(4) No application may be granted under this section unless

- (a) the application was made under section 39 within one year after the expiration of the time otherwise limited by section 38 for serving a notice of objection, and
- (b) the person demonstrates that
 - (i) within the time otherwise limited by section 38 for serving the notice, the person
 - (A) was unable to act or to instruct another to act in the person's name, or
 - (B) intended in good faith to object to the assessment,

- (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
- (iii) the application was made under section 39 as soon as circumstances permitted.

Notice of appeal

41(1) A person who has served a notice of objection under section 38(1) may appeal to the Court to have the assessment or disallowance vacated or varied, a fuel tax exemption certificate issued under section 9 or the refusal, cancellation or suspension of registration revoked after

- (a) the Minister has confirmed the assessment or disallowance or served a new notice of assessment or given a new notice of disallowance under section 38(4),
- (b) the Minister has given a new notice confirming the Minister's refusal to issue a fuel tax exemption certificate under section 9,
- (c) the Minister has given a new notice confirming the Minister's cancellation of a fuel tax exemption certificate,
- (d) the Minister has confirmed the Minister's refusal, cancellation or suspension of registration, or
- (e) 90 days has elapsed after service of the notice of objection and the Minister has not acted under section 38(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 38(4) was served or otherwise given to the objector.

(2) An appeal to the Court must 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.

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

(4) The notice of appeal must be attached to the notice of objection and, for the purpose of section 44, is deemed to be a statement of claim.

Reply to notice of appeal

42(1) The Minister shall, within 60 days from the day a notice of appeal is received or within any further time that the Court may allow either before or after the expiration of that time, serve on the appellant and file in the Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of any further allegations of fact and of any applicable statutory provisions and any reasons on which the Minister intends to rely.

(2) The Court may strike out a notice of appeal or any part of a notice for failure to comply with section 41 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 41 and a new notice of appeal is not filed as and when permitted by the Court, the Court may dismiss the appeal.

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

Powers of Court

43(1) On the filing of the material referred to in sections 41 and 42(1), (2) and (3), the matter in respect of which the material is filed 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 or disallowance,
 - (ii) vary the assessment or disallowance,
 - (iii) restore the assessment or disallowance,
 - (iv) refer the assessment or disallowance back to the Minister for reconsideration,
 - (v) order the Minister to issue a fuel tax exemption certificate under section 9,
 - (vi) order the Minister to revoke the cancellation of a fuel tax exemption certificate or issue a new certificate, or
 - (vii) order the Minister to register the applicant under section 22 or renew the registration or revoke the cancellation or suspension of the registration.

(4) The Court may, in delivering judgment on an appeal, order payment or repayment of tax, a refund, credit or allowance under section 14, a rebate under section 15, an allowance, grant or reimbursement under section 16 and interest, penalties or costs of the appellant or the Minister.

Practice and procedure

44 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 43, and every judgment and order given or made in each such action may be enforced in the same manner and by the same process as a judgment or order given or made in an action commenced in the Court.

Irregularities

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

Documents deemed signed

46 A document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister or an official authorized by the Minister to exercise powers or perform duties of the Minister under this Act is deemed to have been signed, made and issued by the Minister or the official unless called into question by the Minister or by a person acting for the Minister or for the Crown.

Part 3 Investigations, Enforcement and Offences

Division 1 Investigations and Enforcement

Definition

47 In this Part, “property” includes computer hardware.

Authority to enter on land

48 For the purpose of carrying out duties under this Act and the regulations, the Minister or an officer may enter on any land, whether or not that land is enclosed.

General powers respecting inspections

49(1) For the purpose of carrying out duties under this Act and the regulations, the Minister or an officer may do all or any of the following:

- (a) subject to subsection (4), enter, without a warrant, at any reasonable time, the following premises for the purpose of conducting an inspection, audit or examination:
 - (i) any premises used by the person in connection with the refinement, production, importation, exportation,

storage, transportation, distribution, purchase, sale, blending, rebranding or marking of fuel;

(ii) any premises containing any records or property that relates to the refinement, production, importation, exportation, storage, transportation, distribution, purchase, sale, blending, rebranding or marking of fuel or any other records or property that is required to be kept under this Act or the regulations;

(b) make any inquiries of a person that are or may be relevant to an inspection, audit or examination under this section;

(c) require any person keeping any records or property related to the refinement, production, importation, exportation, storage, transportation, distribution, purchase, sale, blending, rebranding or marking of fuel or any other records or property that is required to be kept under this Act or the regulations to provide those records or that property to the Minister or an officer;

(d) examine any fuel on the premises, including any fuel contained in the fuel tank of any motor vehicle found on the premises or in any other receptacle, and take samples of that fuel;

(e) use any computer hardware or software to obtain readings or other information from the engine of a motor vehicle found on the premises.

(2) If any records or property is provided to the Minister or an officer pursuant to subsection (1)(c), the Minister or officer may

(a) examine the records or property, and

(b) remove the records for the purpose of making copies in accordance with section 54.

(3) For the purpose of producing a readable record from a computer system used by a person to whom a request is made pursuant to subsection (1), the Minister or an officer may use any computer hardware or software in the possession of that person.

(4) The Minister or an officer shall not enter any premises that are a dwelling house except with the consent of the occupant or under the authority of a warrant obtained pursuant to section 50.

Warrant

50(1) Where a justice of the peace or provincial judge is satisfied by information on oath of the Minister or an officer that there are reasonable grounds to believe that an offence against this Act or the regulations has occurred and that evidence of that offence is likely to be found, the justice of the peace or the provincial judge may issue a warrant to authorize the Minister or officer to do all or any of the following:

- (a) enter and search any place or premises named in the warrant;
- (b) stop and search any motor vehicle described in the warrant;
- (c) seize and remove anything that may be evidence of an offence against this Act or the regulations.

(2) Under the authority of a warrant issued pursuant to subsection (1), the Minister or officer may do all or any of the following:

- (a) at any time, enter and search any place or premises named in the warrant;
- (b) stop and search any motor vehicle described in the warrant;
- (c) open and examine any trunk, box, bag, parcel, closet, cupboard or other receptacle that the Minister or officer finds in the place, premises or motor vehicle;
- (d) require the production of and examine any records or property that the Minister or officer believes, on reasonable grounds, may contain information related to an offence against this Act or the regulations;
- (e) remove, for the purpose of making copies in accordance with section 54, any records examined pursuant to this section;
- (f) seize and remove from any place, premises or motor vehicle searched anything that may be evidence of an offence against this Act or the regulations.

(3) Subject to subsection (4), the Minister or officer may exercise all or any of the powers mentioned in subsection (2) without a warrant if

- (a) the conditions for obtaining a warrant exist, and
- (b) the Minister or officer has reasonable grounds to believe that the delay necessary to obtain a warrant would result
 - (i) in danger to human life or safety, or
 - (ii) in the loss, removal or destruction of evidence.

(4) The Minister or an officer shall not enter any premises that are a dwelling house without a warrant obtained pursuant to this section unless the occupant of those premises consents to the entry.

Authority to stop and inspect motor vehicles

51(1) For the purpose of carrying out duties under this Act and the regulations, an officer may, without a warrant, signal or request the operator of a motor vehicle to stop the vehicle to enable the officer to examine its fuel and take a sample of it when the officer has reasonable cause to suspect that the operator or owner of the motor vehicle is not authorized to be in possession of marked fuel or is using marked fuel other than for a prescribed purpose or use or farming operations in Alberta.

(2) The operator of a motor vehicle shall, when signalled or requested by an officer who is readily identifiable as an officer,

- (a) immediately bring the motor vehicle to a safe stop,
- (b) immediately provide access to the fuel tank of the motor vehicle or other receptacle on or attached to the motor vehicle where the officer reasonably believes that marked fuel may be located, and
- (c) permit the officer to examine the fuel in the fuel tank of the motor vehicle or in another receptacle on or attached to the motor vehicle and take samples of that fuel.

Searches of motor vehicles transporting fuel in bulk

52(1) When requested to do so by an officer, every person transporting fuel in bulk and every operator of a motor vehicle

transporting fuel in bulk, other than in the fuel tank of a motor vehicle, shall provide the officer with written proof of

- (a) the quantity and type of fuel being transported,
- (b) the name and address of the person or persons from whom the fuel was obtained,
- (c) the name and address of every person to whom the fuel was delivered or is to be delivered, and
- (d) the use or intended use, if known, of the fuel delivered or to be delivered.

(2) An officer may detain a motor vehicle transporting fuel in bulk, other than fuel in the fuel tank of a motor vehicle, if

- (a) the written proof requested under subsection (1) is not provided, or
- (b) the officer wishes to verify any written proof provided under subsection (1).

(3) An officer may detain a motor vehicle under subsection (2) until the written proof requested under subsection (1) has been provided and verified to the satisfaction of the officer.

Demand for records and property

53(1) For the purpose of carrying out duties under this Act, the Minister or an officer may serve a written demand on any person requiring that person to produce any records or property in that person's control that relates to the refinement, production, importation, exportation, storage, transportation, distribution, purchase, sale, blending, rebranding or marking of fuel or any other records or property that is required to be kept under this Act or the regulations within a reasonable period of time stipulated in the demand.

(2) A person on whom a written demand is served pursuant to this section shall produce the records or property mentioned in the written demand within the time specified in the demand.

(3) The Minister or an officer may inspect and examine any records or property produced pursuant to a written demand served

pursuant to subsection (1) and remove the records for the purpose of making copies in accordance with section 54.

(4) If a person is served with a written demand under this section and the person does not comply with the demand, the Minister or 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 any relief that 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 produce the records or property where the Court is satisfied that
 - (i) the records or property demanded is in the possession of or under the control of the person, and
 - (ii) the records or property 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.

Copies of records

54(1) Where any records are removed pursuant to section 49, 50 or 53, the Minister or officer may make copies of those records.

(2) The Minister or officer shall

- (a) make those copies with reasonable dispatch, and

- (b) promptly return the originals of the records to
 - (i) the place they were removed from, or
 - (ii) any other place that may be agreed to by the Minister or officer and the person who produced them or from whom they were seized.

(3) A record certified by the Minister or an officer to be a copy made pursuant to this section

- (a) is admissible in evidence without proof of the office or signature of the person purporting to have issued the certificate, and
- (b) has the same probative force as the original record.

Hindering Minister or officer

55(1) No person shall hinder, molest or interfere with the Minister doing anything that the Minister is authorized to do by or pursuant to section 48, 49, 50 or 53 or attempt to prevent the Minister doing that thing and, notwithstanding any other law to the contrary, a person shall, unless the person is unable to do so, do everything the person is required to do pursuant to section 48, 49, 50 or 53.

(2) No person shall hinder, molest or interfere with any officer doing anything that the officer is authorized to do by or pursuant to section 48, 49, 50, 51, 52 or 53 or prevent or attempt to prevent any officer doing that thing and, notwithstanding any other law to the contrary, a person shall, unless the person is unable to do so, do everything the person is required to do by or pursuant to section 48, 49, 50, 51, 52 or 53.

Division 2 Offences

Offences and penalties re recipients

56 A recipient other than a consumer who contravenes section 4, 5, 6, 12, 21 or 22 is guilty of an offence and 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, and

- (b) for a subsequent 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.

Offences and penalties re vendors

57 A vendor who contravenes section 10 or 18(1) or (3) is guilty of an offence and 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, and
- (b) for a subsequent 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.

Offences and penalties re consumers

58 A consumer who contravenes section 4, 5, 6, 12, 17, 18(5), 19 or 20 is guilty of an offence and liable

- (a) for a first offence, to a fine of not more than \$1000, and
- (b) for 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 a fine and imprisonment.

Offences re documents and records

59 A person who

- (a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in an application, return, statement, record, report or document delivered or made under this Act or the regulations,
- (b) destroys, alters, mutilates or disposes of the records of a person required to keep records under this Act or the regulations,
- (c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in the omitting of material particulars in the records of a person required to keep records under this Act or the regulations,

- (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 for by this Act, is liable to a fine of not more than 300% of the tax evaded or sought to be evaded, the difference between the amount that should have been remitted and the amount remitted, or the refund, credit, allowance, reimbursement or rebate obtained or sought to be obtained, or to that fine and a term of imprisonment of not more than 2 years.

Failure to file returns or maintain records

60(1) A person who fails to submit a return or report 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 of \$50 for each day of default.

(2) A person who fails to maintain records and books of account when required by the Minister to do so under section 69(a) is guilty of an offence and liable to a fine of \$50 for each day from the day the person receives notification of the requirement to the day the person complies with the requirement.

General offences and penalties

61(1) A person other than a consumer who contravenes section 17 or 20 is guilty of an offence and 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, and
- (b) for a subsequent 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.

(2) 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 liable

- (a) for a first offence, to a fine of not more than \$1000 or to a term of imprisonment of not more than one month or to both a fine and imprisonment, and
- (b) for 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 a fine and imprisonment.

Part 4

Administrative Provisions and Regulations

Records

62(1) Every person who is required to be registered under section 22 shall keep records in accordance with the regulations.

(2) Subject to subsections (3) and (4), a record must be retained for 6 years from the end of the calendar year in which the record was created.

(3) A person referred to in subsection (1) may apply to the Minister for permission to destroy a record before the 6-year period has elapsed.

(4) The Minister may before the end of the 6-year period require a person referred to in subsection (1) to retain a record for a further period as specified by the Minister.

Communication of information

63(1) Information collected under this Act may be disclosed to the Government of Canada or the government of a province or territory if the information is used solely for the purpose of administering or enforcing a taxation statute of Canada or of that province or territory and the Government of Canada or government of that province or territory supplies the Government of Alberta with similar information under an information-sharing agreement.

(2) A person who receives information under subsection (1) holds that information subject to the same prohibitions and restrictions respecting communication of the information that applied to the person from whom the information was received.

(3) Notwithstanding subsection (2), a person may communicate information to any person engaged or employed in the investigation

or prosecution of offences under the *Criminal Code* (Canada) solely for the purpose of investigating and prosecuting an offence.

(4) The Minister may, in accordance with the regulations, disclose information, including personal information, about a registrant or other person where the information is required by the person to whom it is disclosed

- (a) for the purpose of complying with this Act or the regulations, or
- (b) to determine if the registrant or other person is complying with this Act or the regulations.

(5) The Minister may, in accordance with the regulations, publish the following information, including personal information, about a registrant:

- (a) the name of the registrant;
- (b) the address of the registrant;
- (c) the type of registration;
- (d) any other prescribed information.

Security for amounts owing

64(1) The Minister may, if the Minister considers it advisable in a particular case, accept security for payment of debts due to the Crown under this Act by way of mortgage or other charge on, or a security interest of any kind under the *Personal Property Security Act* 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 Minister surrender the security, the Minister may 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.

Service

65 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

the person by personal service, fax, registered or regular mail or any other method specified in the regulations.

Limitation on prosecution

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

Limitations Act

67 The *Limitations Act* does not apply to the Crown with respect to any matter arising under this Act.

Certificates as evidence

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

- (a) a certificate of the Minister or a person lawfully acting on the Minister's behalf stating that the defendant is or is not registered under this Act, or was or was not so registered at a time or during a period of time specified in it,
- (b) a certificate of the chief chemist or the deputy chief chemist of the gasoline and oil laboratory of the Alberta Science and Research Authority or any other person designated or appointed by the Minister stating the results of the examination of any substance referred to in the certificate and stating one or more of the following:
 - (i) that the substance is or is not a fuel or a blend stock,
 - (ii) if the substance is a fuel, the type of fuel,
 - (iii) if the substance is a fuel, that the fuel is or is not marked fuel,
 - (iv) that the substance does or does not contain a colouring matter or identifying substance authorized to be used under the regulations,

or

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

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

Powers of Minister

69 The Minister may

- (a) require any person, in a particular case,
 - (i) to keep any record in the manner and place required by the Minister,
 - (ii) to make any return or report,
 - (iii) to comply with a specified method of accounting, or
 - (iv) to make or reconcile an inventory of fuel as of a specified time,for a purpose related to the administration of this Act or the regulations;
- (b) establish or approve the form of any agreement or other document or form used in the administration of this Act;
- (c) extend the time for making a report or return under this Act;
- (d) designate a fuel distribution facility as a terminal;
- (e) enter into agreements with the government of any jurisdiction inside or outside Canada, or with any other person, with respect to the administration and enforcement of this Act or any fuel tax legislation in any other jurisdiction, including, without limitation, agreements with respect to the collection of taxes under this Act or similar taxes imposed by other jurisdictions and the determination of fuel used in a jurisdiction;

- (f) enter into the International Fuel Tax Agreement.

Waiver or cancellation of penalties or interest

70 Notwithstanding the *Financial Administration Act*, the Minister may, on application by a person against whom a penalty or interest is assessed within 4 calendar years from the end of the calendar year in which the penalty or interest is assessed,

- (a) waive or cancel all or any portion of any penalty or interest payable under this Act by the person, or
- (b) refund all or any portion of any penalty or interest paid under this Act by the person.

Regulations

71(1) The Lieutenant Governor in Council may make regulations

- (a) defining words or expressions to be defined by the regulations, and any other word or expression used in this Act but not defined in this Act;
- (b) excluding any substance from the definition of fuel in section 1(n);
- (c) prescribing substances for the purpose of section 1(q);
- (d) prescribing circumstances under which no tax is payable under section 4(3) or 6(3);
- (e) respecting the manner in which or the basis on which the use of locomotive fuel in Alberta is calculated;
- (f) respecting the remittance of tax under this Act;
- (g) exempting any person or class of persons from the payment of tax imposed by this Act subject to any terms set out in the regulations;
- (h) prescribing the types of evidence of exemption for the purpose of sections 8 and 18;
- (i) prescribing purposes or uses for which tax-exempt fuel may be used;

- (j) respecting the possession of marked fuel;
- (k) respecting fuel tax exemption certificates, including, without limitation, regulations respecting
 - (i) applications for a fuel tax exemption certificate,
 - (ii) the types of fuel tax exemption certificates that may be issued, and
 - (iii) the cancellation of a fuel tax exemption certificate;
- (l) respecting the circumstances in which tax-exempt fuel must be marked fuel;
- (m) prescribing activities for the purpose of section 12(2)(h);
- (n) respecting refunds, credits and allowances under section 14 including, without limitation, regulations respecting applications for refunds, credits or allowances;
- (o) respecting rebates under section 15, including, without limitation, regulations respecting applications for rebates;
- (p) respecting the farm fuel distribution allowance;
- (q) respecting grants under section 16(3), including, without limitation, regulations respecting applications for grants;
- (r) respecting reimbursements under section 16(5), including, without limitation, regulations respecting applications for reimbursement;
- (s) respecting the colouring and identifying of fuel as marked fuel;
- (t) respecting the accounting for the receipt, possession and disposition of marked fuel under section 21;
- (u) respecting registrations under section 22, including, without limitation, regulations respecting applications for registrations;
- (v) requiring security bonds, bank guarantees or other financial arrangements to be furnished or made by any person who remits tax pursuant to this Act and prescribing

the form and amount of the bonds, guarantees or other financial arrangements;

- (w) respecting the form and contents of waivers under sections 23 and 24;
 - (x) prescribing the rate of interest and the manner of calculation of interest payable for the purpose of section 28;
 - (y) respecting the delegation of duties for the purpose of section 37;
 - (z) respecting records and property to be kept under this Act, including, without limitation, regulations respecting the manner and place where records and property are to be kept;
 - (aa) respecting certificates to be issued under this Act;
 - (bb) respecting the disclosure and publishing of information for the purposes of section 63;
 - (cc) respecting returns and reports to be made and submitted to the Minister, including the persons required to make them;
 - (dd) respecting the practice and procedures of the Court in respect of proceedings under this Act;
 - (ee) respecting the service of notices and documents under this Act;
 - (ff) prescribing any other matter or thing required or authorized by this Act to be prescribed by regulation;
 - (gg) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or expedient to carry out the intent of this Act.
- (2) The Minister may make regulations**
- (a) respecting forms for the purposes of this Act;
 - (b) prescribing fees for any applications, services or other matters under this Act.

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

Part 5 Transitional Provisions, Consequential Amendments, Repeal and Coming into Force

Transitional provisions

72(1) In this section and section 73, “former Act” means the *Fuel Tax Act*, RSA 2000 cF-28.

(2) Any registration issued or renewed under section 4 of the former Act as that Act existed on the day before the coming into force of this Act is deemed to be issued under this Act and may be dealt with by the Minister as if it were issued under this Act.

(3) Any proceedings with respect to an assessment made under the former Act that are not fully disposed of before the coming into force of this section shall be dealt with and disposed of under the former Act.

Transitional regulations

73 The Lieutenant Governor in Council may make regulations

- (a) respecting the transition of any matter from the former Act to this Act;
- (b) to deal with any difficulty or impossibility resulting from the transition from the former Act to this Act.

Amends SA 2004 cH-8.5

74 The *Highways Development and Protection Act* is amended by repealing section 65.

Repeal

75(1) The *Fuel Tax Act*, RSA 2000 cF-28, is repealed.

(2) Section 3(a) of the *Fuel Tax Amendment Act, 2004* is repealed.

Coming into force

76 This Act comes into force on Proclamation.

Explanatory Notes

74 Consequential amendment.

75 Repeals chapter F-28 of the Revised Statutes of Alberta 2000 and section 3(a) of chapter 17 of the Statutes of Alberta, 2004.

76 Coming into force.