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SNL2009 CHAPTER R-15.01

**REVENUE ADMINISTRATION ACT**

Amended:

2010 c8; 2011 c19; 2011 c25; 2012 c6; 2013 c5; 2013 c6; 2013 c7; 2013 c14 s1; 2013 c16 s25; 2014 c8; 2014 c11;  
2014 c15 s1

**CHAPTER R-15.01**

**AN ACT TO CONSOLIDATE THE LAW RESPECTING REVENUE  
ADMINISTRATION**

*(Assented to May 28, 2009 )*

*Analysis*

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*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

### Short title

1. This Act may be cited as the *Revenue Administration Act* .

[2009 cR-15.01 s1](#)

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### Definitions

#### 2. In this Act

- (a) "annuity" means a contract of insurance that provides for the payment of an income for a specified period or for life and under the terms of which the sole benefit stated to be payable by reason of death does not exceed the sum of the amounts paid as consideration for the contract together with interest;
- (b) "arm's length" has the same meaning as under section 251 of the *Income Tax Act* (Canada) and the word "control" used in that section shall be read in the context given in subsection 256(5.1) of that Act;
- (c) "assessment" means an assessment, a reassessment, an amended assessment or an additional assessment of tax under this Act;
- (d) "associated corporation" means a corporation which is an associated corporation as defined in section 256 of the *Income Tax Act* (Canada );
- (e) "bet" means a bet placed under the system known as *pari-mutuel* wagering upon a race run at a race-meeting;
- (f) "books and records" means any recorded information in original or copied form relating to a taxpayer or taxpayer's returns, including every kind of financial book or record, all purchase invoices, sales invoices, sales tapes, other documents of original sale or purchase, statements of account, bank statements or statements of other financial institutions, bank agreements, loan agreements, partnership agreements, articles of incorporation, share registries, minute books, sales journals, purchase journals, all other journals, letters, memoranda, notes, draft agreements, charts of account, general ledgers, all subsidiary ledgers, payroll journals and summaries, income tax returns, returns under this Act, financial statements, auditors' opinions and notes that comprise part of the financial statements, internal audit reports, executive and management committee minutes and any other thing containing information, and includes those items or data in machine readable or electronic format;
- (g) "business", for the purpose of Part IV, means an undertaking or activity carried on by an employer whether or not it is carried on for gain or profit and includes the carrying on of government or of a government function;
- (h) "business transacted in the province", for the purpose of Part VI, means
  - (i) in the case of insurance in respect of loss of or damage to property of all kinds, all contracts on which premiums are receivable from or in respect of persons whose property was situated in the province when their premiums became payable, and
  - (ii) in the case of other insurance, all contracts on which premiums are receivable from or in respect of persons who were residents of the province when their premiums became payable;
- (i) "cigar" means a roll or tubular construction intended for smoking that consists of
  - (i) a filler composed of natural tobacco, reconstituted tobacco or both natural and reconstituted tobacco, and
  - (ii) a wrapper, or binder and a wrapper, composed of natural tobacco, reconstituted tobacco or both natural and reconstituted tobacco in which the filler is wrapped, and may include a mouthpiece, tip or

filter;

- (j) "collector" means a wholesaler or retailer who
  - (i) collects tax from another wholesaler, retailer or consumer,
  - (ii) holds the tax collected under subparagraph (i) in trust for the Crown, and
  - (iii) is accountable to the minister for remittance of that tax;
- (k) "commercial production" means a point when 60% of the stated processing capacity is achieved for 30 days or as the minister may determine;
- (l) "company" means a person, company, society, association, partnership, exchange or underwriter which carries on or transacts in the province a business of insurance to which the *Insurance Companies Act* or the *Insurance Adjusters, Agents and Brokers Act* applies, or any other business of insurance, and includes a person who administers a contract of insurance under an administrative services only plan or any other financial arrangement which provides group insurance, and an attorney authorized to act for, or acting for, a reciprocal or inter-insurance exchange and underwriters or syndicates of underwriters operating on the plan known as "Lloyd's", but does not include
  - (i) a purely mutual company in respect of a year in which the net premium income in the province of that mutual company is to the extent of not less than 50% derived from the insurance of farm or fishing property or wholly derived from the insurance of churches, schools, or other religious, educational, or charitable institutions,
  - (ii) a fraternal or sororal benefit society, or
  - (iii) a mutual benefit society;
- (m) "consumer", for the purpose of Part IX, means a person who
  - (i) in the province, purchases or receives delivery of tobacco, or
  - (ii) brings into the province tobacco acquired outside the province,for that person's own use or consumption or for the use or consumption by others at that person's expense, or on behalf of, or as the agent for, a principal who wishes to acquire the tobacco for use or consumption by the principal or other person at the principal's expense;
- (n) "contraband" means tobacco that is not purchased, possessed, acquired, marked, stamped, transported, stored or sold in accordance with this Act and includes unmarked tobacco possessed without lawful reason;
- (o) "contract of insurance" includes an administrative services only contract or any other financial arrangement for group insurance;
- (p) "department" means the department presided over by the minister;
- (q) "deputy collector" means a retailer or a wholesaler, who is not a collector;
- (r) "dividend" without restricting the ordinary meaning of the word, includes an amount payable, or subject to be credited, by a company to its insured and that is composed in whole or in part of a portion of the amount previously paid by the insured as a premium or as a deposit or payment under a reciprocal contract of indemnity or inter-insurance;
- (s) "employee" means a natural person employed in the province by an employer, including an officer of an employer, who receives remuneration in respect of the performance of the duties of the employment or the office;
- (t) "employer" means a person or a government, including the government of a province, and the Government of Canada, paying remuneration in relation to a business in the province;
- (u) "establishment" means a place of business and includes an office, branch, agency, factory, workshop, work site, warehouse, storage area, farm, mine, sawmill, timberland, transportation terminal, oil or gas well, refinery or generating station occupied or utilized during a year or part of a year and includes a corporation which has an establishment in the place designated in its articles of incorporation or by-laws

as being its head office, and

- (ii) the use by an employer of machinery or equipment in a particular place during a month constitutes an establishment of the employer in that place for that month,
- (ii) an employer which produced, grew, mined, fished, refined, harvested, collected, created, manufactured, fabricated, improved, packed, preserved, processed or constructed, in whole or in part, anything in the province, whether or not the employer exported that thing or removed that thing from the province before selling it, is considered to maintain an establishment at the places where the employer did any of those things, and
- (iii) an employer which has no fixed place of business is considered to have an establishment in the principal place in which the employer conducted business and in each place from which the employer carried on or transacted a portion of his or her business;
- (v) "exchange" or "reciprocal or inter-insurance exchange" means a group of subscribers exchanging reciprocal contracts of indemnity of inter-insurance with each other through the same attorney;
- (w) "exemption threshold" means, with respect to remuneration paid, \$1,200,000;
- (x) "exploration expenditure" means an expenditure relating to prospecting, sampling, mapping, diamond drilling and other work involved in searching for ore in the province under a licence to explore for minerals issued under the *Mineral Act*;
- (y) "fleet" means all interjurisdictional motor vehicles operated by an interjurisdictional carrier;
- (z) "fraternal or sororal benefit society" means a society, order or voluntary association incorporated or formed to carry on for the purpose of making with its members only and not for profit contracts of life, accident or sickness insurance under which benefits may be paid only to its members or their beneficiaries in accordance with its constitution and by-laws and the laws of the province;
- (aa) "gasoline" includes every liquid or combination of liquids, under whatever name it is known or sold, that is capable of being used for the purpose of generating power in an internal combustion engine whether or not the liquid or combination or a part of it is produced, derived or recovered from petroleum, natural gas, shale or coal;
- (bb) "government assistance" means assistance provided by a government, including a municipal government and an agency of a government, and includes a grant, subsidy, forgivable loan, deduction from tax, but does not include an amount provided under section 84 ;
- (cc) "group insurance" means a policy of insurance or any other financial arrangement that covers a specified group and other persons and gives protection against risk to an individual such as death, disability, loss of income due to illness or accident, and payments for supplemental health care, drugs, dental and other expenses;
- (dd) "HST registrant" means a registrant as defined in Part IX of the *Excise Tax Act* (Canada) ;
- (ee) "impacts and benefits agreement" means an agreement between a person or an association of persons, whether or not incorporated, and an operator that could reasonably confer a benefit on the person or association of persons or its members, which includes any matter connected with exploration, mine development or a mining operation that may affect the person or association;
- (ff) "inspector" means a person appointed under this Act to audit and inspect books and records, collect tax and otherwise perform those duties assigned to him or her under this Act;
- (gg) "interjurisdictional carrier" means the owner or lessee of an interjurisdictional motor vehicle;
- (hh) "interjurisdictional motor vehicle" means a diesel powered "commercial motor vehicle" as defined in the *Highway Traffic Act* , used to transport goods or passengers between the province and another jurisdiction, including buses other than school buses;
- (ii) "joint venture" means a business undertaking entered into by 2 or more persons which terminates upon completion of that undertaking and where the control and contribution of resources are shared;
- (jj) "licence" means a licence issued under this Act;
- (kk) "licensee" means a person who holds a licence issued to that person under this Act;

- (ll) "marine insurance" means insurance against marine losses, that is to say, the losses incidental to marine adventure, and includes insurance that, by the express terms of a contract or by usage of trade, extends so as to protect the insured against losses on land or air or inland water risk that is incidental to a sea voyage;
- (mm) "marked gasoline" means gasoline marked by a specific dye in accordance with the regulations;
- (nn) "marked tobacco" means tobacco in packages, cartons or cases that are marked or stamped as required under the regulations;
- (oo) "mine" means a shaft, open pit, quarry or other place from which minerals are extracted, and where more than one mine is operated under the same mining lease, or on contiguous properties, those mines shall be considered to be one mine;
- (pp) "mineral" means mineral as defined in the *Mineral Act* ;
- (qq) "mining lease" means a mining lease issued under the *Mineral Act* ;
- (rr) "mining operations" means the extraction or production, within the province, of minerals up to and including primary crushing, and includes the transportation, handling, storing, distribution and sale of those minerals, mine rehabilitation and decommissioning, but does not include processing;
- (ss) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (tt) "municipality" means
- (i) the City of Corner Brook ,
  - (ii) the City of Mount Pearl ,
  - (iii) the City of St. John's , and
  - (iv) a municipality established or continued under the *Municipalities Act, 1999*;
- (uu) "mutual benefit society" means a mutual company formed for the purpose of providing sick and funeral benefits for its members or for this and other necessary or incidental purposes except life insurance;
- (vv) "mutual company" means a company, without share capital or with guarantee capital stock subject to repayment by the company, in respect of which the dividend rate is limited by its Act or other instrument of incorporation which is empowered to undertake mutual insurance exclusively;
- (ww) "mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts whether or not the maximum amount of that consideration is predetermined;
- (xx) "operator"
- (i) for the purpose of Part V, means a person who
    - (A) operates a race-course,
    - (B) conducts a race-meeting, or
    - (C) is the custodian or depository of money staked or deposited in the making of a bet at a race-meeting upon races being run at a race-meeting, and
  - (ii) for the purpose of Part VII, means a person who carries out mining operations on or under lands within the province, whether or not that person holds a mining lease to extract minerals;
- (yy) "outlet" means a station, shop, establishment, vehicle or other place or thing from or in which gasoline is kept for sale;
- (zz) "package" includes a bag, box, tin or other container in which tobacco is packaged for retail sale;
- (aaa) "partnership" means a partnership under the *Partnership Act* and includes a limited partnership and a joint venture;

- (bbb) "person" includes a partnership, limited partnership, association, syndicate, joint venture or co-venture and a municipal government;
- (ccc) "plan holder" means with regard to group insurance, the person who holds the group insurance on behalf of the insured members;
- (ddd) "policyholder" includes the personal representative or beneficiary of the policyholder;
- (eee) "premium" means the single or periodic payment made as consideration under a contract of insurance and includes the amount collected from a subscriber under a reciprocal contract of indemnity or inter-insurance for the purpose of defraying losses incurred by the subscriber to a reciprocal or inter-insurance exchange and the necessary operation expenses of the exchange;
- (fff) "pre-production expenditure" means costs, other than capital costs, incurred in order to bring a mine into commercial production, less revenue earned before the mine comes into commercial production;
- (ggg) "purchase price", for the purpose of Part VIII, includes the value in Canadian dollars of the consideration, whether money, goods, services rendered, rental or other consideration for which a used vehicle was acquired at a retail sale, and includes the interest, charges, duties, and taxes;
- (hhh) "race-meeting" means a contest in which one or more horse races are held, whether or not the public is admitted to them, but does not include the racing of horses for the purposes of training only to which the public is not admitted on the payment of a fee or otherwise;
- (iii) "reconstituted tobacco" means a product that is comprised of 50% or more tobacco;
- (jjj) "remuneration" includes all payments, benefits or allowances paid or credited to or on behalf of each employee who reports for work to or who is paid by an employer through an establishment in the province and which, because of subsection 5(1) or section 6 or 7 of the *Income Tax Act* (Canada) are declared to be or are required to be included in income of a person for the purpose of that Act and includes
- (i) salary and wages,
  - (ii) bonuses,
  - (iii) commissions or other similar amounts fixed by reference to the volume of sales made or the contracts negotiated, and
  - (iv) other taxable allowances or benefits paid or accrued to an employee or officer,
- but does not include a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of that employee;
- (kkk) "retail purchaser" means a person who, as the context requires, acquires
- (i) tobacco not for resale but as a consumer,
  - (ii) a used vehicle not for resale but as a consumer, or
  - (iii) gasoline not for resale but
    - (A) for his or her own consumption or use or his or her own intended consumption or use or for the consumption or use or the intended consumption or use of other persons at his or her expense, or
    - (B) on behalf of or as the agent for a principal who wishes to acquire the gasoline for consumption or use by that principal or by other persons at the expense of that principal;
- (lll) "retail sale" means a sale to a retail purchaser;
- (mmm) "retailer" means a person who, as the context requires,
- (i) sells tobacco at a retail sale and who is either an HST registrant who has an establishment in the province, or who is designated as a retailer by the minister, or

- (ii) holds a licence authorizing that person to sell gasoline or keep gasoline for sale directly to retail purchasers;
- (nnn) "sale" means a sale for cash or on credit or a sale where the price is payable by instalments, and includes a barter, an exchange and a contract by which at a price or for other consideration a person gives gasoline, tobacco or a vehicle to another;
- (ooo) "tax" means a tax imposed by this Act and includes all penalties, costs and interest that may be added to the tax;
- (ppp) "tax-exempt gasoline" means gasoline that is not taxed under this Act;
- (qqq) "taxable remuneration" means
  - (i) with respect to the taxation year, remuneration less the exemption threshold, or
  - (ii) in the case of a group of associated corporations or a partnership, remuneration in excess of the amount allocated to each employer in the group or the partnership by way of an allocation agreement filed with the minister, as prescribed, but where the employers in a group of associated corporations or a partnership do not file an allocation agreement, taxable remuneration shall equal remuneration;
- (rrr) "taxpayer" means a person liable to pay, collect or withhold money by way of tax under this Act, and for the purpose of this Act includes a collector and a deputy collector, an operator, a retailer, an employer and a wholesaler;
- (sss) "tobacco" means tobacco in all forms in which tobacco is consumed, including cigars and snuff;
- (ttt) "trailer" means a vehicle which has no motive power of its own and includes a cargo container and a side car attached to a motor cycle;
- (uuu) "transporter" means a person other than a consumer who transports tobacco in the province by any means, in an amount greater than is prescribed;
- (vvv) "unmarked tobacco" means tobacco in packages, cartons or cases which are not marked or stamped as required under this Act, or which are marked or stamped "Not for Sale in Canada", "Canada Duty Not Paid", or which contain or are labelled with a fraudulent, forged or false mark or stamp;
- (www) "vehicle" means a vehicle propelled, driven or controlled otherwise than by muscular power and includes an aircraft, a boat, a ship, a trailer and a vessel;
- (xxx) "warrant" includes a telewarrant; and
- (yyy) "wholesaler"
  - (i) for the purpose of Part III, means a person who holds a licence issued under this Act authorizing that person to sell or keep gasoline for sale otherwise than to retail purchasers, and
  - (ii) for the purpose of Part IX, means a person who sells tobacco in the province for the purpose of resale.

[2009 cR-15.01 s2; 2011 c19 s1; 2011 c25 s1](#)

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### **Application**

**2.1** A person referred to in paragraph 3(4)(b) of the regulations shall be considered to be a taxpayer for the purpose of Parts I, II, VII and X of this Act and the regulations.

[2013 c14 s1](#)

## **PART I GENERAL**

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**Liability for tax**

3. (1) A taxpayer's liability for tax arises when the tax is due and continues until it is paid.

(2) A person who collects money by way of tax under this Act holds that money in trust for the Crown and shall pay over the money in the manner and at the time prescribed in the regulations.

(3) A person who withholds tax is liable for the tax when it is required to be withheld and that liability continues until the tax is paid over to the minister.

[2009 cR-15.01 s3](#)

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**Return and payment required**

4. (1) A person required to collect, withhold, or remit tax under this Act shall file a return with the minister in the time and the manner prescribed by the regulations and in the form required by the minister, and shall pay to the Crown, at the time of filing the return, all tax payable in respect of the period to which the return relates.

(2) Notwithstanding another provision prescribing the time for filing a return or paying tax, the minister may vary the time, manner and form by which a taxpayer or class of taxpayers is required to file a return or pay the tax in respect of a period that the minister may specify.

[2009 cR-15.01 s4](#)

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**Collection of tax**

5. (1) The minister may designate a person as an agent of the minister for the collection of the tax imposed under Parts III and IX of this Act.

(2) The tax received by a collector shall be accounted for, held in trust for and remitted to the minister at the time and in the manner prescribed by the regulations.

(3) A person who collects or withholds tax shall be considered to act subject to sections 77 to 80 and section 83 of the *Financial Administration Act*.

(4) Amounts received by the minister under this Act are part of the Consolidated Revenue Fund.

(5) Notwithstanding anything contained in another Act, a collector or deputy collector collecting a tax or receiving remuneration or an allowance under this Act is not, by reason only of collecting the tax or receiving that remuneration or allowance, ineligible to be elected as a member of or to sit and vote in the House of Assembly.

(6) Where a collector or deputy collector makes an assignment of book debts, whether by way of specific or general assignment, or in another manner disposes of a present or future right to collect book debts, that assignment does not include the portion of the book debts that the collector or deputy collector, as an agent of the Crown, charged the person to whom the collector or deputy collector sold tobacco as tax under this Act and an assignee or another person who collects the book debts shall be considered to be a collector or deputy collector and shall collect, remit and account under this Act for the unassigned portion of the book debts.

(7) Where, on the coming into force of this Act, a person was a collector under the authority of a collector's agreement or a provision of an Act repealed by this Act, that person shall be considered to be a collector under this Act.

[2009 cR-15.01 s5](#)

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**Interest**

6. (1) Where a person does not pay tax in the time and manner required under this Act, interest shall be levied upon that tax and shall be collected at a rate and in the time and manner prescribed in the regulations.

(2) Where a certificate is issued under section 23, interest under subsection (1) shall continue to be added to the amount of the tax payable as contained in the certificate.

[2009 cR-15.01 s6](#)

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#### **Remissions**

7. (1) The minister may remit a penalty or interest imposed under this Act where he or she considers it appropriate to do so.

(2) A remission under this section may be total or partial, conditional or unconditional, and may be granted before or after a suit or proceeding for the recovery of a penalty or of interest and before or after a payment of it has been made or enforced by process or execution.

(3) Subsections 19 (3) and (4) of the *Financial Administration Act* apply, with the necessary changes, to remissions under this section.

[2009 cR-15.01 s7](#)

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#### **Trustee**

8. Every trustee in bankruptcy, assignee, liquidator, receiver, administrator or other person administering, managing, winding-up, controlling or otherwise dealing with property or business of a taxpayer

- (a) shall make returns and pay tax that the taxpayer is required to make or pay; and
- (b) before distributing assets under his or her control, shall obtain a clearance certificate from the minister certifying that no tax, interest or penalties chargeable against or payable by the taxpayer under this Act are outstanding.

[2009 cR-15.01 s8](#)

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#### **Books and records**

9. (1) A person required to collect, withhold or remit tax under this Act shall keep and maintain books and records relating to the taxpayer's business and returns and shall make available within the province for inspection, examination and audit under this Act, all books and records the minister considers necessary to determine tax payable under this Act, or shall make other arrangements satisfactory to the minister to make them available for inspection, examination and audit under this Act.

(2) In addition to the requirements imposed under subsection (1), a licensee under Part III shall keep accounts in the required form of

- (a) all purchases, sales, deliveries, rebrandings, transfers and losses of all grades of gasoline by that licensee in the province;
- (b) sales and deliveries by that licensee to points outside the province;
- (c) sales and deliveries of tax-exempt gasoline; and
- (d) quantities on hand and quantities used in the province by that licensee

and a licensee shall make returns to the minister in the form, in the manner and at the time prescribed by regulation.

(3) In addition to requirements imposed under subsection (1), a wholesaler shall, at the time of making a sale of tobacco, issue an invoice containing the information that the minister may prescribe.

- (4) Where the books and records kept by a taxpayer are, in the opinion of the minister, inadequate for the

purpose of this Act, the minister may, by written order, require particular books and records to be kept by the taxpayer and the nature of entries to be made in the books and records, and the taxpayer shall, within a reasonable time that the minister may stipulate in the order, begin keeping the books and records as required.

(5) A person required under this section to keep records shall keep those records until authorized by the minister to destroy them but in no case shall the records be destroyed before the expiration of 7 years after the year to which the records relate.

[2009 cR-15.01 s9](#)

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### **Confidentiality of records**

**10.** (1) Books and records received in the course of administering this Act shall be kept confidential and a person who receives books and records shall not use or disclose them except

- (a) for the purpose in relation to which they were provided;
- (b) for the purpose of administering or enforcing this Act or another Act of the province imposing a royalty, tax or fee, or administering legislation relating to minerals;
- (c) under an agreement between the government of the province and another government that provides for the exchange or disclosure of information, returns or books and records that relate to the administration or enforcement of a taxation Act;
- (d) for the purpose of conducting tax, fiscal and economic policy analysis, or compiling statistical information by the government of the province or the Government of Canada; or
- (e) for another purpose as authorized by the Lieutenant-Governor in Council.

(2) Books and records received or handled under this Act shall not be made available to anyone except those persons authorized by the minister to do so and the minister shall not authorize anyone to receive or handle books and records except for the purpose outlined in subsection (1).

[2009 cR-15.01 s10](#)

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### **Production of documents**

**11.** (1) The minister may, with reasonable grounds, demand from a taxpayer a return, a supplementary return or the production, including the production on oath or affirmation, of books and records.

(2) The minister may specify a reasonable time within which a demand under this section is to be complied with, and a person to whom a demand is made shall comply with the demand within the specified time.

(3) A person who fails to comply with the requirement of the minister under subsection (1) is liable, regardless of whether that person is prosecuted or convicted under another provision of this Act, to a penalty to be assessed by the minister not exceeding \$500 for each day during which the failure continues, and an amount assessed under this section shall be considered to be tax payable under this Act and is in addition to another tax payable under this Act.

(4) For the purpose of administering and enforcing this Act and the regulations, the minister may demand the production, including the production on oath or affirmation, of books and records from

- (a) a person, syndicate, trust or corporation; and
- (b) an agent or official of a person, syndicate, trust or corporation.

(5) Upon receipt of a demand from the minister, a company which is filing a return shall, within the time specified in the demand, verify the correctness of the return by the statutory declaration of the person who files the return on behalf of the company.

[2009 cR-15.01 s11; 2014 c8 s1](#)

[Back to Top](#)**Contemporaneous documentation**

**11.1** (1) For the purpose of Part VII, where an operator receives revenue from or incurs an expenditure payable to a person with whom he or she does not deal at arms length, the operator shall, in addition to the other records required under this Act and the regulations, before the records for that year are required, make or obtain records or documents that provide a description that is complete and accurate in all material aspects of

- (a) the property or services to which the transaction relates;
- (b) the terms and conditions of the transaction and their relationship to the terms and conditions of each other transaction entered into between the participants to the transaction;
- (c) the identity of the participants to the transaction and their relationship to each other at the time the transaction was entered into;
- (d) the functions performed, the property used or contributed and the risks assumed, with respect to the transaction, by the participants in the transaction;
- (e) the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, with respect to the transaction; and
- (f) the assumptions, strategies and policies that influenced the determination of transfer prices or the allocations of profits or losses or contributions to costs, with respect to the transaction.

(2) For each subsequent year in which the transaction continues, the operator shall make or obtain records that completely and accurately describe each material change in the year with respect to matters referred to in subsection (1).

(3) An operator shall provide records or documentation required under this section to the minister within 3 months of a request by the minister for those records.

(4) Notwithstanding subsection (2) or (3), where, before the coming into force of this section an operator did not keep records required to be submitted to the minister under this section, that operator shall make or obtain those records with respect to the current year to the satisfaction of the minister and shall submit those records to the minister within 6 months of the coming into force of this section.

(5) Where an operator fails to comply substantially with the requirements of this section, a court hearing a matter relating to the administration or enforcement of this Act shall, on motion of the minister, prohibit the introduction of a record or document required under this section.

[2011 c19 s2](#)

[Back to Top](#)**Notice of assessment**

**12.** (1) An assessment becomes binding, notwithstanding an error, defect or omission in the observation of a directory provision of this Act, when a notice of assessment in writing is served upon a taxpayer personally or by expresspost certified mail addressed to the taxpayer's current address in the records of the minister or to another address where the taxpayer is known to reside or maintain an office or place of business, and a mailed notice shall be considered to be received on the day it would be received in the normal course of mailing.

(2) A person who receives a notice of assessment shall pay the tax assessed within 30 days of the day on which the notice is considered to have been received, regardless of an objection, proceeding or appeal.

(3) An affidavit or other evidence that a notice of assessment has been delivered shall be considered as proof that the notice was received as provided in this section, in the absence of evidence to the contrary.

(4) A copy of the notice of assessment may be entered in evidence without proof of the office or signature of the person appearing to have signed the notice.

(5) A person's liability for tax is unaffected by this section and notification under this Act is for administrative purposes only and does not relate to liability.

(6) An assessment may be reviewed by a court of law only as provided in this Act through a proceeding or an appeal in the Trial Division.

[2009 cR-15.01 s12](#)

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#### **Review of objection**

**13.** (1) A person may object to an assessment of tax or other decision of the minister under this Act within 90 days of receiving the notice of assessment or decision of the minister by delivering a written notice to the minister objecting to part or all of the assessment or decision.

(2) A notice of objection shall clearly identify the matter objected to, setting out the reasons for objection, all the relevant facts, and the remedy requested.

(3) The minister shall review the notice of objection and

(a) may deliver a demand for further particulars to be provided to the minister within 30 days of the demand; and

(b) shall deliver a reply to the person objecting, confirming, amending or rescinding part or all of the matter objected to, in the same manner provided for delivering a notice of assessment.

(4) The provisions of this Act pertaining to a notice of assessment apply as appropriate to a reply from the minister, except for a further objection under this section.

(5) Notwithstanding another provision of this Act, the minister shall not delegate the authority to confirm, amend or rescind a matter under review under this section.

[2009 cR-15.01 s13](#)

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#### **Appeal to Trial Division**

**14.** (1) Part or all of a reply from the minister in response to a notice of objection may be appealed to the Trial Division by commencing a proceeding in the Trial Division within 60 days of receiving the minister's reply.

(2) The costs of the proceeding are in the discretion of the judge who hears the matter and he or she may make an order respecting costs in favour of or against the Crown and may fix the amount of them.

[2009 cR-15.01 s14](#)

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#### **Appeal to Court of Appeal**

**15.** (1) Appeal may be taken to the Court of Appeal from a decision of a judge of the Trial Division upon a point of law raised upon the hearing before that judge.

(2) The rules governing appeals to the Court of Appeal from a decision of a judge of the Trial Division apply to appeals under this section.

[2009 cR-15.01 s15](#)

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#### **Effect of delay**

**16.** (1) A notice of objection, proceeding or appeal does not affect the due date or liability for payment of a tax, but where the tax is set aside or reduced following review, the minister shall refund the excess of tax, together with a penalty or interest paid, to the person entitled to it.

(2) Notwithstanding subsections (1) and 12 (2), the minister may agree to defer a payment of tax, interest or penalty until after the final resolution of an objection, proceeding or appeal, and the minister may make the deferral subject to conditions the minister considers appropriate.

[2009 cR-15.01 s16](#)

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#### **Action to recover tax**

**17.** (1) The amount of tax may be recovered with costs, by action in the name of the minister in a court, as debt due to the Crown.

(2) An action under subsection (1) shall be tried without a jury and the court may make an order as to costs in favour of or against the Crown.

[2009 cR-15.01 s17](#)

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#### **Tax as lien**

**18.** (1) Until the amount of the tax required to be paid under this Act is paid, it is a first lien in favour of the Crown on the entire assets of the estate of the taxpayer and the lien has priority over all other claims of a person against the taxpayer.

(2) The lien referred to in subsection (1) attaches on the date the tax was due to the Crown and continues in force until paid, or until a clearance certificate has been issued by the minister.

(3) A lien for tax in respect of real property is considered to be a first mortgage ranking in priority over every grant, deed, lease, or other conveyance and over every judgment, mortgage, or other lien or encumbrance affecting the real property affected or the title to the real property affected and the minister may discharge the lien by power of sale under the *Conveyancing Act*.

(4) The registration of a grant, deed, lease or other conveyance, or of a judgment, mortgage, or other lien or encumbrance, whether the registration was before or after the time the lien was attached does not affect the priority of the lien.

(5) The minister may register the lien in the Registry of Deeds or the Personal Property Registry.

[2009 cR-15.01 s18](#)

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#### **Estimating tax in default**

**19.** (1) Where

- (a) it appears from information or an inspection, audit or examination of books and records that a taxpayer has failed to pay a tax due as required by this Act;
- (b) in the opinion of the minister, the books and records of a taxpayer do not substantiate a taxpayer's return or are inadequate;
- (c) a taxpayer fails or refuses to produce his or her books and records or alleges that they have been lost or destroyed; or
- (d) information comes to the attention of the minister that a person has failed to collect, report or pay a tax due,

the minister shall assess the amount of tax payable to the Crown by a method of estimating the minister considers appropriate.

(2) The amount assessed shall be considered to be the tax payable by the taxpayer, unless varied under an

objection, proceeding or an appeal.

(3) The minister may revoke, amend, revise or make a further assessment of the tax payable.

(4) Liability for tax shall not be affected by an incorrect or incomplete assessment or where no assessment has yet been made.

(5) An assessment for tax payable shall include interest from the time the tax should have been paid or collected until the tax is paid, at a rate prescribed by the regulations.

[2009 cR-15.01 s19](#)

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#### **Effect of default**

**20.** (1) Where a collector fails to make returns as required by the regulations or to pay over to the minister a tax collected by the collector at the time prescribed by the regulations, the minister may revoke the person's collector designation and cancel the person's wholesaler's licence.

(2) Where an interjurisdictional carrier

(a) does not make returns required under this Act or does not pay to the minister a tax or fee required to be paid by that interjurisdictional carrier at the time prescribed by the regulation for that payment; or

(b) does not keep books and records required under this Act,

the minister may suspend, cancel, place conditions upon or refuse to grant registration to that interjurisdictional carrier.

[2009 cR-15.01 s20](#)

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#### **Refund**

**21.** (1) Where a person pays to the minister an amount which exceeds the amount of tax required to be paid, the minister shall refund to that person the amount of the overpayment, together with any interest which may be payable, at the rate and in the manner prescribed by the regulations.

(2) Notwithstanding subsection (1), the minister shall not make a payment under this section unless the overpayment is disclosed to or by the minister within 3 years from the date on which the overpayment is made.

(3) Notwithstanding subsection (1), refund and interest payments under this section may be restricted or denied as prescribed by regulation.

(4) Money paid under this section shall be paid out of the Consolidated Revenue Fund and shall be accounted for as a reduction of revenues under this Act.

[2009 cR-15.01 s21](#)

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#### **Set-off**

**22.** Notwithstanding section 21 , where a person owes money to the Crown under this or another Act, the minister may require the retention, by way of deduction or set-off, out of an amount that may be or becomes payable to that person by the Crown, of an amount that the minister may specify and shall inform the person of the deduction or set-off immediately.

[2009 cR-15.01 s22](#)

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**Certificate of judgment**

**23.** (1) Where default is made by a person in the payment of a tax or a part of a tax that is due or that has been collected on behalf of the Crown under this Act, the minister may issue a certificate, stating the amount due and remaining unpaid to the Crown and the name of the person by whom it is payable, and file the certificate with the Trial Division.

(2) When a certificate is filed with the Trial Division, it is of the same effect and all proceedings may be taken on the certificate, as if it were a judgement of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

[2009 cR-15.01 s23; 2013 c16 s25](#)

[Back to Top](#)**Demand on third party**

**24.** (1) Where the minister has knowledge that a person is or is about to become indebted to a taxpayer who has not paid tax due under this Act, the minister may demand of that person that the money otherwise payable by him or her to the taxpayer be in whole or in part paid to the minister on account of the taxpayer's liability under this Act.

(2) The receipt of the minister for money paid by a person in response to a demand made under subsection (1) is a sufficient discharge of the liability of that person to the taxpayer to the extent of the amount set out in the receipt.

(3) A person paying money to a taxpayer after receipt of a demand under this section is personally liable to the Crown for the lesser of

- (a) the amount of money paid to the taxpayer; and
- (b) the amount of tax payable by the taxpayer.

[2009 cR-15.01 s24](#)

[Back to Top](#)**Director's liability**

**25.** (1) Where a corporation fails to pay tax due, each director of the corporation at the time of the failure is jointly and individually liable with the corporation to pay the tax, whether or not the corporation has been prosecuted or convicted for failure to pay tax due.

(2) A director of a corporation is not liable under subsection (1) unless the minister has taken all actions that the minister considers necessary against the corporation to recover the debt of unpaid tax of the corporation.

(3) A director of a corporation is not liable under subsection (1) where the director is able to show that he or she exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) The minister may assess a director for tax due under this section independent of a prosecution of directors or the corporation and, where the minister sends a notice of assessment to a director, this Act is considered to apply, with the necessary changes, as if the director were the taxpayer.

(5) An assessment under subsection (4) of an amount payable by a person who is a director of a corporation shall not be made more than 4 years after the person last stopped being a director of the corporation.

(6) For the purpose of this section, the minister may apply payments made by or on behalf of the corporation under this Act to any of the liabilities described under subsection (1).

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

(8) For the purpose of this section, a director includes an owner, principal, officer or agent of the corporation who directed, authorized, assented to, acquiesced to or participated in the failure, and a corporation

includes a partnership, business, association or person.

[2009 cR-15.01 s25](#)

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#### **Exercise of recovery powers**

**26.** The powers conferred by this Act for the recovery of taxes due or collected by this Act by an action in court and by filing a certificate under section 23 may be exercised separately, concurrently or cumulatively, and the liability of a person to pay taxes due or to remit taxes collected is not affected by the fact that a term of imprisonment has been served or a fine or penalty has been imposed on or paid by him or her in respect of an offence under this Act.

[2009 cR-15.01 s26](#)

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#### **Third party claims**

**27.** (1) A person, other than a person accused of an offence relating to a seizure under Part II, who claims an interest in a vehicle or other thing seized under those sections as an owner, lienholder or holder of a like interest may, within 30 days after that seizure, apply to a Provincial Court judge for an order under subsection (2).

(2) If, on the hearing of an application under subsection (1), a Provincial Court judge is satisfied that the applicant has not been involved in the offence resulting in the seizure and has not colluded with an accused in relation to the offence, the judge may order that a seized vehicle or other thing be returned to the applicant at a time and subject to conditions to be specified by the judge.

(3) Where a Provincial Court judge orders that a vehicle or other thing be returned to an applicant under subsection (2), he or she shall order that applicant to post a bond or other form of security in an amount satisfactory to the judge, but not less than the market value of the seized item, pending a final resolution of proceedings commenced under this Act.

(4) Where a person from whom a vehicle or other thing has been seized under Part II is convicted of an offence under section 32, a bond or other security posted under subsection (3) shall be forfeited to the Crown.

[2009 cR-15.01 s27](#)

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#### **Notices generally**

**28.** (1) Where, under this Act or the regulations, a notice or document is required to be served on, delivered to or sent to a taxpayer, it is sufficiently served, delivered or sent

- (a) if it is delivered to an office of the taxpayer in the province;
- (b) if it is sent by expresspost certified mail addressed to the taxpayer at the address in the province shown on the most recent return of the taxpayer filed under this Act or as last known to the inspector; or
- (c) where no address of the taxpayer in the province is known to the inspector, if it is sent by expresspost certified mail addressed to the post office nearest to the place where the taxpayer has an establishment in the province.

(2) Where, under this Act or the regulations, a notice or document required to be served on, delivered to or sent to an taxpayer is sent to that taxpayer by expresspost certified mail, the taxpayer shall be considered to have received the notice or document on the day it would be received in the normal course of mailing.

[2009 cR-15.01 s28](#)

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#### **Penalty for failure to file, collect or remit tax**

**29.** The minister may, notwithstanding another penalty imposed by this Act and without the interposition of a court,

- (a) impose a penalty equal to the amount of the loss sustained by the minister because of the failure of that person to collect the tax;
- (b) impose a penalty of 10% of an amount of tax payable or the amount of the loss in (a), upon a person who fails to pay tax to the minister or collector, in the manner and within the time provided by this Act or the regulations;
- (c) impose a penalty of not less than \$100 nor more than \$5,000 upon a person who fails to make a return required by this Act or the regulations in the manner and within the time provided for it; and
- (d) make an estimate of the amount of the loss sustained by the Crown and the amount so estimated shall, for the purposes of this Act, be considered to be the actual loss so sustained.

[2009 cR-15.01 s29](#)

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#### Excess losses

**30.** (1) A person who has excess unverifiable losses, as determined by this section, shall pay a penalty equal to the tax that would have been collectable by the person if the quantity of gasoline that exceeds the prescribed threshold for an unverifiable loss had been sold to a purchaser liable to pay tax under this Part.

(2) For the purpose of this section,

(a) the prescribed threshold for an unverifiable loss is

- (i) for gasoline, other than any of the products commonly known as jet fuel, diesel fuel, fuel oil, coal oil or kerosene, 0.25% for each type of gasoline, and
- (ii) for all other gasoline, 0.125%;

(b) the amount of a person's unverifiable losses of gasoline is the amount by which the person's available inventory exceeds the amount of gasoline that the person verifies to have been sold, lost, destroyed, stolen, contaminated, consumed or distributed; and

(c) a person has excess unverifiable losses to the extent that the person's unverifiable losses of gasoline for a period of 36 continuous months exceeds the amount equal to

- (i) 0.25% for each type or grade of gasoline referred to in subparagraph (a)(i), or
- (ii) 0.125% for each type or grade of gasoline as referred to in subparagraph (a)(ii)

of the person's available inventory of gasoline for that period.

(3) For the purpose of this section, a person's available inventory of gasoline for a period of 36 months is calculated using the formula:

$$A+B-C$$

where

A = the amount of the person's opening inventory of gasoline at the beginning of the period;

B = the amount of gasoline produced, received or purchased by the person during the period; and

C = the amount of the person's closing inventory of gasoline at the end of the period.

[2009 cR-15.01 s30](#)

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**Evasion of tax**

**31.** A person convicted of attempting to evade payment of all or part of tax payable under this Act by wilfully understating the value of a tax withheld or payable is liable, in addition to payment of the tax, without the interposition of a court, to payment of a penalty to be assessed by the minister of not more than 50% of the amount of the tax sought to be evaded.

[2009 cR-15.01 s31](#)

[Back to Top](#)**Offences**

**32.** (1) A person who

- (a) refuses, neglects or fails to produce books and records to a person entitled under this Act to inspect, examine or audit the books and records;
- (b) refuses or neglects to answer a question which
  - (i) is put to him or her by a person entitled under this Act to direct questions, and
  - (ii) he or she is required under this Act and the regulations to answer;
- (c) obstructs an inspector while that inspector is making an inspection, examination or audit;
- (d) refuses, neglects or fails to file a return or make a report required of him or her under this Act;
- (e) files or makes a false or misleading return or report or gives false or misleading answers or information in a return or report under this Act or the regulations, or makes a false or misleading answer to a question described in paragraph (b);
- (f) violates paragraph 8 (b);
- (g) destroys books and records in contravention of section 9 ;
- (h) destroys, alters, mutilates, conceals or disposes of the books and records of a business or commercial activity in order to evade tax;
- (i) makes or permits, or assents to or acquiesces in the making of, false or misleading entries or omissions in the books or records of a corporation in order to evade tax; or
- (j) wilfully evades or attempts to evade compliance with this Act or the payment of tax

is guilty of an offence and is liable on summary conviction to the penalty provided in this Act.

(2) A person who

- (a) not being a retailer, sells gasoline to a retail purchaser;
- (b) being a retailer, sells gasoline to a retail purchaser elsewhere than at the outlet specified in his or her retailer licence;
- (c) being a wholesaler, sells gasoline for retail sale to a person who is not a retailer; or
- (d) not being a wholesaler or retailer, sells gasoline to a retailer

is guilty of an offence.

(3) A person contravenes this Act who

- (a) sells, keeps with intent to sell, purchases, uses or keeps with intent to use marked gasoline for a purpose other than the purpose in respect of which it is marked under the regulations;
- (b) adds to or introduces into marked gasoline a substance, compound or preparation, or submits marked

gasoline to a mechanical, chemical or other process, for the purpose of removing the marking colouring from the gasoline or of making the colouring invisible;

(c) mixes or combines with marked gasoline another type or grade of gasoline; or

(d) marks gasoline in a manner other than that prescribed by the regulations.

(4) A person contravenes this Act who has marked gasoline, or a trace of the dye used to mark gasoline under section 67, in the fuel system of motorized equipment when marked gasoline is not authorized under this Act or the regulations for consumption in that motorized equipment.

(5) The fact that marked gasoline or a trace of the dye used to mark gasoline that was found in a vehicle is the same gasoline or trace that was found in the vehicle or other motorized equipment on another occasion that constituted a contravention of this Act is not a defence in a prosecution for a subsequent contravention of this Act if a period of more than 24 hours has elapsed since taking a sample of gasoline from that vehicle or other motorized equipment.

(6) A person who holds, conducts, enters or otherwise participates in a race-meeting held in the province contrary to this Act or the regulations is guilty of an offence.

(7) A person is guilty of an offence who

(a) not being a retailer, sells tobacco to a retail purchaser;

(b) not being a wholesaler, sells tobacco for resale by a retail sale to a person who is not a retailer; or

(c) not having a valid wholesaler's licence, sells tobacco to a retailer.

(8) Every contravention, failure or false statement described in subsection (7) that relates to a separate sale or transaction constitutes a separate offence.

(9) A person who purchases, possesses, acquires, transports, stores or sells contraband is guilty of an offence.

(10) An operator or other person who contravenes a requirement of the Act in Parts I, II or VII is guilty of an offence.

(11) Where a person commits an offence under this Act and the offence continues for more than one day, the person offending is, for each day during which the offence continues, guilty of a further offence and may be convicted and is liable to the same punishment as for the original offence for each day during which the offence continues, and where an information relating to an alleged offence under this Act sets out that the alleged offence continued on several days or for a period of days it shall be treated as and is considered to be separate information alleging a separate offence for each of the days in the period.

[2009 cR-15.01 s32](#)

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### Penalties

**33.** (1) A person who is guilty of an offence under this Act is liable on summary conviction to a penalty prescribed in the Schedule.

(2) In addition to the fine imposed under subsection (1), a court shall order the person found guilty of an offence to pay to the minister the tax due under this Act and in default of payment, to a term of imprisonment prescribed in the Schedule.

(3) In addition to the fines imposed under this Act, a court shall order a person who defaults in the payment of those fines be imprisoned for a period prescribed in the Schedule and that period of imprisonment shall be in addition to any other period of imprisonment imposed under this section.

(4) A period of imprisonment imposed under subsection (3) shall be served consecutively to another period of imprisonment imposed in the Schedule.

(5) In addition to the penalties which are imposed under this Act, a court shall order the person found guilty of an offence under subsection 32(9) to pay an additional fine equal to 3 times the amount of the tax payable on the

contraband had the contraband been tobacco marked under this Act and purchased by a consumer.

(6) Sections 736 and 737 of the *Criminal Code* shall not be applied in disposing of a complaint made or in imposing punishment for an offence under this Act.

(7) Where a person is guilty of a continuing offence under this Act, the person may be liable to a further fine of not more than \$10,000 for each day during which the offence continues, in addition to a fine imposed under subsection (1).

[2009 cR-15.01 s33](#)

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#### **Limitation period**

**34.** (1) A complaint may be made and proceedings taken on it within 7 years of the date of the offence.

(2) Notwithstanding subsection (1), a complaint may be made and proceedings may be taken on an offence referred to in paragraphs 32(1)(h), (i) and (j) without limitation of time.

[2009 cR-15.01 s34](#)

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#### **Crown bound**

**35.** This Act binds the Crown and an agent of the Crown.

[2009 cR-15.01 s35](#)

## **PART II INSPECTION AND COMPLIANCE**

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#### **Appointment of inspectors**

**36.** (1) The minister may appoint or designate a person or class of persons as inspectors for the purpose of the administration and enforcement of this Act and may authorize the inspectors to perform or exercise the duties and the powers conferred upon the minister by this Act that the minister considers appropriate, and the performance or exercise of those duties or powers by an inspector shall be of the same effect as if they are performed or exercised by the minister.

(2) For the purpose of Part IX, an inspector includes a member of the Royal Newfoundland Constabulary and the Royal Canadian Mounted Police.

[2009 cR-15.01 s36](#)

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#### **Powers of inspectors re: compliance**

**37.** (1) An inspector may, at all reasonable times, for a purpose related to the administration or enforcement of this Act or the regulations, except Parts III and IX, inspect or examine the premises, processes, books and records of a person that the inspector may consider relevant for the purpose of determining compliance with this Act, and the inspector may, without a warrant,

- (a) enter any premises where
  - (i) a business is carried on,
  - (ii) any property, or books and records are or may be kept, or
  - (iii) anything is or is suspected by the inspector of being done or stored in connection with a tax

imposed under this Act;

- (b) make copies, extracts, photographs or videos the inspector considers necessary;
- (c) require the owner or person in charge of a premises to give the inspector all reasonable assistance, including the production of books and records as requested by the inspector, and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or person in charge to attend at the premises with the inspector; and
- (d) require the owner or person in charge to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Notwithstanding subsection (1), an inspector shall not enter a dwelling-house without the consent of the occupant except under the authority of a warrant issued under section 38 .

[2009 cR-15.01 s37](#)

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### **Contravention of Act suspected**

**38.** (1) Where, during the course of an inspection or examination under section 37 , or otherwise where an inspector believes on reasonable grounds that there has been a contravention of this Act or the regulations, except Parts III and IX, the inspector may, with a warrant issued under subsection (2), seize and take away any of the books or records that may be required as evidence of a contravention and may retain those documents until the time they are required in a court proceeding.

(2) A Provincial Court judge who is satisfied upon oath or affirmation there are reasonable grounds for believing there is in or on a business or private premises anything that may provide evidence with respect to a suspected offence under this Act, except Parts III and IX, may issue a warrant authorizing an inspector to enter the premises and to

- (a) search;
- (b) examine the contents of the premises and make those inquiries that the inspector considers necessary; and
- (c) copy, extract, photograph, video, seize and take away evidence, books and records

for the purpose of investigating the suspected offence.

(3) The owner or person in charge of a business or private premises referred to in this section or a person there shall not obstruct an inspector in the carrying out of his or her duties under this section as authorized by the warrant.

[2009 cR-15.01 s38](#)

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### **Determination of compliance – Part III**

**39.** (1) An inspector may, at all reasonable times, for a purpose related to the administration or enforcement of Part III and any regulations made under it, inspect or examine the premises, processes, books and records of a person that the inspector may consider relevant for the purpose of determining compliance with that Part, and the inspector may, without a warrant,

- (a) enter any premises where
  - (i) a business is carried on,
  - (ii) any property, or books and records are or may be kept, or
  - (iii) anything is or is suspected by the inspector of being done or stored in connection with a tax imposed under this Act;

- (b) make copies, extracts, photographs or videos the inspector considers necessary;
- (c) require the owner or person in charge of a premises to give the inspector all reasonable assistance, including the production of books and records as requested by the inspector, and to answer all proper questions relating to the administration or enforcement of Part III and any regulations made under it and, for that purpose, require the owner or person in charge to attend at the premises with the inspector; and
- (d) require the owner or person in charge to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Notwithstanding subsection (1), an inspector shall not enter a dwelling-house without the consent of the occupant except under the authority of a warrant issued under section 41 .

[2009 cR-15.01 s39](#)

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### **Samples**

**40.** (1) Where it is reasonably necessary for the purpose of ensuring compliance with Part III and any regulations made under it, an inspector may, at reasonable times without a warrant,

- (a) inspect the contents of a tank containing gasoline including the gasoline supply tank of an internal combustion engine; and
- (b) for the purpose of analysis, take a sample of gasoline not exceeding a total volume of one litre per tank.

(2) An inspector acting under subsection (1) may detain a vehicle or other mechanized equipment for the purpose of performing the inspection or obtaining the sample referred to in that subsection.

- (3) A sample taken under subsection (1) shall be disposed of as the minister directs.

[2009 cR-15.01 s40](#)

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### **Contravention suspected**

**41.** (1) A Provincial Court judge who is satisfied by information upon oath or affirmation that there are reasonable grounds for believing that there is on a premises, vehicle or other motorized equipment or storage or bulk delivery facility anything that there are reasonable grounds to believe will give evidence with respect to an offence under Part III and any regulations made under it may issue a warrant authorizing an inspector named in the warrant to enter and search the premises, vehicle, or other motorized equipment or storage or bulk delivery facility, and subject to those conditions that may be specified in the warrant

- (a) make those inquiries and copies that are considered necessary;
- (b) seize a sample of gasoline for evidence or for analysis; or
- (c) seize the whole amount of gasoline and bring it to a place of safe custody and keep it there until the court by its judgment has disposed of it, after which, if it is confiscated, the inspector shall dispose of it as the minister directs.

(2) Where an inspector seizes gasoline under this Act he or she may also seize and detain in safe custody a vehicle, or other motorized equipment in which that gasoline was found or carried until

- (a) the matter has been disposed of and a tax required to be paid under this Act has been paid; or
- (b) a charge has been laid under this Act and a deposit or bond in an amount satisfactory to the minister has been provided by the owner or operator of a vehicle or other motorized equipment so detained.

(3) Notwithstanding subsection (1), an inspector may exercise the power of search referred to in that subsection without a warrant if the conditions for obtaining the warrant exist but because of exigent circumstances it would not be practical to obtain the warrant.

(4) For the purpose of subsection (3), exigent circumstances include circumstances in which the delay necessary to obtain the warrant might reasonably result in danger to human life or safety or the loss or destruction of evidence.

[2009 cR-15.01 s41](#)

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#### **Determination of compliance-Part IX**

42. (1) An inspector may, at all reasonable times, for a purpose related to the administration or enforcement of Part IX and any regulations made under it, inspect or examine the premises, processes, books and records of a person that the inspector may consider relevant for the purpose of determining compliance with that Part and any regulations made under it, and the inspector may, without a warrant,

- (a) enter any premises where
  - (i) a business is carried on,
  - (ii) any property, or books and records are or may be kept, or
  - (iii) anything is or is suspected by the inspector of being done or stored in connection with a tax imposed under that Part;
- (b) make copies, extracts, photographs or videos the inspector considers necessary;
- (c) ascertain the quantities of tobacco purchased, on hand, sold or used by that person, and whether the taxes collected or payable by that person have been remitted or paid to the minister;
- (d) require the owner or person in charge of a premises to give the inspector all reasonable assistance, including the production of books and records as requested by the inspector, and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or person in charge to attend at the premises with the inspector; and
- (e) require the owner or person in charge to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Where, on an inspection under subsection (1), an inspector discovers that a wholesaler or retailer is in possession of contraband, and the inspector has reasonable and probable grounds to believe that the possession is contrary to this Act, the inspector may seize, impound, hold and dispose of the contraband in accordance with this section and section 45 .

(3) Notwithstanding subsection (1), an inspector shall not enter a dwelling-house without the consent of the occupant except under the authority of a warrant issued under section 43 .

[2009 cR-15.01 s42](#)

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#### **Contravention re: contraband suspected**

43. (1) For the purposes of Part IX and any regulations made under it, where an inspector believes that a contraband offence has been committed, the inspector may, with a warrant issued under subsection (2), enter commercial or private premises in the province, and

- (a) search for contraband,
- (b) examine the contents of the commercial or private premises and make those inquiries that the inspector considers are necessary,
- (c) seize, take away and hold anything which on reasonable grounds is or appears to be contraband,
- (d) seize and take away books and records and shall, upon the request of the owner of them, make copies of them and those copies shall be returned to that owner as soon as is practicable, and

- (e) seize, take away and hold a vehicle or other thing in which contraband is located in or on a commercial or private premises.

(2) A Provincial Court judge who is satisfied upon oath or affirmation there are reasonable grounds for believing there is in or on business or private premises anything that may provide evidence with respect to a suspected contraband offence, may issue a warrant authorizing an inspector to enter the premises and to

- (a) search;
- (b) examine the contents of the premises and make those inquiries that the inspector considers necessary; and
- (c) copy, extract, photograph, video, seize and take away evidence, books and records

for the purpose of investigating the suspected contraband offence.

(3) The owner or person in charge of a premises or a vehicle referred to in this section or a person there shall not obstruct an inspector in the carrying out of his or her duties under this section as authorized by a warrant.

(4) Notwithstanding paragraph (1)(a), an inspector may exercise the power of search referred to in that paragraph without a warrant where the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

(5) In this section, "exigent circumstances" include circumstances in which the delay necessary to obtain a warrant might reasonably result in danger to human life or safety or the loss or destruction of evidence.

(6) A person who has possession or control of more than a prescribed quantity of tobacco may be required by the minister to show proof of ownership satisfactory to the minister and proof that the tax has been paid.

(7) Where a person is unable to provide proof of ownership of tobacco as required by subsection (6), an inspector may seize the tobacco.

(8) Tobacco seized under subsection (7) shall be forfeited to the Crown to be disposed of as the minister directs unless, within 30 days after the seizure of the tobacco, the person from whom it has been seized provides the minister with satisfactory proof of ownership.

[2009 cR-15.01 s43](#)

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#### **Seizure of contraband**

**44.** Where an inspector believes on reasonable grounds that a person is in possession of contraband, he or she may, without a warrant, stop and detain a vehicle which he or she has reasonable grounds to believe that contraband is located and may examine the contents of that vehicle, including cargo, books and records or other things that may provide evidence that the vehicle is carrying contraband and may

- (a) seize, take away and hold contraband;
- (b) seize, take away and detain a vehicle, receptacle or container in which contraband is located; and
- (c) seize and take away books and records and other things and retain them until they are produced in a court proceeding.

[2009 cR-15.01 s44](#)

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#### **Disposal or return of evidence**

**45.** (1) Where a person has been convicted of an offence under section 32 with respect to tobacco seized under this Part, that tobacco shall be destroyed at the time and in the manner directed by the minister.

(2) A person from whom a vehicle or other thing has been seized under section 43 or 44 who is not convicted of an offence under section 32 in relation to that seizure shall have that item returned to him or her within

3 months from the date of the court proceedings at which the finding of not guilty was made unless further proceedings by way of appeal have been commenced.

(3) A person from whom tobacco seized as contraband under subsection 42 (2), section 43 or 44 who is not convicted of an offence under section 32 in relation to that seizure and who establishes to the satisfaction of the minister that the tobacco is not contraband and is his or her property may apply to the minister to have that property returned to him or her or for reimbursement of the value of that tobacco and the minister shall return that property to him or her or pay out to him or her from the Consolidated Revenue Fund an amount equal to the value of tobacco that was his or her tobacco at the time of its seizure.

[2009 cR-15.01 s45](#)

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#### **Telewarrant**

**46.** (1) Where, in the opinion of an inspector it would not be practical to appear before a Provincial Court judge to apply for a warrant, the inspector may make the application by telephone, facsimile or other means of telecommunication.

(2) Where the information on which an application for a warrant is submitted by telephone, facsimile or other means of telecommunication, the information shall be given under oath or affirmation, and the oath or affirmation may be administered by telephone, facsimile or other means of telecommunication.

(3) The information submitted by telephone, facsimile or other means of communication shall include

- (a) a statement of the circumstances that make it impracticable for the inspector to appear personally before a provincial court judge; and
- (b) a statement of the inspector's grounds for believing that a person has contravened this Act or that entry onto public or private premises where a contravention of this Act is believed to occur has been denied.

(4) The sworn or affirmed information submitted by telephone, facsimile or other means of telecommunication by an inspector shall specify the name of the person giving evidence, the facts ascertained and the manner and location in which evidence was received, and a record of that information shall be filed by the provincial court judge with the clerk of the court over which the judge presides.

[2009 cR-15.01 s46](#)

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#### **Search warrants**

**47.** Notwithstanding another section of this Act, the provisions of the *Criminal Code* adopted by section 6 of the *Provincial Offences Act* relating to the issuance of search warrants may be invoked for the purpose of a search made under this Act in respect of which a search warrant is required or is desirable.

[2009 cR-15.01 s47](#)

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#### **Actions against inspectors**

**48.** A judgment shall not be given against an inspector in a court of law with respect to anything done by an inspector under this Act where the court is satisfied there was reasonable cause for the action of the inspector and the action was not malicious.

[2009 cR-15.01 s48](#)

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#### **Affidavit as proof**

**49.** (1) In a prosecution for failure to pay, withhold or remit tax, and in an action to recover money, for which a

person is liable under this Act, an affidavit by an inspector sworn or affirmed before a person authorized to take affidavits, that the inspector has charge of the appropriate books and records, and that after careful examination and search of those records the inspector has been unable to find that a return or payment required by this Act has been received in the department, shall be accepted in a court, in the absence of evidence to the contrary, as proof that the required return or payment has not been received or paid.

(2) Proof that a notification under section 12 has been mailed or served is, in the absence of evidence to the contrary, proof that the amount stated is due.

(3) In a prosecution or proceeding under this Act, an affidavit by an inspector as to facts necessary to establish that he or she has complied with this Act is admissible, in the absence of evidence to the contrary, as proof of the facts set out in the affidavit.

[2009 cR-15.01 s49](#)

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### **Evidence**

**50.** In a prosecution under this Act or the regulations,

- (a) where an inspector has made a copy of a document, or books and records that have been seized, examined or produced under this Act, the copy certified by the inspector to be a true copy is admissible in evidence, without proof of the office or signature of the certifying inspector, and has the same probative value as the original document;
- (b) it is proof, in the absence of evidence to the contrary, that a liquid is gasoline and was used to propel a vehicle or other motorized equipment when it is established that it was found in the fuel tank or an auxiliary tank or a part of the fuel supply system of that vehicle or other motorized equipment;
- (c) information on a package indicating that it contains a tobacco product is, in absence of evidence to the contrary, proof that the package contains a tobacco product;
- (d) a name or address on a package purporting to be the name or address of the person by whom the tobacco product was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person; and
- (e) a certificate or report purporting to be signed by an analyst stating that the analyst has analysed anything to which this Act applies and stating the results of the analysis, is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

[2009 cR-15.01 s50](#)

## **PART III GASOLINE TAX**

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### **Tax levied**

**51.** (1) A person who acquires gasoline at a retail sale in the province shall pay to the Crown at the time of the sale

- (a) on propane fuel grade of gasoline, a tax of \$0.07 per litre;
- (b) on gasoline for the operation of sea-going vessels or boats, other than pleasure craft, a tax of \$0.035 per litre;
- (c) on diesel fuel grade of gasoline, a tax of \$0.165 per litre;
- (d) on gasoline for use in an aircraft, a tax of \$0.007 per litre; and
- (e) on all other grades of gasoline, a tax of \$0.165 per litre.

(2) In this section, "litre" means the unit of measurement known as the litre and set out in Schedule II of the

*Weights and Measures Act (Canada )*.

[2009 cR-15.01 s51](#)

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#### **Tax reduction for south coast** Labrador

52. Notwithstanding paragraph 51 (1)(e), a person who acquires gasoline, other than diesel fuel, at a retail sale in south coast Labrador extending from the border with the province of Quebec to and including the community of Red Bay, in respect of the consumption or use of the gasoline in that area, shall pay to the Crown at the time of the sale a tax of \$0.15 per litre.

[2009 cR-15.01 s52](#)

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#### **Gasoline brought into province**

53. (1) A person other than an interjurisdictional carrier, who brings gasoline into the province, or who receives delivery of gasoline in the province, for that person's own consumption or use as a consumer, shall immediately report the matter in writing to the minister.

(2) A person who is required to make a report under subsection (1) shall supply with the report to the minister the invoice for the gasoline and all other pertinent information that may be required by the minister in respect of the consumption or use of the gasoline.

(3) A person who is required to make a report under subsection (1) shall pay to the Crown, at the same time as the report, a tax in the amount that would be payable if the gasoline had been purchased at a retail sale in the province by that person.

(4) This section does not apply to a person visiting the province as a tourist who brings into the province gasoline in accordance with and not exceeding the quantity prescribed by the regulations.

[2009 cR-15.01 s53](#)

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#### **Gasoline held for consumption**

54. A person who has or keeps in that person's possession or under that person's control gasoline in respect of which no tax has been paid under this Act and that he or she has, keeps or controls for himself or herself as a consumer shall immediately pay to the Crown a tax in the amount that would be payable if the gasoline had been purchased at a retail sale in the province by that person.

[2009 cR-15.01 s54](#)

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#### **Gasoline not purchased at retail sale**

55. (1) A person who consumes or uses gasoline originally acquired by that person at a sale other than a retail sale and in respect of which no tax has been paid under this Act shall, as soon as that person consumes or uses that gasoline, pay to the Crown a tax in the amount that would be payable if the gasoline had been purchased at a retail sale in the province by that person.

(2) Where a person who is not a collector acquires tax-exempt gasoline for resale, that person shall report that fact to the minister.

(3) Where a person makes a report to the minister under subsection (2) and

(a) sells a quantity of that gasoline for use in an internal combustion engine in circumstances in which it would stop being tax-exempt gasoline; or

- (b) consumes or uses a quantity of that gasoline in an internal combustion engine in circumstances in which it would stop being tax-exempt gasoline,

that person shall collect and pay over, or pay, as the case may require, to the Crown, a tax in the amount that would be payable if the gasoline had been purchased in the first instance by that person at a retail sale in the province.

[2009 cR-15.01 s55](#)

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### **Tax**

**56.** (1) Notwithstanding section 51 , an interjurisdictional carrier shall pay to the Crown a tax which shall be calculated by the following formula:

$$tp = \frac{kms}{d/l} \times tr$$

where

tp = the tax payable by the interjurisdictional carrier;

kms = the number of kilometres travelled within the province by the fleet during the reporting period;

d = the total kilometres travelled in all jurisdictions by the fleet during the reporting period;

l = the total number of litres of gasoline consumed by the fleet during the reporting period; and

tr = the tax rate per litre of gasoline set out at paragraph 51 (1)(e).

(2) For the purpose of collecting the tax referred to in subsection (1), an interjurisdictional carrier who acquires gasoline at a retail sale in the province shall pay tax to the Crown as required in section 51 .

(3) Where the amount of tax paid under subsection (2) during the reporting period exceeds the amount due under subsection (1), the minister may refund the difference to the interjurisdictional carrier or may pay over the difference to another jurisdiction which has entered into an agreement with the minister under section 72 .

(4) Where the amount of tax paid under subsection (2) is less than the amount due under subsection (1), the interjurisdictional carrier shall pay the difference in amount to the minister at the time prescribed by regulation for filing the return for that reporting period.

(5) This section shall not apply in relation to gasoline consumed by an interjurisdictional motor vehicle operating under a single trip registration granted as prescribed by regulation.

[2009 cR-15.01 s56](#)

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### **No double tax**

**57.** Sections 51 to 56 do not authorize the imposition of a tax under this Act more than once upon the same gasoline.

[2009 cR-15.01 s57](#)

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### **Power to issue licences**

**58.** (1) The minister may issue to a person

- (a) a retailer licence authorizing that person to sell or keep gasoline for sale directly to retail purchasers at that outlet only as may be specified in that licence; or

(b) a wholesaler licence authorizing that person to sell or keep gasoline for sale otherwise than directly to retail purchasers.

(2) Where, in the minister's sole discretion, the minister considers it desirable to do so, the minister may issue both a retailer licence and a wholesaler licence to a person.

(3) The minister may, for cause, refuse to issue a licence to a person.

[2009 cR-15.01 s58](#)

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#### **Application for licences**

**59.** An application for a licence shall be made to the minister on a form to be supplied by the minister and be accompanied by the fee that may be set by the minister in respect of the licence which the application is made for.

[2009 cR-15.01 s59](#)

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#### **Power to suspend, etc.**

**60.** The minister may, for cause,

- (a) suspend or cancel a licence;
- (b) limit the operation of a licence as to the kind of gasoline to be sold by the licensee or as to the location where gasoline may be sold or apply both of those limitations in respect of the operation of a licence; or
- (c) limit the operation of a licence in another manner.

[2009 cR-15.01 s60](#)

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#### **Registration**

**61.** (1) An interjurisdictional carrier shall not operate or allow another person to operate an interjurisdictional motor vehicle in the province unless

- (a) that vehicle is registered with the minister as prescribed by regulation; and
- (b) there is displayed in or on the interjurisdictional motor vehicle in the manner prescribed by regulation, valid plates, stickers or markers issued under the regulations.

(2) An application for registration shall be accompanied by the fee set by the minister and information that may be prescribed by regulation.

(3) The minister may, for cause, suspend, cancel, place conditions upon or refuse to grant registration.

(4) Registration shall expire on a date prescribed by regulation.

(5) Where an interjurisdictional carrier no longer uses a registered interjurisdictional motor vehicle or sells, transfers, exchanges or disposes of an interjurisdictional motor vehicle, registration of that vehicle shall cease.

(6) Where registration ceases under subsection (5), the evidence of registration issued with regard to that vehicle shall be returned to the minister within 15 days of the date of that registration cessation.

[2009 cR-15.01 s61](#)

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**Saving provision**

62. (1) Nothing in this Part requires a person to obtain either a retailer or wholesaler licence merely because that person sells furnace oil, stove oil, kerosene, naphtha, butane gas, propane gas or liquefied petroleum gas for purposes other than use in the generation of power in internal combustion engines.

(2) A person mentioned in subsection (1) shall not rebrand products described in subsection (1) and sell them for consumption in internal combustion engines, whether as taxable gasoline or otherwise, unless that person is in possession of a wholesaler licence issued under section 58 .

(3) Notwithstanding subsections (1) and (2), a person selling products under this section shall keep those books and records the minister may, by regulation, prescribe, and shall be subject to Parts I and II of this Act and any regulations made under those Parts.

(4) A person selling products under this section shall provide to the purchaser an invoice containing the information that may be required under the regulations.

[2009 cR-15.01 s62](#)

[Back to Top](#)**Prohibited sales of gasoline**

63. (1) A person shall not offer for sale, keep for sale, or sell gasoline in the province, except under the authority conferred by a licence issued to that person.

(2) A wholesaler shall not sell gasoline at a retail sale, unless the wholesaler also holds a valid retailer licence.

(3) A wholesaler shall not sell gasoline to a person for resale at a retail sale, unless that person holds a valid retailer licence issued to that person.

(4) A retailer shall not sell or keep gasoline for retail sale unless the gasoline has been purchased by that retailer from a wholesaler or another retailer.

(5) A wholesaler shall not sell to a person a smaller quantity of gasoline than 180 litres.

[2009 cR-15.01 s63](#)

[Back to Top](#)**Retailer to post licence**

64. A retailer shall post the retailer's licence and keep it posted in a conspicuous place at the retail outlet or in other places that may be prescribed by the regulations.

[2009 cR-15.01 s64](#)

[Back to Top](#)**Automatic revocation of licence**

65. Where a licensee stops carrying on a business of selling gasoline in respect of which a licence was issued to the licensee under this Act, that licence is automatically revoked and shall be returned, by the person to whom it was issued or that person's personal representative, to the minister within 15 days of the date that business stops being carried on.

[2009 cR-15.01 s65](#)

[Back to Top](#)**Levying the tax**

66. (1) At the time of a sale of gasoline to a retail purchaser the person making the sale shall levy and collect the tax imposed by this Act and shall, in accordance with the regulations, pay over the tax so collected to the collector from whom the gasoline was acquired or, where the minister so requires, directly to the minister.

(2) Where money by way of tax is collected on gasoline that was sold to a retail purchaser but acquired by the seller otherwise than from a collector, that money shall be paid over to the minister at the time and in the manner prescribed by the regulations.

(3) A person selling gasoline to a retail purchaser shall, on the request of the retail purchaser, deliver to the retail purchaser an invoice showing the number of litres of gasoline sold to the retail purchaser and the amount of the tax paid.

[2009 cR-15.01 s66](#)

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#### **Marking gasoline**

67. For the purposes of distinguishing gasoline used or to be used for specified purposes, the minister may order a kind of gasoline to be marked in accordance with the regulations.

[2009 cR-15.01 s67](#)

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#### **Gasoline delivery**

68. The driver of a vehicle engaged in transporting or delivering gasoline

- (a) shall have in his or her possession in that vehicle at all times an invoice or bill of lading respecting the products being carried on or by the vehicle and correctly identifying each product and the quantity of each product loaded;
- (b) shall, when requested to do so by an inspector, produce the invoice or bill of lading mentioned in paragraph (a); and
- (c) shall not place tax-exempt gasoline in the storage tank of an internal combustion engine unless the owner or operator of the engine produces a tax-exempt permit issued under the regulations that authorizes the use of tax-exempt gasoline in that piece of equipment.

[2009 cR-15.01 s68](#)

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#### **Powers re interjurisdictional carrier**

69. (1) For the purpose of ascertaining whether an interjurisdictional motor vehicle is registered or a tax or fee has been paid under this Act, an inspector may

- (a) demand proof of registration; and
- (b) stop, enter and inspect an interjurisdictional motor vehicle.

(2) Where an inspector, on reasonable grounds believes that an interjurisdictional carrier has not paid a tax or fee required to be paid by the interjurisdictional carrier under this Act, he or she may stop and detain an interjurisdictional motor vehicle operated by or for that interjurisdictional carrier until the tax or fee has been paid.

(3) Where an interjurisdictional carrier referred to in subsection (2) is carrying goods or passengers, the inspector shall allow the vehicle to proceed to its destination and the inspector may require the operator of the vehicle to report to another inspector at that destination and that other inspector may detain the vehicle following its unloading or discharge of passengers until the tax or fee has been paid.

[2009 cR-15.01 s69](#)

[Back to Top](#)**Meters required**

70. (1) The minister may require a collector or another person dealing with gasoline to install at that person's expense automatic meters or other equipment approved by the minister, and that person may use the information supplied by the approved meters or equipment to establish the quantities of gasoline refined, acquired, delivered or sold.

(2) The minister shall be notified immediately by the person who operates equipment approved under subsection (1) when meter heads are changed on the equipment and that person shall at the time report the old and new meter readings to the minister.

[2009 cR-15.01 s70](#)

[Back to Top](#)**Sealed equipment**

71. (1) The minister may place a seal in the approved form or a lock on a meter or mechanical injection system, drum or receptacle containing gasoline, notwithstanding where that meter, system, drum or receptacle is located.

(2) It is an offence to remove an approved seal or lock placed on a meter, mechanical injection system, drum or receptacle without first obtaining authority from the minister to do so.

[2009 cR-15.01 s71](#)

[Back to Top](#)**Agreements**

72. The minister, with the approval of the Lieutenant-Governor in Council, may, on behalf of the province, enter into reciprocal agreements with the Government of Canada, another province of Canada or a state of the United States of America

- (a) to determine the amount of gasoline tax properly due to or by each of those governments as a result of interjurisdictional carrier operations; and
- (b) for collection, payment, refund or allocation of gasoline tax between the province and the government or governments to these agreements,

and may enter into agreements not inconsistent with this Act, amending the terms and conditions of those agreements.

[2009 cR-15.01 s72](#)

**PART IV  
HEALTH AND POST-SECONDARY EDUCATION TAX**

[Back to Top](#)**Imposition of tax**

73. (1) Every employer shall pay monthly to the Crown at the time and in the manner prescribed, a tax at the rate of 2% of taxable remuneration paid to employees of that employer.

- (2) Where an employer is
  - (a) a registered charity for the purpose of the *Income Tax Act* (Canada); or
  - (b) considered by the minister to be a private sector non-profit organization,

the remuneration paid to employees at each establishment shall be considered to be paid by a separate person for the purpose of calculating tax.

[2009 cR-15.01 s73](#)

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#### **Ceasing to have an establishment**

74. Where an employer ceases to have an establishment in the province during a month, the employer shall, with respect to that month, pay the tax in the same manner as though the month ended on the date on which the employer ceased to have an establishment in the province.

[2009 cR-15.01 s74](#)

### **PART V HORSE RACING TAX**

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#### **Payment of tax**

75. A person who places a bet shall pay to the minister a tax equal to 11% of the amount of money deposited by him or her with the operator when making the bet.

[2009 cR-15.01 s75](#)

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#### **Collection of tax**

76. An operator shall collect the amount of the tax by deducting it from the money deposited with the operator for making a bet, before recording it or applying it to the making of the bet.

[2009 cR-15.01 s76](#)

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#### **Remuneration of tax collectors**

77. The minister may allow operators remuneration for collecting and forwarding the tax that may be prescribed in the regulations.

[2009 cR-15.01 s77](#)

### **PART VI INSURANCE COMPANIES TAX**

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#### **Imposition of tax**

78. (1) A company shall pay to the minister for the use of the province, a tax equal to 4% of the gross premiums that become payable to it during the year in respect of business transacted by it in the province, other than premiums in respect of reinsurance ceded to the company by other companies and premiums or other consideration becoming payable to the company in respect of annuities, after deducting from those gross premiums a sum equal to

- (a) the cash value of dividends paid or credited to policyholders in that year; and
- (b) the premiums returned by the company in that year.

(2) Notwithstanding subsection (1), a company which administers a contract of insurance under an administrative services only plan or any other financial arrangement, shall pay a tax equal to 4% of the value of benefits paid out of the plan as well as any dues, assessments, and administrative costs or fees charged to the plan holder, policy or program of insurance.

- (3) This Part does not apply to premiums receivable in respect of contracts of marine insurance.

[2009 cR-15.01 s78](#)

## PART VII MINING AND MINERAL RIGHTS TAX

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### Definition

79. For the purpose of this Part, "year" means a fiscal year.

[2009 cR-15.01 s79](#)

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### Mining tax

80. An operator is liable for and shall pay to the minister, in the manner and at the time prescribed by regulations, an annual tax of

- (a) 15% of the taxable income determined under subsection 83 (1), less the credit determined under section 84 ,

plus

- (b) 20% of the amount taxable as determined under subsection 83 (2).

[2009 cR-15.01 s80](#)

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### Gross revenue

81. (1) Gross revenue is the revenue derived by an operator from the sale of minerals as a result of mining operations in a year and includes

- (a) if those minerals are processed before the sale, the income from processing;
- (b) gains or losses resulting from
- (i) the fixing of a price for output of a mine before delivery, and
- (ii) other hedging transactions related directly to the proceeds of the output of a mine;
- (c) insurance proceeds for which related premiums are deductible or deducted;
- (d) government assistance related to revenue;
- (e) withdrawals from a financial assurance fund established under paragraph 10(3)(d) of the *Mining Act* ; and
- (f) other revenue that may be prescribed by regulation.

(2) Notwithstanding subsection (1), where an operator receives revenue from a person with whom he or she does not deal at arm's length, the revenue attributed to the transaction for tax purposes shall be adjusted by the operator to reflect an arm's length fair market receipt and, for the purpose of subsection (1) but subject to subsection (3), the gross revenue from that transaction shall be the fair market value as determined by the operator.

(3) A determination of fair market value by an operator may be reviewed by the minister, who may impose his or her own determination of fair market value and, in the absence of evidence to the contrary, the minister's determination of fair market value shall be considered to be the gross revenue from that transaction and, for the purpose of subsection (4), the minister's determination is considered to have been made at the time of the

transaction.

(4) Where the minister's determination of fair market value under subsection (3) is greater than the determination of the operator under subsection (2), the minister may make an assessment of tax due, including interest, under this Act.

[2009 cR-15.01 s81](#)

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### **Net income**

**82.** (1) The net income of a taxpayer shall be ascertained by deducting from the gross revenue of the taxpayer

- (a) all expenses and outlays directly attributable to and reasonably incurred in mining operations and in processing and smelting;
- (b) depreciation expenses that may be prescribed by regulation respecting vehicles, machinery, plant, equipment, buildings and other assets of a capital nature used in mining operations and in processing and smelting;
- (c) an amount for unamortized pre-production expenditures divided by the estimated remaining life of the mining operation;
- (d) all money paid to the Crown during the year by way of rentals, royalties, charges and other payments for the right to engage in mining operations which generate all or part of the gross revenue, but not a payment by way of taxation;
- (e) contributions to a financial assurance fund established under paragraph 10(3)(d) of the *Mining Act* ; and
- (f) those amounts respecting those items that are prescribed by regulation.

(2) In addition to the amounts deductible under subsection (1), an operator may deduct exploration expenditures exclusively incurred by the taxpayer anywhere in the province before the commencement of commercial production, but only to the extent that these expenditures have not been deducted in a previous year.

(3) In addition to the amounts deductible under subsection (1), an operator may deduct an amount by way of return on capital directly and necessarily employed by the taxpayer in processing, in an amount or at a rate that the Lieutenant-Governor in Council may prescribe by regulation, and the Lieutenant-Governor in Council may prescribe different amounts or rates for different types of processing and smelting assets.

(4) An amount determined under subsection (3) shall not exceed 65% of the portion remaining after deducting from the gross revenue the amounts deductible under subsections (1) and (2).

(5) Notwithstanding subsections (1) and (2), where an operator incurs an expenditure payable to a person with whom that operator does not deal at arm's length, the expenditure deductible under this section shall be adjusted by the operator to reflect an arm's length fair market value of the expenditure and, for the purpose of subsections (1) and (2), the fair market value of the expenditure shall be the fair market value as determined by the operator.

(6) A determination of the fair market value of an expenditure by an operator may be reviewed by the minister, who may impose his or her own determination of fair market value and, in the absence of evidence to the contrary, the minister's determination of the fair market value of the expenditure shall be considered to be the expenditure incurred by the operator and, for the purpose of subsection (7), the minister's determination is considered to have been made at the time of the expenditure.

(7) Where the minister's determination of fair market value under subsection (6) is less than the determination of the operator under subsection (5), the minister may make an assessment of tax due, including interest, under this Act.

(8) Amounts deductible under this section shall be reduced by related government assistance.

(9) Notwithstanding another provision of this section, the following shall not be deductible for the purpose of calculating net income:

- (a) a tax imposed under this Part;

- (b) other tax imposed upon revenue, income, profits or capital by any jurisdiction;
- (c) legal or professional fees incurred with respect to an objection or an appeal in respect of an assessment of a tax referred to in paragraphs (a) and (b);
- (d) interest, dividends and all other costs of financing including the acquisition and maintenance of equity financing;
- (e) social and recreational costs, other than at the mine site;
- (e.1) costs incurred for research and development;
- (f) bad debts;
- (g) costs incurred for incorporation, organization or reorganization;
- (h) a payment under Part IX of the *Excise Tax Act* (Canada);
- (i) royalties or similar payments, other than those referred to in paragraph (1)(d);
- (j) payments made under an impacts and benefits agreement, except where that payment represents fair market value for a good or service which would otherwise be an eligible expenditure under paragraph (1)(a), if not for this paragraph;
- (k) a payment for loss, costs, liability or damages based in tort with respect to a third party;
- (l) costs incurred or damages paid as a result of a negligent act or omission or as a result of a wilfully damaging act;
- (m) costs incurred or a fine paid as a result of a strict liability imposed by, or an act or omission which is a breach of laws, rules, regulations, permits, licenses, orders or other directives of a government, government agency, or a court;
- (n) an expenditure on account of, instead of, in satisfaction for or in relation to paragraphs (k), (l) and (m);
- (o) charitable donations, and gifts to the Crown;
- (p) depreciation, other than as specified in paragraph (1)(b);
- (q) depletion or exhaustion;
- (r) the cost of capital assets; and
- (t) another expenditure prescribed by regulation.

[2009 cR-15.01 s82; 2011 c19 s3](#)

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#### **Taxable income**

**83.** (1) For the purpose of paragraph 80 (a), the taxable income shall be net income less the greater of

- (a) 20% of the net income, if positive, or
- (b) amounts paid to a person referred to in paragraph 85 (1)(a).

(2) For the purpose of paragraph 80 (b), the amount taxable shall be

- (a) 20% of the net income, if positive, minus
- (b) amounts paid to a person referred to in paragraph 85 (1)(a).

[2009 cR-15.01 s83](#)

[Back to Top](#)**Corporate income tax credit**

**84.** (1) For the purpose of paragraph 80(a), an operator may, in respect of the current tax year, credit against the tax otherwise payable, an amount in respect of corporate income tax paid to the province in the preceding year as determined under this section.

(2) Subsection (1) applies only for 10 consecutive years beginning in the year in which commercial production is achieved in the mine from which the mining income is derived, but the cumulative amount of the deduction shall not exceed \$20 million.

(2.1) Notwithstanding that the corporate income tax from a preceding year is used in calculating a credit under this section, a credit under this section

(a) shall be applicable only for the 10 year period referred to in subsection (2); and

(b) shall not exceed the amount referred to in subsection (2).

(2.2) Where, in a calculation of the corporate income tax credit under this section the corporate income tax from a preceding year is used but 10 consecutive years beginning in the year in which commercial production was achieved have expired, that method of calculation shall not revive an entitlement to a credit under this section.

(2.3) Notwithstanding another provision of this section, where an operator achieves commercial production after the coming into force of this subsection, the period of 10 consecutive years referred to in subsection (2) shall begin to run one year after the operator achieved commercial production.

(3) A credit under subsection (1) is applicable only if all depreciation and exploration expenses available in the year have been utilized by the operator.

(4) The amount of the credit in respect of corporate income tax for a year shall be the lesser of

(a) \$2 million, and

(b) amounts payable under the *Income Tax Act, 2000* for the year in respect of mining operations.

(5) Where a corporate income tax credit has been claimed with respect to the corporate income tax paid for a particular tax year and an operator has subsequently been subject to a reassessment with respect to that tax year, the operator shall inform the minister of that reassessment and the mining tax payable under this Part shall be reassessed as appropriate.

[2009 cR-15.01 s84; 2011 c19 s4](#)

[Back to Top](#)**Mineral rights tax**

**85.** (1) A person who receives,

(a) from an operator or other person, consideration including a lump sum, periodic payment, rent, royalty or other income, which is contingent upon production of a mine, or computed by reference to the amount or value of production from a mining operation, for the grant or assignment of any right issued under the *Mineral Act*, including an exploration license, a mining lease and any claim, permit or right held under them; or

(b) consideration under section 7 of the *Undeveloped Mineral Areas Act*, by way of payment to that person as owner of an undeveloped mineral area,

is liable for and shall pay to the Crown, in the manner and at the time set out in the regulations, an annual tax of 20% of the net revenue received for the consideration during that year.

(2) Notwithstanding subsection (1), where a person receives consideration referred to in that subsection from an operator, and the net revenue of the person in that year as determined under subsection (4) is \$100,000 or less, no tax is payable under this section.

(3) Notwithstanding subsection (1), where net revenue in a year is greater than \$100,000 and less than

\$200,000, the tax payable under this section shall be the product of

- (a) net revenue minus \$100,000, times
- (b) 40%.

(4) For the purpose of this section, "net revenue" means the total value of consideration received under paragraphs (1)(a) and (b), less

- (a) legal expenses incurred by the person in the collection of the consideration referred to in subsection (1);
- (b) exploration expenditures incurred by the person;
- (c) consideration paid by the person who receives the royalty payment to another person, where that other person is subject to the tax referred to under subsection (1) in respect of the consideration received; and
- (d) an amount that may be prescribed by regulation.

[2009 cR-15.01 s85](#)

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### **Withholding**

**86.** (1) A person who pays the consideration referred to in section 85 shall deduct and withhold 20% of the value of that consideration and shall account for and pay over the amount to the minister at the time and in the manner prescribed by regulation.

(2) A person who withholds tax under subsection (1) is relieved of all liability at law for the obligation to pay the taxpayer to the extent of the amount withheld, notwithstanding the terms of a statute, agreement, lease, contract or other document which binds the person to make the payment to the taxpayer.

(3) A person who withholds tax under subsection (1) is considered to hold the tax in trust for the Crown and shall pay over the tax in the manner and at the time required by the minister.

(4) A person who fails to make a withholding under subsection (1) shall be personally liable, without the interposition of a court, to a penalty under this Act in an amount equal to the amount which was not withheld.

(5) A penalty under this section is not deductible under section 82 or 85 .

(6) A penalty under this section does not relieve the liability of a person subject to the tax under section 85 .

[2009 cR-15.01 s86](#)

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### **Application and construction of prior statutes and contracts**

**87.** (1) The tax imposed under section 80 applies to every operator but, notwithstanding this Act, where a tax or royalty is payable to the Crown for the right to engage in mining operations or in respect of income from those mining operations

- (a) by a person under an Act of the province relating specifically to that person;
- (b) by a person under an agreement or lease ratified or confirmed by a statute; or
- (c) by an operator who has assumed the obligation to pay that tax or royalty under an agreement entered into with that person,

the tax or royalty imposed by the Act, agreement or lease shall be payable instead of the tax imposed under section 80 .

(2) Nothing in an Act, or in a grant, deed, licence, contract, agreement or other document, whether or not that grant, deed, licence, contract, agreement or other document has received ratification by the Legislature, or been passed, given, made or entered into before December 19, 2002, shall be construed so as

- (a) to defeat the liability of a taxpayer to pay the tax required to be paid by section 85 ; or
- (b) to enable a person who is liable for the tax under section 85 , to require the operator from whom that person receives consideration,
  - (i) to pay the tax in its place, or
  - (ii) to indemnify that person against the tax; or
- (c) to impose liability on the Crown for loss or damage sustained,

and, where an Act, grant, deed, licence, contract, agreement or other document is in conflict with this section, this section shall prevail.

[2009 cR-15.01 s87](#)

## **PART VIII RETAIL SALES TAX**

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### **Tax**

**88.** (1) A person who acquires a used vehicle at a retail sale in the province from a person other than an HST registrant shall, in respect of the use of that vehicle, pay to the Crown at the time of the sale a tax at the rate of 14% of the purchase price of it.

(2) A person who brings into or receives delivery of a used vehicle in the province where that vehicle was acquired from a person who is not an HST registrant is liable for and shall pay at the time the vehicle enters the province tax at the rate of 14% of the purchase price of the vehicle.

[2009 cR-15.01 s88; 2012 c6 s1](#)

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### **Trade-in**

**89.** Where a person who acquires a used vehicle at a retail sale turns in to the seller or to another person selling at a retail sale, as part or full payment of the purchase price of the used vehicle being acquired, another used vehicle on which he or she has paid a tax under this Act or in respect of which he or she is under this section or the regulations not liable to pay tax, that person shall pay the tax on the difference between the purchase price of the used vehicle being acquired and the value allowed by the seller or other person on the used vehicle turned in to him or her.

[2009 cR-15.01 s89](#)

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### **Valuation**

**90.** Where a consumer acquires a vehicle from a person who is not an HST registrant, the purchase price on which tax is required to be paid under this Act is the amount determined by the valuation system prescribed by regulation.

[2012 c6 s2](#)

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### **Effect of return**

**91.** Where tax has been paid in respect of the consumption or use of a used vehicle purchased at a retail sale and, within one year from the date that the tax became payable, a used vehicle is returned to the seller, a refund of the tax shall be paid to the retail purchaser, proportionate to the amount of the purchase price that the retail purchaser is

entitled to have refunded to him or her by the seller when the used vehicle is returned to the seller.

[2009 cR-15.01 s91](#)

## **PART IX TOBACCO TAX**

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### **Tax levied**

**92.** (1) A person who acquires tobacco at a retail sale in the province shall, in respect of the consumption or use of that tobacco, pay to the Crown at the time of the sale a tax calculated in accordance with section 98 .

(2) A person who, as a consumer, brings tobacco into the province or receives delivery of tobacco in the province shall, except as prescribed by regulation, immediately report and pay to the Crown the tax that would be payable had that tobacco been acquired at a retail sale in the province.

[2009 cR-15.01 s92](#)

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### **Permit**

**93.** (1) A person shall not bring tobacco or cause tobacco to be brought into the province in an amount greater than is prescribed by regulation without holding a permit issued under this section.

(2) The minister may issue a permit in the manner prescribed by regulation authorizing a person to bring tobacco in an amount greater than is prescribed into the province and may set those reasonable restrictions and conditions upon the permit with respect to the marking or stamping of tobacco, collection and payment of tax or other things that the minister considers necessary.

(3) The minister may for cause refuse to issue or may cancel or suspend a permit issued under this section to a person who the minister is satisfied or has reason to believe shall not comply or has not complied with this Act or the regulations.

(4) An application for a permit under this section shall be made in the manner prescribed by the minister and shall be in the form and accompanied by the fee set by the minister.

[2009 cR-15.01 s93](#)

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### **Transporter duties**

**94.** (1) A person who holds a permit issued under section 93 shall provide a notarized true copy of that permit to a transporter who transports tobacco to, from or for him or her.

(2) A transporter shall at all times and in accordance with the regulations, keep in the vehicle used to transport the tobacco the permit copy referred to in subsection (1), a uniform manifest and books and records that are prescribed by regulation.

[2009 cR-15.01 s94](#)

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### **Prohibition**

**95.** (1) A person shall not sell or give unmarked tobacco to

- (a) a consumer who is required to pay tax; or
- (b) a wholesaler or retailer who is not authorized under this Act to possess unmarked tobacco.

(2) A person shall not mark packages, cartons or cases of tobacco unless he or she has a permit to mark tobacco issued under section 96 .

(3) A person shall not sell, give, possess or mark a package of cigarettes that contains 19 or less cigarettes.

[2009 cR-15.01 s95](#)

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#### **Permits**

**96.** (1) A person shall not possess, sell or purchase unmarked tobacco unless he or she is authorized under the regulations to possess unmarked tobacco.

(2) The minister may issue a permit to mark tobacco packages, cartons or cases to a manufacturer of tobacco and tobacco products.

(3) The minister may issue a permit to stamp tobacco packages, cartons or cases to a retailer or a licensed wholesaler who acquires tobacco from a person who does not have a permit to mark tobacco issued under subsection (2).

(4) The minister may, before issuing a permit under this section, require and impose reasonable restrictions upon that permit.

(5) The minister may, before issuing a permit under this section, require a deposit equal to the amount of tax collectable.

(6) A person who has been issued a permit to stamp tobacco packages, cartons or cases under this section shall provide to the minister an accounting for all stamps received by that person from the minister.

(7) A person who has been issued a permit to stamp tobacco packages, cartons or cases under this section shall account for each stamp as required under subsection (5) and each stamp that is not accounted for shall be considered to have been affixed to a tobacco package, carton or case and sold to a consumer who has paid tax and that tax shall be paid by that person to the Crown in accordance with this Act.

(8) The minister may suspend or cancel a permit issued to a person under this section if that person contravenes a condition or restriction placed upon it and where that permit is held by a collector, may cancel the wholesaler's licence of that collector.

[2009 cR-15.01 s96](#)

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#### **Retailer**

**97.** (1) The minister may, for the purposes of this Act, designate a person as a retailer.

(2) A person who is not an HST registrant who has an establishment in the province may apply to the minister for designation as a retailer.

[2009 cR-15.01 s97](#)

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#### **Rate of tax**

**98.** (1) The tax imposed on tobacco by this Act shall be calculated as follows:

(a) for cigarettes, a tax of \$0.235 on every cigarette;

(b) for tobacco, other than cigarettes and cigars, a tax of \$0.38 for each gram of tobacco; and

(c) for cigars, a tax of 125% of the purchase price on a cigar, and the tax shall be rounded to the nearest 1/100 of a cent.

- (2) [Rep. by 2013 c6 s1]
- (3) [Rep. by 2013 c6 s1]
- (4) [Rep. by 2013 c6 s1]
- (5) [Rep. by 2013 c6 s1]

[2009 cR-15.01 s98](#); [2010 c8 s1](#); [2013 c5 s1](#); [2013 c6 s1](#); [2014 c11 s1](#)

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#### **Calculating tax**

**99.** (1) The tax payable on tobacco other than cigars shall be calculated separately on every package.

(2) The tax payable on cigars shall be calculated separately on the purchase price of each cigar, whether or not it is sold in a package.

[2009 cR-15.01 s99](#)

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#### **Purchase price of cigars**

**100.** For the purpose of determining the amount of tax payable on a cigar, the purchase price shall be determined in the manner following:

- (a) where a retail purchaser acquires the cigar from a wholesaler or retailer, "purchase price" means the price paid by the purchaser for the cigar, but where that price is not known to the collector, the "purchase price" means an amount equal to the sum of
  - (i) the price at which a cigar of that kind is sold at wholesale by the collector, and
  - (ii) an additional amount determined according to a prescribed method of calculation; and
- (b) where the consumer acquires the cigar otherwise than from a wholesaler or retailer, the "purchase price" means the price paid by the consumer for the cigar, but where that price cannot be determined or no price is paid for the cigar, the "purchase price" shall be determined according to a prescribed method of calculation.

[2009 cR-15.01 s100](#)

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#### **When tax payable**

**101.** (1) Where a retail purchaser acquires tobacco from a wholesaler or retailer, the purchaser shall pay the tax to the wholesaler or retailer at the time the tobacco is purchased or delivery of the tobacco is received.

(2) Where tobacco is sold on credit at a retail sale, the retail purchaser is assessable for the full amount of the tax as imposed by this Act and the tax shall be imposed when the retail sale is made.

[2009 cR-15.01 s101](#)

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#### **Licences**

**102.** (1) The minister may issue to a person a licence, to be known as a wholesaler's licence, authorizing that person to sell tobacco for resale.

- (2) A wholesaler's licence shall expire at midnight on December 31 of the calendar year in which it is

issued.

(3) The minister may for cause refuse to issue or may cancel or suspend a wholesaler's licence and the minister may refuse to issue a licence to or may cancel or suspend the licence of

(a) a person who the minister is satisfied or has reason to believe has used or shall use the licence to purchase tobacco for that person's consumption or use or who has otherwise failed to comply with this Act or the regulations; and

(b) a person who is under the supervision and control of a person

(i) whose licence has been cancelled or suspended under paragraph (a), or

(ii) who supervised or controlled a person whose licence has been cancelled or suspended under paragraph (a).

(4) The minister may refuse to issue a licence to a corporation or may cancel or suspend the licence of a corporation unless the corporation sends to the minister a copy of the certificate of incorporation, together with the names and addresses of the officers or directors of the corporation holding office at the time the minister makes the request for the names and addresses.

(5) An application for a wholesaler's licence shall be made to the minister before the date, in the required form and accompanied by the fee that may be set in respect of that licence.

[2009 cR-15.01 s102](#)

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#### **Prohibition**

**103.** (1) A person shall not sell or offer to sell tobacco at a retail sale or keep tobacco for sale at a retail sale in the province unless that person is a retailer.

(2) A person shall not sell tobacco at a sale that is not a retail sale unless that person holds a valid wholesaler's licence issued under this Act.

[2009 cR-15.01 s103](#)

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#### **Prohibited sales**

**104.** (1) A wholesaler shall not sell tobacco to a person for resale at a retail sale unless that person is a retailer.

(2) A retailer who is not a licensed wholesaler, shall not sell tobacco for resale to another retailer.

(3) A retailer shall not purchase tobacco for resale from a person who is not a licensed wholesaler.

[2009 cR-15.01 s104](#)

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#### **Deputy collectors**

**105.** (1) A licensed wholesaler or retailer, not being a collector, who sells tobacco is a deputy collector and an agent of the Crown for the collection of the tax.

(2) A deputy collector shall levy and collect the tax and shall, at the time and in the manner prescribed by the regulations, pay over the tax so collected to the collector or deputy collector from whom the tobacco was acquired.

(3) Where money by way of tax is collected on tobacco sold to a retail purchaser that was acquired by the seller otherwise than from a collector or deputy collector, that money shall be paid over to the minister by the seller at the time and in the manner prescribed by the regulations.

[2009 cR-15.01 s105](#)

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#### **Prohibition against rebate**

**106.** A wholesaler or retailer shall not advertise or hold out or state to the public or to a retail purchaser, directly or indirectly, that the tax or a part of the tax shall be assumed or absorbed by the wholesaler or retailer.

[2009 cR-15.01 s106](#)

### **PART X REGULATIONS, TRANSITIONAL AND COMMENCEMENT**

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#### **Regulations**

107. The Lieutenant-Governor in Council may make regulations

- (a) prescribing the manner in and times at which tax payable under this Act shall be paid to the minister;
- (b) prescribing the manner in and times at which a return under this Act shall be filed with the minister;
- (c) providing for the accounting for money payable under this Act and regulating the time and manner of the accounting;
- (d) prescribing rates and methods of calculating interest, and the manner of paying refunds, interest and making other payments;
- (e) prescribing the circumstances under which refunds and interest may be granted or denied and setting restrictions on the granting or denying of refunds and interest;
- (f) prescribing the circumstances under which rebates of tax may be granted or denied and setting restrictions on the granting or denying of rebates of tax;
- (f.1) respecting a refund, rebate or reimbursement of an amount equal to a tax paid, in whole or in part, by a recipient under Part IX of the *Excise Tax Act* (Canada);
- (f.2) providing for the recovery of overpayments of rebates;
- (g) prescribing the methods of collecting tax and other conditions or requirements affecting collection of tax;
- (h) providing for the division of collectors into classes;
- (i) prescribing the remuneration or allowance to be paid to collectors and the time and manner of payment;
- (j) requiring surety bonds by collectors and other persons who collect taxes and prescribing the form and amount of the bonds;
- (k) prescribing the information which may be required to be submitted to the minister under subsections 62 (3) and (4);
- (l) prescribing the doing of an act considered necessary or expedient for the collection of the tax, or to prevent evasion of the tax, or this Act;
- (m) defining a word or expression that is not already defined in this Act;
- (n) prescribing anything else that by this Act is to be prescribed or is to be determined or regulated by the regulations; and
- (o) generally, to give effect to the purpose of this Act.

[2009 cR-15.01 s107](#); [2011 c25 s2](#); [2014 c15 s1](#)

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**Regulations re: gasoline tax**

**108.** The Lieutenant-Governor in Council may make regulations

- (a) prescribing the returns and statements to be made by licensees and other persons, the information to be given in the returns and statements, and by whom and in what manner they are to be made;
- (b) prescribing the information required for registration;
- (c) prescribing classes of registration;
- (d) prescribing the time of expiration of registration;
- (e) prescribing the cards, decals or other evidence of registration to be carried or displayed by an interjurisdictional carrier and the manner of displaying those cards or decals;
- (f) prescribing reporting periods, the manner in which returns and reports shall be filed and the tax shall be paid or remitted;
- (g) prescribing the manner in which an inspector may detain an interjurisdictional motor vehicle, the reports and documentation required and the procedures to be followed;
- (h) prescribing all aspects of registration including exemptions;
- (i) prescribing the date before which all applications for licences may be made and the expiry date of licences;
- (j) declaring that the use of gasoline for a purpose specified in the regulations is to entitle the user to a refund of tax in the method, to the extent and under the conditions specified in the regulations;
- (k) exempting from this Act gasoline used for a purpose specified in the regulations;
- (l) providing that gasoline of a prescribed quantity brought into the province by a tourist is to be exempted from this Act and prescribing the quantity to and the condition under which the exemption is to apply;
- (m) exempting a class of persons from the payment of the tax;
- (n) authorizing and regulating tax exemption permits to be issued to persons or classes of persons exempted, by this or another Act or otherwise, from the payment of tax under this Act and prescribing the contents of the permits, the periods for which they may be issued, and authorizing the issue of the permits by the minister or other persons;
- (o) authorizing the issue of tax-exemption permits, subject to those rules that the minister may prescribe, to refuse to issue the permits and to suspend or cancel the permits in the circumstances that the minister may prescribe;
- (p) designating the places at which retailers are to post and keep licences posted;
- (q) requiring licensees to indicate the grade and price of gasoline offered for sale;
- (r) prescribing the octane classification of gasoline to be marked;
- (s) prohibiting the marking of gasoline of an octane classification other than that prescribed by the regulations;
- (t) prohibiting the treatment of gasoline by the addition of a substance, compound or preparation, or by submitting it to a mechanical, chemical or other process, or in another manner, so as to give it the appearance of marked gasoline;
- (u) prescribing the type, ingredients and other specifications of the colouring to be used to mark gasoline and the manner in which the gasoline is to be marked;

- (v) prescribing the persons who may mark gasoline and the time and manner of the marking;
- (w) prescribing the minimum and maximum amount of gasoline that may be marked by a person at a time and the amount of gasoline that may be marked by that person during a period;
- (x) prescribing the manner in which marked gasoline may be sold; and
- (y) requiring that all persons who mark gasoline or deal with marked gasoline file reports and statements with the minister, and prescribing the periods to be covered by the reports and statements and the times of filing them and the contents of the reports and statements.

[2009 cR-15.01 s108](#)

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#### **Regulations re: horse racing tax**

**109.** The Lieutenant-Governor in Council may make regulations respecting a regime of taxation on horse-racing.

[2009 cR-15.01 s109](#)

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#### **Regulations re: mining and mineral rights tax**

**110.** The Lieutenant-Governor in Council may make regulations

- (a) prescribing, for the purpose of mining and mineral rights taxation, the classes of capital assets and rates and methods of depreciation, and the accounting treatment of additions, disposals and removal from service;
- (b) prescribing the expenses and deductions which may be allowed or disallowed for the purpose of section 82 ;
- (c) prescribing, for the purpose of subsection 82 (3), the processing assets, or classes of processing assets, and amounts or rates for each class;
- (d) prescribing rates and methods of calculating depreciation for capital assets;
- (e) prescribing rates and methods of calculating net revenue for the purpose of section 85 ; and
- (f) prescribing, for the purpose of section 81 , amounts to be included in gross revenue.

[2009 cR-15.01 s110](#)

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#### **Regulations re: retail sales tax**

**111.** The Lieutenant-Governor in Council may make regulations

- (a) exempting from this Act a used vehicle used for a purpose specified in the regulations;
- (b) exempting a person or class of persons from the payment of the whole or a part of the tax in respect of a used vehicle generally or subject to exceptions, and
- (c) prescribing a system of valuation and appraisal for vehicles.

[2009 cR-15.01 s111](#)

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#### **Regulations re: tobacco tax**

112. (1) The Lieutenant-Governor in Council may make regulations

- (a) providing for the division of wholesalers into classes and prescribing that persons seeking licences as wholesalers in a class shall, as a condition of their receiving those licences, accept appointments as collectors;
- (b) prescribing the date before which applications for wholesalers licences may be made and the conditions which may be attached to those licences;
- (c) exempting from this Act tobacco of a prescribed quantity brought into the province by a tourist and prescribing the quantity of tobacco and the conditions under which the exemption shall apply;
- (d) exempting from tax tobacco purchased at retail or used for a purpose under circumstances or by a class of persons referred to in the regulations;
- (e) providing for the payment to collectors of money paid as tax in the case of money paid on behalf of a deputy collector, wholesaler or retailer or taxpayer who has defaulted in paying the tax, and prescribing the conditions to be attached to those payments;
- (f) prescribing the method of calculation for determining the purchase price of cigars in cases where that method is required by section 100 ;
- (g) prescribing the information to be included in invoices issued by wholesalers;
- (h) prescribing the manner of applying for and utilizing permits issued under section 96 , uniform manifests and other documents required under this Act including providing for the placing of time or other restrictions upon those permits;
- (i) governing the activities of those who are required or permitted to hold permits or licences under this Act;
- (j) prescribing the amount of tobacco which a transporter may carry or transport, and the books and records which he or she shall have;
- (k) prescribing the responsibilities of holders of permits to mark or stamp tobacco including accounting for the receipt, use of and holding of stamps or stamping and marking equipment;
- (l) providing a system for the sale of unmarked tobacco to classes of person who are exempt from the payment of tax imposed by this Act, including the limitation on the quantity of tobacco to be sold to retailers for resale to consumers;
- (m) providing for the furnishing to the minister of information related to the sale or delivery of tobacco products that are exempt from tax imposed by this Act or that are delivered to classes of persons who are exempt from the payment of tax imposed by this Act;
- (n) prescribing the criteria to be met by a person under section 96 ;
- (o) providing for the affixing of stamps and marks on tobacco packages, cartons or cases before or at the time of delivery to a consumer as evidence of the tax having been paid;
- (p) providing for the issue of the stamps and the designs and denominations of stamps and marks;
- (q) prohibiting the delivery of tobacco to a consumer and the taking of delivery by a consumer upon which stamps or marks are not affixed in accordance with the Act and regulations;
- (r) providing for the stamping or marking of tobacco packages, cartons or cases before or at the time of delivery to a consumer as evidence of the tax having been paid;
- (s) prohibiting the delivery to a consumer and the taking of delivery by a consumer of tobacco which is not stamped or marked in accordance with the Act and regulations; and
- (t) prescribing classes of tobacco that may be exempt from the application of sections 94 and 95 .

(2) [Rep. by 2013 c6 s2]

[2009 cR-15.01 s112](#); [2013 c6 s2](#)

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#### **Retroactivity**

113. Regulations made under this Act may be made with retroactive effect.

[2009 cR-15.01 s113](#)

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#### **Clearance certificate fee**

113.1 Notwithstanding section 114, the fee for a clearance certificate is \$50.

[2013 c7 s1](#)

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#### **Fees and forms**

114. The minister may set fees and establish forms for the purpose and administration of this Act.

[2009 cR-15.01 s114](#)

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#### **Transitional**

115. (1) Where, before the coming into force of this Act a tax was imposed, owing or in the process of being collected under an Act consolidated here, the liability for that tax remains unaffected by the coming into force of this Act, and the tax shall be paid or collected.

(2) An approval, authorization or permit, issued under an Act repealed by this Act before the coming into force of this Act, where that approval, authorization or permit relates to a matter to which this Act would apply, shall

- (a) be considered to have been issued as an approval, authorization or permit under this Act;
- (b) be subject to this Act; and
- (c) continue in force until that approval, authorization or permit would have expired, or had to be renewed or reissued under the Act under which it was issued, or 2 years after the coming into force of this Act, whichever occurs first.

[2009 cR-15.01 s115](#)

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#### **SNL1994 cE-1.1 Amdt.**

**116. Subsection 9(1) of the *Economic Diversification and Growth Enterprises Act* is repealed and the following substituted:**

#### **Remission and reimbursement of tax**

9. (1) A corporation that has been designated as an EDGE Corporation qualifies for a remission of tax and the Lieutenant-Governor in Council shall, by order under section 19 of the *Financial Administration Act*, remit all of the tax payable by the corporation under

- (a) the *Income Tax Act, 2000*; or
- (b) Parts IV and VIII of the *Revenue Administration Act*.

[2009 cR-15.01 s116](#)

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**RSNL1990 cH-3 Amdt.**

**117. (1) Section 13.1 of the *Highway Traffic Act* is repealed and the following substituted:**

**Interjurisdictional carrier registration under the *Revenue Administration Act***

13.1 A person who operates a motor vehicle required to be registered under section 61 of the *Revenue Administration Act* who is not registered as required by that section commits an offence under this Act.

**(2) Paragraph 16(7)(c) of the Act is amended by deleting the reference "the *Retail Sales Tax Act* " and substituting the reference "Part VIII of the *Revenue Administration Act* ".**

**(3) Paragraph 48(1)(k) of the Act is amended by deleting the reference "the *Retail Sales Tax Act* " and substituting the reference "Part VIII of the *Revenue Administration Act* ".**

[2009 cR-15.01 s117](#)

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**RSNL1990 cL-18 Amdt.**

**118. Subsection 33(5) of the *Liquor Control Act* is repealed and the following substituted:**

(5) The board shall cancel a licence where the licensee operates an electronic or mechanical amusement device in contravention of the *Lotteries Act* or is guilty of an offence under subsection 32(9) of the *Revenue Administration Act* .

[2009 cR-15.01 s118](#)

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**SNL1991 c53 Amdt.**

**119. Subsection 4(4) of the *Lotteries Act* is amended by deleting the reference "the *Tobacco Tax Act* " and substituting the reference "Part IX of the *Revenue Administration Act* ".**

[2009 cR-15.01 s119](#)

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**RSNL1990 cM-14 Amdt.**

**120. (1) Paragraph 2(b) of the *Mineral Holdings Impost Act* is repealed.**

**(2) Paragraph 2(g) of the Act is amended by deleting the reference "the *Mining and Mineral Rights Tax Act* " and substituting the reference "Part VII of the *Revenue Administration Act* ".**

[2009 cR-15.01 s120](#)

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**RSNL1990 cP-26 Amdt.**

**121. Subsection 3(1) of the *Proceedings Against the Crown Act* is amended by deleting the words, references and commas "the *Gasoline Tax Act* , the *Health and Post-Secondary Education Tax Act* , the *Retail Sales Tax Act* , the *Tobacco Tax Act* , the *Mining and Mineral Rights Tax Act* ," and substituting the word, reference and comma "the *Revenue Administration Act* ,".**

[2009 cR-15.01 s121](#)

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**NLR 78/99 Amdt.**

**122. Section 2 of the *Provincial Offences Ticket Regulations, 1999* is amended by adding immediately after paragraph (k.1) the following:**

(k.2) subsections 32(3) and (4) of the *Revenue Administration Act* ;

[2009 cR-15.01 s122](#)

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**RSNL1990 cP-45 Amdt**

**123. (1) Paragraph 3(2)(a) of the *Public Tender Act* is amended by deleting the phrase "and retail sales imposable under the *Retail Sales Tax Act*".**

**(2) Paragraph 3(2)(b) of the Act is amended by deleting the phrase "and tax imposable under the *Retail Sales Tax Act*".**

**(3) Subsection 3(3) of the Act is amended by deleting the phrase "and retail sales tax imposable under the *Retail Sales Tax Act*".**

**(4) Paragraphs 4(1)(a) and (b) of the Act are amended by deleting the phrase "and retail sales tax imposable under the *Retail Sales Tax Act*" wherever it occurs.**

[2009 cR-15.01 s123](#)

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**SNL1992 cS-10.1 Amdt.**

**124. Subsection 5(2) of the *School Tax Authorities Winding Up Act* is amended by deleting the reference "*Health and Post-Secondary Education Tax Act*" and substituting the reference "*Revenue Administration Act*".**

[2009 cR-15.01 s124](#)

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**SNL2006 cS-31.1 Amdt.**

**125. Paragraph 30(1)(d) of the *Support Orders Enforcement Act, 2006* is repealed and the following substituted:**

- (d) all provincial taxation statutes, including
- (i) the *Income Tax Act, 2000*,
  - (ii) the *Mineral Holdings Impost Act*, and
  - (iii) the *Revenue Administration Act* ,

against the same money whether made before or after providing the notice of garnishment.

[2009 cR-15.01 s125](#)

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**SNL1996 cT-0.01 Amdt.**

**126. (1) Subsection 5(1) of the *Tax Agreement Act* is amended by deleting the reference "*Retail Sales Tax Act*" and substituting the reference "*Revenue Administration Act*".**

(2) Subsection 5(4) of the Act is amended by deleting the reference "*Retail Sales Act* " and substituting the reference "*Revenue Administration Act* ".

[2009 cR-15.01 s126](#)

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**SNL1992 cT-0.1 Amdt.**

**127. (1) *Taxation of Utilities and Cable Television Companies Act* is amended by adding immediately after section 2 the following:**

**Application of *Revenue Administration Act***

**2.1 (1)** Parts I and II of the *Revenue Administration Act*, with the necessary changes, apply to the collection of taxes under section 6 of this Act.

(2) Where there is a conflict between this Act and Parts I and II of the *Revenue Administration Act*, the *Revenue Administration Act* shall apply.

**(2) Subsections 6(2), (5.1), (5.2), (5.3) and (7), and sections 6.1 to 6.13 of the Act are repealed.**

[2009 cR-15.01 s127](#)

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**Repeal**

**128. The following Acts are repealed:**

- (a) the *Gasoline Tax Act* ;
- (b) the *Health and Post-Secondary Education Tax Act* ;
- (c) the *Horse Racing Regulation and Tax Act* ;
- (d) the *Insurance Companies Tax Act* ;
- (e) the *Mining and Mineral Rights Tax Act, 2002* ;
- (f) the *Retail Sales Tax Act* ; and
- (g) the *Tobacco Tax Act* .

[2009 cR-15.01 s128](#)

[Back to Top](#)**Schedule****Penalties**

Part, section, subsection or paragraph	Offence		Penalty			
			A fine of not more than the dollar amounts specified		Imprisonment for no longer than time specified, or to both a fine and imprisonment	
			Max.	Min.	Max.	Min.
32(1)(a) to (g), 32(2), (4), (6) & (7), 71(2) and where no other penalty has been provided or prescribed by the Act or the regulations	Offences generally under the Act	First Offence	\$10,000	\$300	90 days	-
		Second Offence	20,000	500	180 days	-
		Third & Subsequent Offence	30,000	1,000	365 days	-
32(1)(h), (i) and (j)	Offences related to tax evasion	First Offence	10,000	300	180 days	-
		Second Offence	50,000	500	365 days	-
		Third & Subsequent Offence	100,000	1,000	730 days	-
32(3)	Commercial gasoline tax offences	First Offence	10,000	300	-	-
		Second Offence	50,000	500	-	-
		Third & Subsequent Offence	100,000	1000	-	-
32(9)	Contraband tobacco tax offences	First Offence	10,000	300	-	-
		Second Offence	50,000	500	-	-
		Third & Subsequent Offence	100,000	1000	-	-
32(10)	Offences relating to Mining and Mineral Rights Taxation	First Offence	1 million	5,000	180 days	-
		Second Offence	2 million	10,000	365 days	-
		Third & Subsequent Offence	5 million	20,000	730 days	-
	Default in payment of tax	First Offence	-	-	90 days	-
		Second Offence	-	-	180 days	-
		Third & Subsequent Offence	-	-	365 days	-
	Default in payment of fines, except contraband offence	First Offence	-	-	90 days	-
		Second Offence	-	-	180 days	-
		Third & Subsequent Offence	-	-	365 days	-
	Default in payment of fines, contraband offence	First Offence	-	-	180 days	-
		Second Offence	-	-	365 days	-
		Third & Subsequent Offence	-	-	730 days	-

[2009 cR-15.01 Sch](#)

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