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c 147 The Motor Vehicle Fuel Tax Amendment Act, 1972 (No. 2)

Ontario

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CHAPTER 147

An Act to amend
The Motor Vehicle Fuel Tax Act

Assented to December 15th, 1972
Session Prorogued December 15th, 1972

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

1. Clause a of section 1 of The Motor Vehicle Fuel Tax Act, being chapter 282 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1972, chapter 14, section 1, is repealed and the following substituted therefor:

(a) "fuel" means any gas or liquid that may be used for the purpose of generating power by internal combustion, and includes any substance added thereto, but does not include,

(i) any product that is excluded from this Act by the regulations and to which subsection 5 of section 3 does not apply,

(ii) gasoline on which the tax imposed by The Gasoline Tax Act has been paid, or

(iii) aviation fuel on which the tax imposed by The Gasoline Tax Act has been paid and that is used to create power to propel an aircraft.

2. Subsections 3, 4, 5 and 6 of section 3 of the said Act are repealed and the following substituted therefor:

(3) Subject to subsection 5, the tax imposed by subsection 1 shall be paid at the time the fuel is supplied to the purchaser or, where the fuel is acquired by the purchaser outside Ontario, at the time such fuel is used in Ontario, and the tax imposed by subsection 2 shall be paid in accordance with section 9.
(4) Where a purchaser uses in Ontario fuel that was acquired outside Ontario, such purchaser shall, upon the demand of the Minister or of some one authorized by the Minister to make such a demand, furnish to the Minister security in cash or in such other form as is satisfactory to the Minister that is sufficient for the payment of all tax imposed by this Act on the use by such purchaser in Ontario of fuel on which the tax imposed by this Act has not been paid, and in the event that the tax for which the security is given is not paid, the Minister may realize upon the security to the extent necessary to pay such tax.

(5) Where any person places any product that is excluded from this Act by the regulations in a fuel tank, such product thereupon becomes taxable as fuel under this Act and is no longer excluded from this Act, and the person so doing shall forthwith pay the tax imposed by this Act on such fuel to the Treasurer directly or through any registrant.

(6) Every person who knowingly fails to pay the tax imposed by subsection 1, 2 or 5 when required by this Act is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of the tax that he failed to pay and of an additional amount that is not less than $100 and not more than $5,000.

(7) Every person who fails to comply with subsection 4 is guilty of an offence and on summary conviction is liable to a fine of not less than $100 and not more than $500.

(8) Every person who is not a registrant and who knowingly supplies or makes available to a purchaser fuel that becomes taxable under this Act is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of tax imposed by this Act on the fuel that he has supplied or made available to a purchaser plus an amount that is not less than $100 and not more than $5,000.

(9) Where it is established to the satisfaction of the Minister that a person who is not a registrant has supplied or made available to a purchaser fuel that becomes taxable under this Act, any person thereunto authorized by the Minister may enter upon the business premises of such person who is not a registrant and may audit and examine the books, records
and accounts of such person to ascertain the amount of fuel that has been supplied under subsection 8 and the amount of tax that is payable with respect thereto.

3. **Subsection 1** of section 4 of the said Act is amended by striking out "on the portion of such fuel in excess of forty imperial gallons" in the sixth line.

4. The said Act is amended by adding thereto the following section:

4a.—(1) For the purpose of ascertaining that the tax imposed by this Act has been paid on fuel in the fuel tank of a motor vehicle, or for the purpose of ascertaining whether any tax imposed by this Act on such fuel is payable, any person thereunto authorized by the Minister may detain any motor vehicle in Ontario that has a fuel tank that is capable of holding more than forty imperial gallons and may examine such motor vehicle and the fuel contained in any fuel tank thereof, and may demand proof that the tax imposed by this Act for the fuel in the fuel tank of such motor vehicle has been paid.

(2) Every operator of a motor vehicle that may be detained under subsection 1 who refuses to permit the detention and examination of such motor vehicle that is under his control, or who refuses to permit the examination of the fuel used in such motor vehicle, is guilty of an offence and on summary conviction is liable to a fine of not less than $100 and not more than $500 for each offence.

5. **Subsection 2** of section 9 of the said Act is amended by striking out "the rate of 7 per cent per annum" in the fourth line and inserting in lieu thereof "such rate as is prescribed in the regulations".

6.—(1) **Subsections 1, 2 and 3** of section 10 of the said Act are repealed and the following substituted therefor:

(1) If the Minister, in order for him to assess the tax collectable by a registrant or of the tax payable by a registrant or purchaser under this Act or for any other purpose, desires any information or additional information, or a return from a registrant or purchaser who has not made a return or a complete or sufficient return, he may, by registered letter, demand from the registrant or purchaser, or from the president,
manager, secretary, or any director, agent or representative of any registrant or purchaser, such information, additional information or return, and the person upon whom the demand is made shall deliver to the Minister the information, additional information or return within the time specified in the registered letter.

(2) The Minister may, by registered letter, require the production under oath or otherwise by any registrant or purchaser, or by the president, manager, secretary, or any director, agent or representative of any registrant or purchaser, or by any person, partnership, syndicate, trust or company holding or paying or liable to pay any portion of the income of such registrant or purchaser, or by any partner, agent or official of any such person, partnership, syndicate, trust or company, of any letters, accounts, invoices, statements or other documents.

(3) If a registrant or purchaser fails or refuses to keep adequate books or accounts for the purpose of ascertaining the amount of the tax payable by him or payable and collectable by him, as the case may be, the Minister may require such registrant or purchaser to keep such records and accounts as the Minister specifies.

(2) Subsections 7, 8 and 9 of the said section 10 are repealed and the following substituted therefor:

(7) After examination of the return of a registrant, the Minister shall send by mail or by registered mail or deliver by personal service a notice of assessment to such registrant verifying or altering the amount of tax shown to be collectable by the registrant or to be payable by the registrant in his return, and any additional tax found to be collectable or payable, as the case may be, over the amount shown in the return shall be transmitted within one month from the date of mailing of the notice of assessment, whether or not an objection or appeal from the assessment is made or taken, and such additional tax shall bear interest at the rate prescribed by the regulations calculated from the last date prescribed for making the return to the date of transmission to the Treasurer.

(8) The Minister may at any time he considers reasonable assess any tax collectable or payable by a registrant or purchaser under this Act and shall send by mail
or by registered mail or deliver by personal service a notice of assessment requiring the registrant or purchaser to transmit the tax assessed forthwith to the Treasurer.

(9) A registrant or purchaser shall, within one month of the date of an assessment made against him, transmit the tax claimed in the assessment whether or not an objection or appeal from the assessment is outstanding, and if a registrant or purchaser fails to transmit the tax at the time required, he shall pay to the Treasurer interest at the rate prescribed by the regulations upon the tax from the due date to the date of transmission to the Treasurer.

(10) Where a registrant or purchaser objects to an assessment made under this section, he may, within ninety days from the day of mailing of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(11) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.

7. The said Act is further amended by adding thereto the following sections:

10a.—(1) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the registrant or purchaser, as the case may be, of his action by registered letter.

(2) After the Minister has given the notification required by subsection 1, a person who has served notice of objection under section 10 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 1 that the Minister has confirmed the assessment or reassessed, and an appeal under this section shall not be made to the Divisional Court.

(3) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court.
Court or with the local registrar of the Supreme Court for the county or district in which the person appealing resides or has his place of business.

Service

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

Content of notice of appeal

(5) The person appealing shall set out in the notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in supporting his appeal.

Reply to notice of appeal

(6) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

Matter deemed action

(7) Upon the filing of the material referred to in subsection 6, the matter shall be deemed to be an action in the court.

Disposition of appeal

(8) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and,

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and re-assessment.

Idem

(9) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.
(10) The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under subsection 7, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

(11) No assessment shall be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

(12) The time within which a notice of objection under subsection 10 of section 10 or a notice of appeal under subsection 2 of this section is to be served may be extended by the Minister if application for such extension is made before the time for service of the notice of objection or notice of appeal, as the case may be, has expired.

10b.—(1) The Minister or Deputy Minister of Revenue shall determine the amount of the tax referred to in subsection 6 or 8 of section 3 or in subsection 5 or 6 of section 7 from such information as is available to him and shall issue a certificate as to that amount.

(2) In any prosecution under subsection 6, 7 or 8 of section 3 or under subsection 5 or 6 of section 7 a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax that should have been collected is prima facie evidence of the amount of tax that should have been collected and of the authority of the person giving or making the certificate without any proof of appointment or signature.

(3) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(4) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax payable under this Act.
15a. An information in respect of an offence against this Act shall be laid within six years of the time when the matter of the information arose.

S. Section 16 of the said Act is repealed and the following substituted therefor:

16.—(1) Upon default of transmission by a registrant of any tax collectable by him or of any tax or penalty payable by him or upon default of payment by any purchaser of any tax payable by him under this Act,

(a) the Minister may bring an action for recovery thereof in any court of competent jurisdiction and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred, and shall be tried without a jury; or

(b) the Minister may issue a warrant and direct it to the sheriff of any county or district in which any property of the registrant or purchaser is located or situate, for the amount of the tax, interest and penalty, or any of them owing by the registrant or purchaser, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court; or

(c) the Minister or any officer authorized by him may enter upon the premises of a registrant or purchaser or any other place in Ontario where the books or records of a registrant or purchaser or any part of them are kept and make such investigation and examination as he considers necessary, and may seize any of the books and records and may by notice in writing, require that any person who may be indebted to a registrant or to a purchaser shall pay the debt to the Treasurer.

(2) A notice under clause c of subsection 1 may be served personally or by registered letter addressed to such person at the address indicated in the books or records of the registrant or purchaser and the receipt of payment of the amount of the indebtedness by
the Treasurer constitutes a good and sufficient discharge of the liability of such person to the registrant or purchaser to the extent of the amount indicated in the receipt.

(3) Any person discharging any liability to a registrant or purchaser owing taxes collectable by him or owing taxes or penalties payable by him under this Act after the service of the notice referred to in subsection 2 is personally liable to the Treasurer to the extent of the amount of the liability discharged between the person and the registrant or purchaser or to the extent of the amount of taxes collectable by the registrant and of taxes, interest and penalties payable by him or by a purchaser whichever is the lesser amount, and the Treasurer has the same remedies for the recovery of such amount from such person as he has for the recovery from the registrant of a tax collectable by him or of a tax or penalty payable by him or by a purchaser under this Act.

9. Subsection 3 of section 18 of the said Act is amended by striking out "notice of accounting" in the second line and in the sixth and seventh lines and inserting in lieu thereof in each instance "notice of assessment".

10. The said Act is further amended by adding thereto the following section:

18a.—(1) The provisions of this section apply notwithstanding any provision of this Act to the contrary.

(2) In this section, "authorized registrant" means a registrant whom the Minister authorizes in writing to receive certificates of exemption issued under this section, and no person who is not an authorized registrant shall receive or act on any such certificate of exemption.

(3) Where the Minister is satisfied that fuel to be acquired by a purchaser will be used exclusively by that purchaser in the business of farming or commercial fishing and where the Minister has determined to make a full refund of the tax imposed by this Act on fuel so used by such a purchaser, the Minister may issue to such purchaser a certificate of exemption that shall show the date when the certificate is issued, the name and address of the person to whom the certificate is issued and a number differentiating that certificate from other similar certificates, and such
certificate may contain restrictions limiting the time during which it remains valid, the use to which any fuel may be put that is purchased through the use of the certificate, and such other restrictions as the Minister considers necessary.

(4) Any purchaser to whom a certificate of exemption is issued may, by complying with the terms of the certificate and after delivering the certificate up to an authorized registrant, purchase from that authorized registrant fuel exempt from the tax otherwise payable under this Act, and such purchaser is not liable to pay the tax imposed by this Act unless he uses such fuel in a manner that is not authorized by the certificate.

(5) An authorized registrant who sells or supplies fuel to a purchaser who is acquiring such fuel pursuant to a certificate of exemption issued under this Act shall not, while the certificate remains valid, collect from such purchaser any tax on any fuel that is purchased from such authorized registrant on the authority of a certificate of exemption delivered over to him, but every authorized registrant who having received a certificate of exemption from a purchaser sells or supplies fuel on which he does not collect the tax imposed by this Act because of the purchaser's possessing a certificate of exemption shall provide to the Minister the information that an authorized registrant is required by the regulations to provide.

(6) Every authorized registrant who receives a certificate of exemption from a purchaser shall keep in his records the particulars shown on the certificate, and shall send the certificate to the Minister.

(7) Any person who knowingly contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not less than $500 and not more than $10,000.

(8) Where an authorized registrant or a purchaser holding a certificate of exemption issued under this section is found guilty of an offence under subsection 7, the Minister may cancel the authorization of such authorized registrant or revoke the certificate of such purchaser, as the case may be, and where the Minister determines that he will no longer make a full refund to a purchaser holding a certificate of exemption issued under this section, the Minister...
shall revoke the certificate and shall give notice of such revocation to the purchaser and to the authorized registrant to whom the purchaser has delivered over the certificate of exemption.

11. Section 21 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 14, section 5, is further amended by adding thereto the following clauses:

(f) exempting from a part or all of the tax imposed by this Act fuel that will be used by specified persons or in a specified manner or in a specified type of machinery or class of industry, and relieving registrants from their obligation of collecting a part or all of the tax on fuel so used;

(g) prescribing additional information to be contained in any certificate of exemption issued under this Act, and attaching additional conditions to the use of any such certificate;

(h) providing for the furnishing to the Minister by registrants of information relating to the sale or delivery by them of fuel that is exempt from the tax imposed by this Act;

(i) prescribing rates of interest payable under this Act.

12.—(1) This Act, except section 10, comes into force on the day it receives Royal Assent.

(2) Section 10 shall be deemed to have come into force on the 1st day of April, 1972.

13. This Act may be cited as The Motor Vehicle Fuel Tax Amendment Act, 1972 (No. 2).