

Revenue Act

CHAPTER 17 OF THE ACTS OF 1995-96

as amended by

1996, c. 5, ss. 24, 25; 1996, c. 21; 1996, c. 31, ss. 14, 15;
1997, c. 3, ss. 14-18; 1998, c. 13, s. 22; 1999 (2nd Sess.), c. 5, s. 9;
2001, c. 3, ss. 20-31; 2001, c. 6, s. 124; 2001, c. 48; 2002, c. 5, ss. 54, 55;
2003, c. 4, ss. 28, 29; 2004, c. 3, s. 45; 2005, c. 6, ss. 32-37;
2006, c. 2, ss. 52, 53; 2007, c. 9, s. 37; 2008, c. 2, ss. 29, 30;
2009, c. 5, s. 31; 2010, c. 25, ss. 2(1), (2); 2011, c. 8, ss. 21-25, 27(1);
2013, c. 3, s. 17; 2014, c. 34, s. 60; 2015, c. 6, s. 46; 2016, c. 2, s. 16



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 2001, c. 3, ss. 20-31; 2001, c. 6, s. 124; 2001, c. 48; 2002, c. 5, ss. 54, 55;
 2003, c. 4, ss. 28, 29; 2004, c. 3, s. 45; 2005, c. 6, ss. 32-37;
 2006, c. 2, ss. 52, 53; 2007, c. 9, s. 37; 2008, c. 2, ss. 29, 30;
 2009, c. 5, s. 31; 2010, c. 25, ss. 2(1), (2); 2011, c. 8, ss. 21-25, 27(1);
 2013, c. 3, s. 17; 2014, c. 34, s. 60; 2015, c. 6, s. 46; 2016, c. 2, s. 16

**An Act to Revise
 the Gasoline and Diesel Oil Tax,
 the Health Services Tax and
 the Tobacco Tax and to Provide for
 the More Efficient Enforcement of those
 Revenue Measures**

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Short title

1 This Act may be cited as the *Revenue Act*. 1995-96, c. 17, s. 1.

Interpretation

2 In this Act,

(a) “collector” means any person who has collected or is required to collect taxes under this Act;

(b) “Commissioner” means the Provincial Tax Commissioner appointed pursuant to the *Public Service Act*;

(c) “Her Majesty” means Her Majesty in right of the Province;

(d) “Minister” means the Minister of Finance and Treasury Board;

(e) “person” includes a firm, partnership, association of persons, estate heir, trustee, executor, administrator, agent or other legal representative of a person and a collector;

(f) “prescribed” means prescribed by the regulations. 1995-96, c. 17, s. 2; 2014, c. 34, s. 60.

Supervision of Act

3 The Minister has the general supervision and management of this Act and the regulations. 1995-96, c. 17, s. 3.

Civil servants and experts

4 (1) Such persons as are necessary for the administration of this Act and the regulations shall be appointed in accordance with the *Civil Service Act*.

(2) Notwithstanding subsection (1), the Commissioner may engage, upon such terms and conditions as the Commissioner deems fit, the services of professional and technical persons and experts to advise the Commissioner as the Commissioner deems necessary for the efficient carrying out of this Act and the regulations. 1995-96, c. 17, s. 4.

PART I

GASOLINE AND DIESEL OIL TAX

Interpretation of Part

5 In this Part,

(a) “consumer” means any person who uses or consumes or causes to be used or consumed gasoline or diesel oil in the Province by that person or by that person’s family, agent, employee, partner or in connection with any equipment owned or operated by that person or any business in which that person has an interest;

(b) “diesel oil” means the products distilled from petroleum that are capable of developing the power required for operating glow plug ignition system engines and that are commonly known as diesel oil, semi-diesel oil or fuel oil and includes every other product that fulfills [fulfills] the same purpose by the same means and for the same end, except gasoline, and includes any other products determined by the Commissioner to be diesel oil;

(c) “gasoline” means the product distilled from petroleum that by a spark plug ignition system develops the power required for operating internal combustion engines, and also means every other product that fulfills [fulfills] the same purpose by the same means and for the same end, except diesel oil, and includes any other product determined by the Commissioner to be gasoline;

(d) “purchaser” means any person who acquires gasoline or diesel oil in the Province for that person, that person’s family, agent, employee, partner or in connection with any equipment owned or operated by that person or any business in which that person has an interest;

(e) “tax” means a tax imposed pursuant to this Part and includes all penalties and interest that are, may be or may have been added to a tax pursuant to this Part, and deposits made or required to be made on account of tax liability under this Part. 1995-96, c. 17, s. 5.

Tax on gasoline

6 (1) Every purchaser shall pay to Her Majesty a tax at the rate of thirteen and one-half cents per litre, or such other rate as prescribed, on all gasoline purchased by or delivered to such purchaser.

(1A) Notwithstanding subsection (1), every purchaser shall pay to Her Majesty a tax at the rate of seven cents per litre, or such other rate as prescribed, on all propane fuel purchased by or delivered to such purchaser.

(2) Every consumer shall pay to Her Majesty a tax at the same rate on all gasoline used or consumed by the consumer within the Province and in respect of which the tax has not been paid.

(3) The tax shall be paid to the Minister or an agent of Her Majesty at the time and in the manner prescribed. 1995-96, c. 17, s. 6; 1996, c. 5, s. 24.

Prohibition

7 Subject to the regulations, no person shall

- (a) sell or deliver gasoline to any person unless the tax is paid; or
- (b) use or consume gasoline unless the tax is paid. 1995-96, c. 17,

s. 7.

Tax on diesel oil

8 (1) Every purchaser shall pay to Her Majesty a tax at the rate of fifteen and four-tenths cents per litre, or such other rate as prescribed, on all diesel oil purchased by or delivered to such purchaser.

(2) Every consumer shall pay to Her Majesty tax at the same rate on all diesel oil used or consumed by the consumer within the Province and in respect of which the tax has not been paid.

(3) The tax shall be paid to the Minister or an agent of Her Majesty at the time and in the manner prescribed by the regulations. 1995-96, c. 17, s. 8.

Prohibition

9 Subject to the regulations, no person shall

- (a) sell or deliver diesel oil to any person unless the tax is paid; or
- (b) use or consume diesel oil unless the tax is paid. 1995-96, c. 17,

s. 9.

Annual report on highway construction

10 The Minister of Transportation and Public Works shall file an annual report with the House of Assembly respecting the expenditures of the Province on the construction of all Provincial highways. 2002, c. 5, s. 54.

Fuel licence or permit

11 No person shall operate or cause to be operated a commercial vehicle in the Province unless the person has been granted, upon application in the form required by the Commissioner, a fuel licence or a single-trip fuel permit and such licence or permit is in force at the time. 1995-96, c. 17, s. 11.

Regulations

12 (1) For the purpose of carrying into effect this Part according to its true intent and of supplying any deficiency therein, and for the purpose of relaxing the strictness of the law relative to the incidence or the collection of the tax thereunder, in cases where, without relaxation, great public inconvenience or great hardship or injustice to persons or individuals could not be avoided, the Governor in Council may make such regulations as the Governor in Council deems necessary or advisable.

(2) Without restricting the generality of subsection (1), the Governor in Council may make regulations

- (a) exempting any consumer or purchaser or class of consumers or purchasers from payment of the tax pursuant to this Part or any portion thereof and prescribing the methods by which any such consumer or purchaser or class of consumers or purchasers may obtain such exemption;

(b) providing for the marking or dyeing of gasoline, diesel oil, furnace oil or stove oil, or all of them, and regulating or prohibiting, or both, the dealing with, possession, handling, sale, purchase, use and consumption of gasoline, diesel oil, furnace oil or stove oil so marked or dyed;

(c) prohibiting the sale, purchase, use, consumption, transportation, delivery, storage, manufacture or importation of gasoline or diesel oil or any class, type or grade of gasoline or diesel oil without a permit;

(d) defining any word or expression used but not defined in this Part;

(e) respecting any matter the Governor in Council deems necessary or advisable to carry out effectively the intent and purpose of this Part.

(3) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*, 1995-96, c. 17, s. 12.

PART II

HEALTH SERVICES TAX

Interpretation of Part

13 In this Part,

(a) “computer software” means packaged or pre-written computer software that is designed for general application, including the right to use the software, and includes modifications to the software and modifications of the software, whether the software is delivered by electronic, disk, tape or other means, but does not include

(i) modifications to or of software solely to meet the requirements of a person if

(A) the purchase price or lease price, as applicable, of the modifications is separate from that of the unmodified software, and

(B) the purchase price or lease price of the modifications is greater than the purchase price or lease price, as applicable, of the software in its unmodified form,

(ii) software modified solely to meet the requirements of a person if

(A) the purchase price or lease price as applicable is for the software as modified, and

- (B) the purchase price or lease price is greater than double what it would have been in its unmodified form, or
- (iii) custom software, being
 - (A) software developed solely to meet the requirements of a person, and
 - (B) modifications to software referred to in subclause (i) when performed for the person for whom the software was originally developed,

unless the software is a copy of software referred to in subclause (i), (ii) or (iii), or the right to use such software, that is sold or leased to someone other than the person for whom the software was originally modified or developed;

(b) “consumption” or “use” includes the provision by way of promotional distribution of any tangible personal property and the incorporation into any structure, building or fixture of tangible personal property including those manufactured by the consumer or further processed or otherwise improved by the consumer;

(c) “graphic design” includes, but is not limited to,

- (i) layout,
- (ii) artwork,
- (iii) illustration,
- (iv) type setting,
- (v) drawing, and
- (vi) design;

(d) “inspector” means a person appointed as an inspector pursuant to this Part;

(e) “lease” includes a contract for possession and profit of tangible personal property for consideration whether the consideration is expressed as rental, licence fee, royalty or other consideration, but does not include a conditional sales contract;

(f) “manufacture or production” means the transformation or conversion of raw or prepared material into a different state or form from that in which it originally existed as raw or prepared material, but does not include production or processing;

(g) “municipality” means a municipality as defined in the *Municipal Affairs Act*;

(h) “non-renewable resource” means any naturally occurring inorganic substance, and includes coal, bituminous shales and other stratified deposits from which oil can be extracted by destructive distillation and includes petroleum;

(i) “offshore area” means Sable Island and the submarine area of the Province that is between the inner limits and the outer limits described in Schedule I, as amended from time to time, of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*;

(j) “petroleum” means, in addition to its ordinary meaning, any mineral oil or relative hydrocarbon and any natural gas, including coal gas, existing in its natural condition *in strata*;

(k) “production or processing” means exploration for, extraction of, or transformation or conversion of any non-renewable resource to the extent and in the manner determined by the regulations;

(l) “promotional distribution” means the provision by any person to others of any tangible personal property that is, in the opinion of the Minister, provided for any one or more of the following:

(i) to describe or to promote or encourage the purchase, consumption or use of any tangible personal property,

(ii) to furnish to any person any directory, listing or compilation of persons, places, prices, services, commodities, places of business or users of any service, or

(iii) for any function, use or purpose prescribed by regulation to be promotional distribution;

(m) “promotional distributor” means any person who is a resident of, or carries on business in, the Province and who, by way of promotional distribution, provides or causes to be provided to any person in the Province any tangible personal property the fair value of which is not specifically charged to, and required to be paid by, the person to whom such tangible personal property is provided;

(n) “purchaser” means any person who acquires tangible personal property at a sale

(i) for the person’s own consumption or use,

(ii) for the consumption or use of other persons at that person’s expense,

(iii) on behalf of or agent for a principal who desires such property for consumption or use by such principal or other persons at the principal’s expense,

and includes a user and a promotional distributor to the extent that the fair value of any tangible personal property provided by way of promotional distribution exceeds any payments specifically made by the person to whom such property is so provided;

(o) “repair services” means the installation, adjustment, repair, restoration, reconditioning, refinishing or maintenance of tangible personal property that is taxable pursuant to this Part and includes any contract for

installation, adjustment, repair, restoration, reconditioning, refinishing or maintenance of such tangible personal property, but does not include

- (i) the installation of tangible personal property that becomes real property,
 - (ii) motor vehicle towing or emergency battery boosting,
 - (iii) diagnosis, a safety inspection or an estimate when no installation, adjustment, repair, restoration, reconditioning, refinishing or maintenance is done at the same time,
 - (iv) the installation, adjustment, repair, restoration, reconditioning, refinishing or maintenance of tangible personal property for resale or lease by a vendor holding a registration certificate,
 - (v) repair services rendered to a person's own tangible personal property by that person or that person's employees,
 - (vi) repair services exempted by the regulations,
 - (vii) repair services with respect to tangible personal property for which a rebate of tax is provided pursuant to this Part or the regulations;
- (p) "retail sale" means a sale to a purchaser for the purpose of consumption or use and not for resale;
- (q) "sale" includes
- (i) a conditional sale,
 - (ii) hire purchase,
 - (iii) a sale on credit or where the price is payable by instalments,
 - (iv) an exchange,
 - (v) barter,
 - (vi) a lease,
 - (vii) a rental,
 - (viii) any contract whereby at a price or other consideration a person delivers to another tangible personal property,
 - (ix) the provision by way of promotional distribution of any tangible personal property, and
 - (x) a transfer of title or possession, conditional or otherwise;
- (r) "sale in bulk" means a sale
- (i) outside of the usual course of business, of substantially an entire stock, or
 - (ii) of an interest in a business;

(s) “sale price” or “purchase price” or “fair value” includes a price in money and also the value of services rendered, the actual value of the thing exchanged and other considerations accepted by the seller or person for whom the property passes as price or on account of the price of the thing covered by the contract, sale or exchange, and includes

(i) customs, excise and sales tax imposed by or pursuant to an enactment of the Parliament of Canada,

(ii) a tax imposed pursuant to Part III,

(iii) charges for transportation, unless the total charges for transportation of the thing sold relate solely to transportation within the Province and are shown separately on the invoice or in the contract with the purchaser,

(iv) in relation to a telecommunication service, the total consideration paid by the purchaser for the provision of the service and for each period in respect of which an invoice for or in relation to the service is issued and includes, but is not limited to,

(A) sign-up charges,

(B) access charges,

(C) air time charges,

(D) usage charges,

(E) services charges,

(F) in the case of a dedicated telecommunication service, all charges for telecommunications provided as part of the service,

(G) in the case of any other telecommunication service, all such charges in respect of each telecommunication that meets at least two of the following criteria:

(I) the telecommunication originates in the Province,

(II) the telecommunication is received in the Province,

(III) the charge for the telecommunication is invoiced with respect to a transmitter that is ordinarily located in the Province,

(H) electronic access to information,

(I) electronic storage of information,

(J) provision of electronic connections to information or communication services, but not including services provided by a person or their employees using that person's equipment, and

- (v) the value of tangible personal property manufactured, processed or produced by a person and consumed by that person as determined in accordance with rules prescribed in the regulations;
- (t) “sign” includes, but is not limited to, a board or notice bearing any information, advertising, warning, commands or identification, but does not include signs that form part of the framework of a building;
- (u) “tangible personal property” means personal property that is the subject of ownership not coming under the denomination of real estate and that can be seen, weighed, measured, felt or touched or is in any way perceptible to the senses and includes, but is not limited to,
 - (i) electricity,
 - (ii) telecommunications services,
 - (iii) transient accommodation,
 - (iv) repair services,
 - (v) computer software,
 - (vi) signs,
 - (vii) any property referred to in Schedule II of the regulations made pursuant to the *Income Tax Act* (Canada) as prescribed, and
 - (viii) a graphic design service when used to produce other tangible personal property;
- (v) “tax” means a tax imposed pursuant to this Part and includes all penalties and interest that are, may be or may have been added to a tax pursuant to this Part, and deposits made or required to be made on account of tax liability pursuant to this Part;
- (w) “telecommunication service” means a message, music or sound transmitted by means of electronic waves or by any means whatsoever in the form of words, writing, images, sound, music symbols or other indications, and includes, but is not limited to,
 - (i) the provision of telecommunications originating and terminating within the Province,
 - (ii) the provision of telecommunications originating within and terminating outside the Province or originating outside the Province and terminating within the Province, where the charges for the facilities are charged to and payable by a person residing in the Province,
 - (iii) local telephone service,
 - (iv) long distance telephone service, and
 - (v) other services as prescribed by regulation;

(x) “transfer of possession”, “lease” or “rental” includes any transactions held by the Commissioner to be in lieu of a transfer of title, exchange or barter;

(y) “transient accommodation” means the provision of lodging in hotels, motels, hostels, apartment houses, lodging houses, boarding houses, clubs and other similar accommodation, whether or not a membership is required for the lodging, but does not include

(i) lodging let for a continuous period of thirty days or more,

(ii) lodging in a lodging house, rooming house or boarding house if such house has accommodation for fewer than four tenants,

(iii) lodging supplied to students, patients, residents or employees in educational institutions, hospitals, nursing homes or homes for the aged,

(iv) lodging supplied by religious or charitable organizations at summer camps and similar places,

(v) tent or trailer sites supplied by a camp or trailer park,

(vi) lodging where the charge for the lodging is twenty dollars or less per day, or

(vii) rooms situated in a hotel or other lodging place that do not contain beds and that are used for displaying merchandise or holding meetings, dinners, receptions or entertainments;

(z) “user” or “consumer” means any person who utilizes any tangible personal property for that person’s own consumption or use, or for the consumption or use of other persons at that person’s expense, or on behalf of, or as the agent for, a principal who desires to acquire such property for the consumption or use by such principal or other persons at the principal’s expense and includes any person who consumes tangible personal property acquired by that person for resale, or who consumes tangible personal property manufactured, processed or purchased by that person;

(aa) “vendor” means any person who, in the ordinary course of that person’s business, sells tangible personal property to a purchaser at a retail sale. 1995-96, c. 17, s. 13.

Application to offshore

14 This Part does not apply to the offshore area, except in respect of

(a) tangible personal property purchased on

(i) a regularly scheduled ferry for use by the general public, or

(ii) vessels engaged in the transportation of persons for profit or with a view to profit,

where the voyage originates or terminates inside the Province, or during a temporary stopover in the Province by a ferry or vessel that originates or terminates its voyage outside of the Province;

(b) tangible personal property purchased on docks, wharfs or other structures that are permanently attached to land

(i) above the low water mark of the Province, and

(ii) outside the offshore area; or

(c) tangible personal property purchased for use in respect of submarine mines or mine workings accessible from outside the offshore area. 1995-96, c. 17, s. 14.

Tax on purchases

15 (1) Every purchaser shall pay to Her Majesty a tax at the rate of

(a) three per cent of the purchase price of electricity; and

(b) eleven per cent of the purchase price of all other tangible personal property purchased other than that referred to in clause (a).

(2) For the purpose of this Part, every user and consumer is deemed to have purchased the tangible personal property from a vendor at a sale in the Province, and such property is deemed to have passed at the sale.

(3) Subject to subsection (4), where tangible personal property has been purchased, whether before or after May 29, 1987, and at the time of the purchase is exempt from the tax imposed pursuant to this Part or is taxed at a lower rate of tax than that imposed pursuant to clause (1)(b) and the tangible personal property is subsequently put to a taxable use within four years of the purchase, the purchaser shall pay

(a) the tax at the rate then in force, in accordance with the use to which the property is put, on the fair value of the property at the time of the change of use,

less

(b) the tax, if any, paid by that purchaser pursuant to this Part in respect of that property.

(4) Where the Commissioner deems fit, the Commissioner may determine the fair value of any tangible personal property for the purpose of taxation pursuant to this Part.

(5) The Commissioner shall give notice, in writing, of the determination made pursuant to subsection (4) to the owner of the tangible personal property either by mail or personal service.

(6) Where a used vehicle, as defined in the regulations, is the subject of a sale between individuals who are not vendors of used vehicles, the purchase price on which tax is required to be paid pursuant to this Part is the purchase price determined by the valuation system prescribed by regulation.

(7) Every operator of a commercial flea market who leases or rents or otherwise provides a table, selling space or other facility to a person for the purpose of conducting sales of tangible personal property subject to tax under this Part at the flea market shall collect and remit to the Minister an amount equal to fifty per cent of the fee charged for each table, selling space or other facility, at the time and in the manner prescribed by regulation. 1995-96, c. 17, s. 15.

Refund of tax

16 Where a person sells any tangible personal property at a retail sale to a person who alleges that that person is not purchasing it for consumption or use, the person who sells the tangible personal property shall nevertheless require such person to pay the tax, but such payment shall be refunded by the Minister on receipt of satisfactory evidence that the tax was wrongly paid. 1995-96, c. 17, s. 16.

Application for refund

17 (1) Where a purchaser considers that the purchaser has wrongly paid tax pursuant to this Part, the purchaser may, within four years of the date of purchase, apply to the Commissioner for a refund of the tax paid.

(2) A purchaser is not entitled to a refund of tax wrongly paid except in accordance with subsection (1).

(3) This Section applies to a purchaser whether the tax was paid before or after the coming into force of this Section.

(4) Nothing in this Section affects the rights acquired by a purchaser from a judgment or order of a court given or made in litigation or proceedings commenced before June 3, 1992. 1995-96, c. 17, s. 17.

Duties of certain persons

18 (1) Every person who

- (a) brings tangible personal property into the Province; or
- (b) receives delivery in the Province of tangible personal property acquired by that person for value

(i) for the person's own consumption or use in the Province, or

(ii) on behalf of, or as agent for, a principal who desires to acquire such property for the consumption or use in the Province by the principal or other persons at the principal's expense,

shall immediately

- (c) report the matter in writing to the Commissioner;
- (d) supply to the Commissioner the invoice and all other pertinent information as required by the Commissioner in respect of the consumption or use of such property; and
- (e) pay to Her Majesty the same tax in respect of the consumption or use of such property as would have been payable if the property had been purchased at a retail sale in the Province.

(2) *repealed 1997, c. 3, s. 14.*

1995-96, c. 17, s. 18; 1997, c. 3, s. 14.

Valuation

19 (1) Where the Commissioner deems fit, the Commissioner may make a valuation of any tangible personal property that passes at any sale, and thereupon the sale price for the purpose of taxation under this Part shall be as determined by the Commissioner.

(2) The Commissioner shall give notice, in writing, of the Commissioner's valuation to the seller and purchaser, either by mail or personal service. 1995-96, c. 17, s. 19.

Calculation of tax

20 The tax imposed by this Part shall be calculated separately on every purchase, and shall be computed to the nearest cent, and one-half cent shall be counted as one cent, but where, on the same occasion or as part of one transaction, several items of tangible personal property are purchased, the total of the purchases is deemed one purchase for the purpose of this Part, except that where on the same occasion or as part of one transaction more than one bottle or can of liquor is purchased from The Nova Scotia Liquor Commission the tax imposed by this Part shall be calculated separately on the purchase price of each bottle or can of liquor. 1995-96, c. 17, s. 20.

Trades

21 Where tangible personal property is accepted in trade from the purchaser at the time of sale by a vendor on account of the price of the tangible personal property sold the purchaser shall pay the tax on the difference between the purchase price of the property sold and the credit allowed for the tangible personal property accepted in trade on account of the purchase price. 1995-96, c. 17, s. 21; 1997, c. 3, s. 15.

Registration certificate

22 (1) Subject to the regulations, no vendor shall sell any tangible personal property in the Province at a retail sale unless the vendor has been granted,

upon application in the form required by the Commissioner, a registration certificate to act as a collector and such certificate is in force at the time of sale.

(2) In a prosecution brought against a vendor who is required to register under this Act, the vendor's application form is *prima facie* proof that the person charged is a vendor registered under this Act, and the vendor's return form is *prima facie* proof that the vendor collected tax. 1995-96, c. 17, s. 22.

Restriction on advertising for sale

23 (1) A person in another province of Canada shall not advertise for sale tangible personal property in the Province by means of a telecommunication service unless that person has been granted on that person's application, in the form required by the Commissioner, a registration certificate pursuant to this Part and the certificate is in force at the time of advertising.

(2) The registration certificate referred to in subsection (1) shall be issued by the Commissioner and the certificate is not transferable.

(3) The registrant shall forward a copy of the certificate to each person who operates in the Province a telecommunication service on which the registrant advertises.

(4) Where the Commissioner considers that there is a significant risk that an applicant for registration may not collect or remit taxes pursuant to this Part, the Commissioner may, as a condition of registration, require the applicant to deposit a bond by way of cash or other security and, where the Commissioner requires that a bond be deposited, Section 82 applies.

(5) The Commissioner may cancel or suspend a registration certificate granted to a person pursuant to this Section or refuse to grant a registration certificate to a person who

- (a) has committed an offence contrary to this Part or the regulations;
- (b) has failed to include or remit, when required, tax imposed pursuant to this Part; or
- (c) has failed to post the security required pursuant to Section 82.

(6) A registrant is deemed to be an agent for the Minister and as such shall collect and remit the tax imposed pursuant to Section 15 in respect of tangible personal property that the registrant sends into the Province.

(7) A registrant is deemed to be a vendor for the purpose of applying the provisions of this Act and the regulations respecting the administration and enforcement of this Act and the collection and remission of taxes pursuant to this Act.

(8) A person who operates a television or cable television service shall not carry advertising, as referred to in subsection (1), of a person required to be registered pursuant to this Section unless that person is registered and the operator has a copy of a registration certificate that is in force during the time of advertising.

(9) A person who violates this Section is guilty of an offence and is liable, on summary conviction, to a fine of not less than ten thousand dollars and not more than one hundred thousand dollars and, in default of payment, to imprisonment for a term not exceeding two years and, in addition, is liable to pay the amount of the tax that is owing including any arrears, penalties and interest. 1995-96, c. 17, s. 23.

Non-resident contractors

24 (1) In this Section, “non-resident contractor” does not include a company that has been incorporated pursuant to the laws of the Province for a period of at least twelve months prior to the signing date of the contract.

(2) Where a non-resident contractor enters into a contract with a person pursuant to which, or in the carrying out of which, tangible personal property will be consumed or used in the Province, the non-resident contractor shall deposit with the Minister a sum equivalent to five per cent of the total amount to be paid under the contract, or shall furnish the Minister with a guarantee bond satisfactory to the Commissioner in a sum equivalent to five per cent of such total amount, to require payment of the tax payable in respect of tangible personal property consumed or used pursuant to or in the carrying out of the contract and shall obtain a certificate, in duplicate, from the Commissioner that the requirements of this subsection have been met.

(3) Any person dealing with a non-resident contractor without first obtaining the duplicate copy of the certificate from the Commissioner as required pursuant to subsection (2) shall deduct five per cent of all amounts payable to the non-resident contractor and pay that amount over to the Minister on behalf of or as agent for the non-resident contractor, or shall furnish the Minister with a guarantee bond satisfactory to the Commissioner in a sum equivalent to five per cent of such total amount to secure payment of the tax payable in respect of tangible personal property consumed or used pursuant to or in the carrying out of the contract.

(4) A person who deals with a non-resident contractor and who fails to comply with subsection (3) is personally liable for payment of all amounts not paid over to the Minister as required by subsection (3) or such other amount as is established to the satisfaction of the Commissioner to be the tax imposed by this Part in respect of tangible personal property consumed or used pursuant to or in the carrying out of the contract. 1995-96, c. 17, s. 24.

Exempt property

25 (1) The following classes of tangible personal property are exempt from the tax imposed by this Part:

- (a) food and food products for human consumption off the premises where purchased other than candies and similar confections, soft drinks, snack foods and prepared meals;
- (b) gasoline, coal, coke, fuel oil, natural and propane gas, and firewood for all purposes;
- (c) kerosene used for domestic purposes;
- (d) farm implements, farm machinery, horse-drawn vehicles, farm tractors, and parts for the same, live animals, live birds, live fish, disinfectants, insecticides, binder twine, metal wire, or netting for fences, and harnesses for horses, materials and equipment required for irrigation purposes and drainage tile, when purchased by a farmer for farm use;
- (e) boats, fishing nets and other apparatus ordinarily utilized in catching fish, when purchased by a commercial fisherman for use in the fishing trade;
- (f) tangible personal property purchased by a volunteer fire department, where the purchase is made on a purchase order bearing the certificate of an official of the fire department that the property is being purchased for the sole use of and with the funds of the fire department and is not being purchased for resale;
- (g) smoke detection and carbon monoxide detection equipment;
- (h) portable fire extinguishers and repairs thereto;
- (i) generators purchased for use in the logging industry where power is not available from a public utility;
- (j) natural water, including ice and steam, natural soil, sand, gravel and unfinished stone;
- (k) artificial limbs, orthopaedic appliances, equipment designed solely for the use of the physically challenged, hearing aids, dentures, dental and optical appliances when purchased pursuant to a prescription of a dentist, optometrist or medical practitioner, toothpaste, baby's needs, and personal hygiene supplies;
- (l) medicaments, whether purchased for use or consumption for humans or animals;
- (m) tangible personal property consumed or used in the production or processing of non-renewable resources;
- (n) transient accommodation purchased by a person attending a convention of twenty-five or more registered participants;
- (o) tangible personal property and parts thereof that are to be used or that are used in the manufacture or production of goods for sale;

(p) tangible personal property purchased by manufacturers, producers or processors of goods, or such other persons engaged in other commercial activities as are designated by the Minister, for use by them in the detection, measurement, prevention, treatment, reduction or removal of pollutants to water, soil or air;

(q) materials consumed or expended in the manufacture or production of goods for sale;

(r) goods purchased for the purpose of being processed, fabricated or manufactured into, or incorporated into, goods for the purpose of sale;

(s) goods purchased for the purpose of becoming attached to the goods referred to in clause (r) during the processing, fabrication or manufacture of goods for the purpose of sale;

(t) machinery and equipment, and parts thereof, that are to be used or that are used in research and development;

(u) fodder, grain, mill and other agricultural feeds, seeds, shrubs, plants, fertilizers, fungicides, soil and soil conditioners and weed control chemicals, when purchased by a farmer for farm use;

(v) fruit and vegetable producing plants;

(w) goods to be shipped by the seller for delivery outside the Province and ship stores delivered to a commercial vessel or boat that normally operates in extra-territorial waters;

(x) vessels of more than five hundred tonnes gross, and repairs to such vessels;

(y) vessels that do not exceed five hundred tonnes gross and that are operated for commercial purposes, as defined by the regulations, and repairs to such vessels;

(z) tangible personal property purchased at a purchase price of twenty-five cents or less;

(aa) prepared meals when purchased at a purchase price of two dollars or less;

(ab) newspapers, however purchased, magazines and periodicals when purchased by subscription for delivery by mail;

(ac) tangible personal property purchased by Her Majesty in right of the Province, The Nova Scotia Liquor Commission or any other agency of the Province designated by the Minister;

(ad) tangible personal property purchased for a hospital as defined in the *Hospitals Act* if such property is purchased in good faith for the exclusive use of the hospital and not for resale;

(ae) tangible personal property purchased by a municipality or an agency thereof

(i) if the purchase is made on a purchase order bearing the certificate of an official of the municipality or agency thereof certifying that the goods are for the sole use of the municipality or agency, are being purchased with funds of the municipality or the agency and are not for resale, or

(ii) generating or distributing electrical energy and purchased by that municipality or agency for the better operation, administration, generation or distribution by that municipality or agency of electrical energy;

(af) aircraft, normally engaged in foreign or interprovincial public carriage of passengers or freight for gain, and repairs thereto;

(ag) school textbooks;

(ah) funeral caskets for the interment of human remains;

(ai) school supplies;

(aj) clothing and repairs thereto when purchased at a purchase price of one hundred dollars or less per article unless otherwise provided by the regulations;

(ak) footwear and repairs thereto when purchased at a purchase price of one hundred dollars or less per pair unless otherwise provided by the regulations;

(al) books that are printed and bound, and that are solely for educational, technical, cultural or literary purposes, but not including directories, price lists, timetables, rate books, catalogues, periodic reports, fashion books, albums, magazines, periodicals, books for writing or drawing upon, or any books of the same general classes;

(am) settler's effects as defined in the regulations;

(an) electricity produced or manufactured from excess material and energy of an industrial process where the electricity is utilized by a corporation operating the process or a corporation that is, according to the regulations, related to it, for its own consumption or use, and machinery used to produce or manufacture such electricity;

(ao) safety equipment as defined by the regulations;

(ap) telecommunication services as prescribed by the regulations;

(aq) tobacco and tobacco products; and

(ar) tangible personal property purchased by ambassadors and consuls.

(2) The exemptions referred to in subsection (1) may be subject to criteria prescribed by regulation.

(3) For the purpose of clause (1)(ae), and without restricting the generality of subclauses (1)(ae)(i) and (ii), the Minister may declare any organization to be an agency of a municipality that out of funds obtained by assessment, contribution or fundraising enterprises performs a function that a municipality has power to assess for or perform.

(4) A person in the Province to whom any tangible personal property is provided by way of promotional distribution is, with respect to the consumption or use of that tangible personal property, exempt from the tax imposed by this Part on the amount by which the fair value of the property exceeds any payment that is made by the person solely and specifically for the receipt by the person of the tangible personal property so provided and that is not referable to the purchase, consumption or use by the person of any other property, right or service. 1995-96, c. 17, s. 25.

Restriction on advertising and statements

26 No person who sells tangible personal property shall advertise or hold out or state to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed pursuant to this Part will be assumed or absorbed by that person or that it will not be considered as an element in the price to the purchaser or user or, if added, that it or any part thereof will be refunded. 1995-96, c. 17, s. 26.

Regulations

27 (1) For the purpose of carrying into effect this Part according to its true intent and of supplying any deficiency therein, and for the purpose of relaxing the strictness of the law relative to the incidence or the collection of the tax thereunder, in cases where, without relaxation, great public inconvenience or great hardship or injustice to persons or individuals could not be avoided, the Governor in Council may make such regulations as are considered necessary or advisable.

(2) Without limiting the generality of subsection (1), the Governor in Council may make regulations

(a) to determine the extent and manner that exploration for, extraction of, or transformation or conversion of any non-renewable resource is production or processing;

(b) providing for relaxing the strictness of the Part in cases involving the purchase of tangible personal property at sales conducted by religious or charitable organizations;

(c) prescribing criteria for the purpose of exemptions pursuant to subsection 25(1);

(d) prescribing the time and manner in which an operator of a commercial flea market shall remit to the Minister the amounts required pursuant to this Part;

(e) prescribing telecommunication services that are exempt from the tax imposed by this Part;

(f) prescribing a method for determining the purchase price of a used vehicle as defined in the regulations;

(g) defining any word or expression used but not defined in this Part;

(h) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Part.

(3) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*. 1995-96, c. 17, s. 27.

Copies of regulations for federal ministers

28 (1) Subject to subsection (2), the Minister shall concurrently furnish the Minister of National Revenue for Canada and the Minister of Finance for Canada with a copy of every regulation proposed to be made pursuant to Section 27 on the recommendation of the Minister at least thirty days before the regulation is made unless the Minister and the Minister of National Revenue for Canada or the Minister and the Minister of Finance for Canada, as the case may be, otherwise agree.

(2) Where a copy of a proposed regulation has been furnished in accordance with subsection (1) and it is proposed to make the regulation with amendments from the version so furnished, that subsection does not apply in respect of the proposed regulation as so amended, but the Minister shall furnish the Minister of National Revenue for Canada or the Minister of Finance for Canada, or both, as the case may be, with a copy of the proposed regulation as amended, unless the Minister and the Minister of National Revenue for Canada or the Minister and the Minister of Finance for Canada, as the case may be, otherwise agree. 1995-96, c. 17, s. 28.

Certain provisions cease to have effect

29 Clause 13(i) and Sections 14 and 28 cease to have effect on such day as the Governor in Council orders and declares by proclamation. 1995-96, c. 17, s. 29.

Use of proceeds of tax

30 The proceeds of any tax levied pursuant to this Part shall be used to defray the costs of providing, operating and maintaining hospitals, hospital facilities, hospital services, nurses' homes, medical services and related health services. 1995-96, c. 17, s. 30.

Health Services Reserve Account

31 (1) The Health Services Reserve Account is continued.

(2) The Minister may, from time to time and in any fiscal year, pay into the Health Services Reserve Account out of the Consolidated Fund of the

Province such sum or sums as the Minister deems necessary to establish a reserve for the purpose of

- (a) providing the cost of the insured services under the *Health Services and Insurance Act*;
- (b) hospital equipment and construction grants; and
- (c) the cost of the administration of this Part,

and may, for those purposes, pay out of the Health Services Reserve Account such sum or sums as may be necessary to achieve those purposes and may, in addition thereto,

- (d) make loans to hospitals in such amount and upon such terms and conditions as are approved from time to time by the Governor in Council;

- (e) defray the cost of purchasing or acquiring control of a hospital as defined by the *Hospitals Act*;

- (f) invest any money in the Health Services Reserve Account in securities authorized for the investment of trust funds, and from time to time sell any such securities and purchase other securities authorized for the investment of trust funds, or pay the proceeds of the sale of any such securities into the Health Services Reserve Account. 1995-96, c. 17, s. 31.

PART IIA

TAX ON MOTOR VEHICLES AND OTHER DESIGNATED TANGIBLE PERSONAL PROPERTY

Application of Part

31A This Part applies as determined by the regulations. 1996, c. 31, s. 14.

Tax

31B Every purchaser of a motor vehicle or other designated tangible personal property where the purchase is not a taxable supply made by a registrant pursuant to Part IX of the *Excise Tax Act* (Canada) shall pay to Her Majesty in right of the Province a tax on the purchase price in an amount equal to the tax that would be paid or payable under subsections 165(1) and (2) of the *Excise Tax Act* (Canada) if the purchase was a taxable supply made by a registrant pursuant to Part IX of the *Excise Tax Act* (Canada). 2008, c. 2, s. 29.

Regulations

31C (1) The Governor in Council may make regulations

- (a) respecting the tax imposed by his Part including, without limiting the generality of the foregoing, the rebating of the tax;

- (b) applying this Part and designating provisions of Part II of this Act as applying to this Part *mutatis mutandis*;
- (c) designating tangible personal property for the purpose of this Part;
- (d) defining any word or expression used in this Part and not defined herein;
- (e) respecting any matter necessary or advisable to carry out effectively the intent of this Part.

(2) The exercise of the authority contained in this Section is regulations within the meaning of the *Regulations Act*. 1996, c. 31, s. 14.

PART III

TOBACCO TAX

Interpretation of Part

32 In this Part,

- (a) “consumer” means a person who purchases tobacco from a vendor at a retail sale
 - (i) for that person’s own consumption or for the consumption of other persons at that person’s expense, or
 - (ii) as agent for a principal who desires to acquire tobacco for consumption by the principal or other persons at the expense of the principal;
- (b) “offshore area” means Sable Island and the submarine area of the Province that is between the inner limits and the outer limits described in Schedule I, as amended from time to time, of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*;
- (c) “permit” means, unless the context otherwise requires, a wholesale vendor’s permit or a retail vendor’s permit issued pursuant to this Part;
- (d) “retail sale” means a sale to a consumer for purposes of consumption and not for resale;
- (e) “retail vendor” means a person who sells tobacco in the Province to a consumer at a retail sale, whether or not that vendor holds a retail vendor’s permit;
- (f) “sale price”, “purchase price” or “fair value” includes a price in money and also the value of services rendered, the actual value of the thing exchanged and other considerations accepted by the seller or person from whom the property passes as price or on account of the price of the thing covered by the contract, sale or exchange, and includes

- (i) customs duties and excise tax imposed by or pursuant to an enactment of the Parliament of Canada and including an amount equal to the tax that would be paid or payable under subsection 165(1) of the *Excise Tax Act* (Canada) if that tax were calculated only on the preceding elements of this clause, determined without reference to the input tax credit provided for in that Part that would relate to the thing covered by the contract of sale, and
- (ii) charges for transportation, unless the total charges for transportation of the thing sold relate solely to transportation within the Province and are shown separately on the invoice or in the contract with the purchaser;
- (g) “tax” means a tax imposed pursuant to this Part and includes all penalties and interest that are, may be or may have been added to a tax pursuant to this Part and includes deposits made or required to be made on account of tax liability under this Part;
- (h) “tobacco” means tobacco in any form, whether consumed by smoking, by chewing or as snuff;
- (i) “vendor” means a retail vendor or a wholesale vendor;
- (j) “wholesale vendor” means a person who sells tobacco in the Province for the purpose of resale. 1995-96, c. 17, s. 32; 1997, c. 3, s. 16; 2006, c. 2, s. 53; 2008, c. 2, s. 30.

Application to offshore

- 33** This Part does not apply to the offshore area, except in respect of
- (a) tobacco purchased on
 - (i) a regularly scheduled ferry for use by the general public, or
 - (ii) vessels engaged in the transportation of persons for profit or with a view to profit,
 where the voyage originates or terminates inside the Province, or during a temporary stopover in the Province by a ferry or vessel that originates or terminates its voyage outside of the Province;
 - (b) tobacco purchased on docks, wharfs or other structures that are permanently attached to land
 - (i) above the low-water mark of the Province, and
 - (ii) outside the offshore area; or
 - (c) tobacco purchased for use in respect of submarine mines or mine workings accessible from outside the offshore area. 1995-96, c. 17, s. 33.

Tax on tobacco

- 34 (1)** Every consumer shall pay to Her Majesty a tax at the rate of

- (a) twenty-seven and fifty-two one-hundredths cents per cigarette for tobacco purchased in the form of a cigarette;
- (b) twenty-six cents per gram of tobacco for fine-cut tobacco;
- (c) twenty-seven and fifty-two one-hundredths cents per stick of tobacco for tobacco in the form of pre-proportioned tobacco sticks;
- (d) sixty per cent of the manufacturer's or importer's suggested retail selling price of tobacco in the form of cigars; and
- (e) eighteen and fifty-two one-hundredths cents per gram of tobacco in any other form.

(2) For the purpose of this Part, every consumer of tobacco is deemed to have purchased the tobacco from a vendor at a retail sale in the Province and the tobacco is deemed to have passed at the sale. 1995-96, c. 17, s. 34; 1996, c. 21, s. 1; 1997, c. 3, s. 17; 1998, c. 13, s. 22; 1999 (2nd Sess.), c. 5, s. 9; 2001, c. 3, s. 20; 2001, c. 48, s. 1; 2002, c. 5, s. 55; 2003, c. 4, s. 28; 2004, c. 3, s. 45; 2007, c. 9, s. 37; 2009, c. 5, s. 31; 2013, c. 3, s. 17; 2015, c. 6, s. 46; 2016, c. 2, s. 16.

Duties of certain persons

35 Every person who

- (a) brings tobacco into the Province; or
- (b) receives delivery in the Province of tobacco acquired by that person for value
 - (i) for that person's own consumption in the Province, or for the consumption in the Province of other persons at that person's expense, or
 - (ii) on behalf of, or as agent for, a principal who desires to acquire the tobacco for consumption in the Province by such principal or other persons at the principal's expense,

shall immediately

- (c) report the matter in writing to the Commissioner;
- (d) supply to the Commissioner the invoice and all other pertinent information as required by the Commissioner in respect of the consumption of the tobacco; and
- (e) pay to Her Majesty the same tax in respect of the consumption of the tobacco as would have been payable if the tobacco had been purchased at a retail sale in the Province. 1995-96, c. 17, s. 35; 2001, c. 3, s. 21.

Valuation

36 (1) Where the Commissioner deems fit, the Commissioner may make a valuation of tobacco that passes at any sale, and thereupon the sale price for the purpose of taxation pursuant to this Part is as determined by the Commissioner.

(2) The Commissioner shall give notice in writing of a valuation pursuant to subsection (1) to the seller and purchaser, either by mail or by personal service. 1995-96, c. 17, s. 36.

Retail vendor's permit

37 No person shall sell or agree to sell tobacco to a consumer at a retail sale, by any means, including vending machines, unless the person has been granted, upon application in the manner required by the Commissioner, a retail vendor's permit and such permit is in force at the time of the sale. 1995-96, c. 17, s. 37.

Wholesale vendor's permit

38 The Commissioner may issue a wholesale vendor's permit upon application to the Commissioner by a person in the manner and form required by the Commissioner. 1995-96, c. 17, s. 38.

Prohibitions

39 (1) No person shall be in possession of tobacco

- (a) on which tax has not been paid;
- (b) not bearing a prescribed mark; or
- (c) not purchased from a retail vendor who holds a valid retail vendor's permit, where the person in possession is a consumer.

(2) No retail vendor shall be in possession of tobacco other than tobacco purchased by the retail vendor from a wholesale vendor who, at the time of purchase, held a wholesale vendor's permit that was issued pursuant to this Part and that, at the time of purchase, was in force.

(3) No person shall distribute, sell, barter or offer for sale or as a gift tobacco except as permitted by this Part or the regulations. 1995-96, c. 17, s. 39.

Prohibition respecting transportation

40 No person shall transport tobacco unless, at the time the tobacco is being transported, that person is in possession of a bill of lading, waybill or other document showing the origin and destination of the tobacco. 1995-96, c. 17, s. 40.

Restriction on advertising and statements

41 No person who sells tobacco shall advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax or any part of the tax imposed pursuant to this Part will be assumed or absorbed by that person or that it will not be considered as an element in the price to the purchaser or, if added, that it or any part thereof will be refunded. 1995-96, c. 17, s. 41.

Power of court to infer

42 The judge of a court trying a prosecution for a contravention of this Part may, in the absence of proof to the contrary, infer that the substance in question is tobacco by the substance's appearance, packaging or odour and from the fact that a witness describes the substance as tobacco. 1995-96, c. 17, s. 42.

Regulations

43 (1) For the purpose of carrying into effect this Part according to its true intent and of supplying any deficiency therein and for the purpose of relaxing the strictness of the law relative to the incidence or the collection of the tax thereunder, in cases where, without relaxation, great public inconvenience or great hardship or injustice to persons or individuals could not be avoided, the Governor in Council may make such regulations as are considered necessary or advisable.

(2) Without limiting the generality of subsection (1), the Governor in Council may make regulations

(a) requiring tobacco sold in the Province to be marked in the manner prescribed by the regulations and providing for the stamping or otherwise marking of tobacco or the packages in which tobacco is sold;

(b) governing the acquisition, transportation, storage, possession and sale of marked and unmarked tobacco;

(ba) prohibiting or regulating the sale, purchase, distribution, use or possession of tobacco stamps used in the packaging or marking of tobacco;

(bb) respecting the keeping of records of any tobacco stamps sold, purchased, distributed, used or possessed;

(c) defining any word or expression used but not defined in this Part;

(d) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Part.

(3) A regulation made pursuant to subsection (2) may, if it so provides, be retroactive in its operation to a date not earlier than May 6, 1989.

(4) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*. 1995-96, c. 17, s. 43; 2005, c. 6, s. 32; 2011, c. 8, s. 21.

Copies of regulations for federal ministers

44 (1) Subject to subsection (2), the Minister shall concurrently furnish the Minister of National Revenue for Canada and the Minister of Finance for Canada with a copy of every regulation proposed to be made pursuant to Section 43 on the recommendation of the Minister at least thirty days before the regulation is made unless the Minister and the Minister of National Revenue for Canada or the

Minister and the Minister of Finance for Canada, as the case may be, otherwise agree.

(2) Where a copy of a proposed regulation has been furnished in accordance with subsection (1) and it is proposed to make the regulation with amendments from the version so furnished, that subsection does not apply in respect of the proposed regulation as so amended, but the Minister shall furnish the Minister of National Revenue for Canada or the Minister of Finance for Canada, or both, as the case may be, with a copy of the proposed regulation as so amended, unless the Minister and the Minister of National Revenue for Canada or the Minister and the Minister of Finance for Canada, as the case may be, otherwise agree. 1995-96, c. 17, s. 44.

Certain provisions cease to have effect

45 Clause 32(b), Section 33 and Section 44 cease to have effect on such day as the Governor in Council orders and declares by proclamation. 1995-96, c. 17, s. 45.

Use of proceeds of tax

46 The proceeds of any tax levied pursuant to this Part shall be paid into the Consolidated Fund of the Province. 1995-96, c. 17, s. 46.

PART IV

ADMINISTRATION

Purpose of Part

47 The purpose of this Part is to facilitate the administration of Parts I, II, IIA and III of this Act in an efficient and uniform manner. 1995-96, c. 17, s. 47; 1996, c. 31, s. 15.

Interpretation of Part

48 In this Part,

(a) “auditor” means a person appointed as an auditor pursuant to this Act;

(b) “certificate” means a certificate or permit issued pursuant to this Act or the regulations;

(c) “consumer” means a consumer as defined in Part I, II or III of this Act and is applicable as the case may be;

(d) “inspector” means an inspector appointed pursuant to this Act;

(e) “offshore area” means Sable Island and the submarine area of the Province that is between the inner limits and the outer limits described in Schedule I, as amended from time to time, of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*;

(f) “purchaser” means any person who acquires revenue property at a sale

- (i) for the person’s own consumption or use,
- (ii) for the consumption or use of other persons at the purchaser’s expense, or
- (iii) on behalf of or as agent for a principal who desires to acquire such property for personal consumption or use or for other persons at the principal’s expense,

and includes a consumer and a promotional distributor, as defined in Part II of this Act, to the extent that the fair value of any revenue property provided by way of promotional distribution exceeds any payments specifically made for the property by the person to whom such property is so provided;

(g) “revenue property” means

- (i) gasoline and diesel oil as defined in Part I of this Act,
- (ii) tangible personal property as defined in Part II of this Act,
- (iii) motor vehicles and other designated tangible personal property referred to in Part IIA of this Act,
- (iii) tobacco as defined in Part III of this Act;

(h) “sale” includes

- (i) a conditional sale,
- (ii) hire purchase,
- (iii) a sale on credit or where the price is payable by installments,
- (iv) an exchange,
- (v) barter,
- (vi) a lease,
- (vii) a rental,
- (viii) any contract whereby at a price or other consideration a person delivers to another revenue property,
- (ix) the provision by way of promotional distribution of any revenue property, and

(x) a transfer of title or possession, conditional or otherwise;

(i) “sale in bulk” means a sale

- (i) outside of the usual course of business, of substantially an entire stock, or

(ii) of an interest in a business;

(j) “sale price” or “purchase price” or “fair value” includes a price in money and also the value of services rendered, the actual value of the thing exchanged and other considerations accepted by the seller or person from whom the property passes as price or on account of the price of the thing covered by the contract, sale or exchange, and includes

(i) customs, excise and sales tax imposed by or pursuant to an enactment of the Parliament of Canada,

(ii) a tax imposed pursuant to this Act,

(iii) charges for transportation, unless the total charges for transportation of the thing sold relate solely to transportation within the Province and are shown separately on the invoice or in the contract with the purchaser,

(iv) in relation to a telecommunication service, the total consideration paid by the purchaser for the provision of the service and for each period in respect of which an invoice for or in relation to the service is issued and, without restricting the generality of the foregoing, includes

(A) sign-up charges,

(B) access charges,

(C) air time charges,

(D) usage charges,

(E) service charges,

(F) in the case of a dedicated telecommunication service, all charges for telecommunications provided as part of the service,

(G) in the case of any other telecommunication service, all such charges in respect of each telecommunication that meets at least two of the following criteria:

(I) the telecommunication originates in the Province,

(II) the telecommunication is received in the Province,

(III) the charge for the telecommunication is invoiced with respect to a transmitter that is ordinarily located in the Province,

(H) electronic access to information,

(I) electronic storage of information,

(J) provision of electronic connections to information or communication services, but not including services

provided by a person or the person's employees using that person's equipment, and

(v) the value of tangible personal property, manufactured, processed or produced by a person and consumed by the person, as determined in accordance with rules prescribed in the regulations;

(k) "tax" means a tax imposed pursuant to this Act, whether before or after the coming into force of this Act, and includes all penalties and interest that are, may be or may have been added to a tax pursuant to this Act, and deposits made or required to be made on account of tax liability under this Act;

(l) "taxpayer" means a person required by this Act to pay a tax;

(m) "transfer of possession" means transfer of possession as defined in Part II of this Act. 1995-96, c. 17, s. 48; 2005, c. 6, s. 33.

Fees

49 The Minister may require administrative fees, user fees or other similar fees to be paid as prescribed. 1995-96, c. 17, s. 49.

Application to offshore

50 This Part does not apply to the offshore area except in respect of

(a) revenue property purchased on

(i) a regularly scheduled ferry for use by the general public, or

(ii) vessels engaged in the transportation of persons for profit or with a view to profit,

where the voyage originates or terminates inside the Province, or during a temporary stopover in the Province by a ferry or vessel that originates or terminates its voyage outside of the Province; or

(b) revenue property purchased on docks, wharves or other structures that are permanently attached to land,

(i) above the low-water mark of the Province, and

(ii) outside the offshore area;

(c) revenue property purchased for use in respect of submarine mines or mine workings accessible from outside the offshore area. 1995-96, c. 17, s. 50.

LIABILITY

Liability and enforcement

51 (1) A taxpayer is liable for a tax until it is paid.

(2) The Commissioner may, from time to time and at such intervals as the Commissioner considers reasonable, assess and reassess any tax payable under this Act by any taxpayer and may vacate or vary any assessment or reassessment and, thereupon, the tax so determined is due and payable by the taxpayer.

(3) Where a taxpayer fails to

- (a) pay a tax; or
- (b) substantiate a payment by records of the taxpayer,

the Commissioner may estimate the tax and such estimated amount is deemed to be the amount of tax due and payable by the taxpayer.

(4) The Commissioner, or any person appointed by the Commissioner, may make or cause to be made an audit of the books of account, records, documents and papers of a taxpayer.

(5) In the discretion of the Commissioner, or any person appointed by the Commissioner, any or all books of account, records, documents and papers of a taxpayer may be audited and an assessment levied pursuant to Section 78.

(6) A taxpayer shall make the taxpayer's books of account, records, documents and papers available to the Commissioner, or a person designated by the Commissioner, for the purpose of allowing an audit to be made pursuant to this Section.

(7) In the discretion of the Commissioner, a tax may be determined pursuant to subsection (2) and an amount of tax may be estimated pursuant to subsection (3) by an audit conducted pursuant to this Section.

(8) The Commissioner shall, by personal service or by mail, give to the taxpayer at the taxpayer's last known address a notice of assessment, in the form prescribed, setting out the amount determined pursuant to subsection (2) or estimated pursuant to subsection (3), and in the case of a taxpayer having more than one address, one of which is in the Province, such notice may be sent to the taxpayer's address in the Province.

(9) Liability to assessment is not affected by an incorrect or incomplete assessment or by the fact that no assessment was made.

(10) An assessment made shall, subject to being varied or vacated on reconsideration or appeal and subject to a reassessment, be valid and binding notwithstanding any error, defect or omission in the assessment or any proceeding under this Act relating to the assessment.

(11) This Section applies notwithstanding Parts I, II and III of this Act. 1995-96, c. 17, s. 51.

Valuation of revenue property

52 (1) Where the Commissioner deems fit, the Commissioner may make a valuation of revenue property that is the subject of a sale, and thereupon the sale price for the purpose of taxation pursuant to this Act is as determined by the Commissioner.

(2) The Commissioner shall give notice in writing of a valuation pursuant to subsection (1) to the seller and purchaser, either by personal service or by mail. 1995-96, c. 17, s. 52.

COLLECTION**Collection and remission**

53 (1) All taxes collected by a collector under this Act shall be collected and remitted to the Minister at such time and in such manner as may be required by the regulations.

(2) In the event of failure on the part of a collector to collect a tax, the collector shall immediately notify the Commissioner. 1995-96, c. 17, s. 53.

Commission to collector

54 (1) A collector shall be paid such allowance or commission as is prescribed for the services provided by a collector in collecting and remitting a tax.

(2) A collector may, as and when authorized by the Commissioner, deduct any commission to which the collector may be entitled from the amount to be remitted by the collector to the Minister.

(3) No person accepting an allowance or commission pursuant to this Section is ineligible as a candidate for election to or as a member of the House of Assembly. 1995-96, c. 17, s. 54.

Duty to obtain certificates

55 Every collector shall obtain all certificates required by the regulations. 1995-96, c. 17, s. 55.

Collection and remission

56 (1) The tax imposed by this Act, whether the price is payable in cash, on terms, by instalments or otherwise, shall be collected and remitted to the Minister at the times and in the manner prescribed by the regulations.

(2) Without restricting the generality of subsection (1), the regulations referred to in that subsection may provide for the Commissioner to enter into agreements with persons respecting the collection of tax and the remitting of tax to the Minister by those persons, or their agents, as agents of Her Majesty.

(3) No person is ineligible as a member of the House of Assembly by reason only of being a party to or receiving an allowance under an agreement made pursuant to subsection (2).

(4) A person who is required to collect and remit tax pursuant to subsection (1) is deemed for those purposes to be an agent of the Minister and is deemed to be a collector for the purpose of this Act. 1995-96, c. 17, s. 56.

Estimate and assessment

57 (1) Where a collector fails to collect a tax under this Act or to make a return or remittance as required under this Act or the regulations, or if the collector's returns are not substantiated by the collector's records, the Commissioner may make an estimate of

- (a) the amount of tax collected by the collector;
- (b) the amount of tax that should have been collected by the collector,

and such estimated amount is deemed to be the amount of tax collected or that should have been collected by the collector that the collector has not remitted.

(2) In the discretion of the Commissioner, any or all of an amount of tax may be estimated pursuant to subsection (1) by an assessment pursuant to Section 78.

(3) The Commissioner shall, by personal service or mail, send a notice of assessment in the form and manner required by the Commissioner to the collector, the collector's heirs, executors, successors or assigns, or to the custodian or trustee in bankruptcy of the assets of the collector's estate setting out the amount estimated pursuant to subsection (1).

(4) Proof that notice pursuant to subsection (3) has been given constitutes *prima facie* proof that the amount stated in the notice is due and owing, and the onus of proving otherwise rests on the person who sold the revenue property. 1995-96, c. 17, s. 57.

Collectors and retail vendors

58 (1) Every collector and retail vendor shall keep such records in the form and at the location prescribed by the regulations and, when required to do so by the Commissioner pursuant to the regulations, shall pay into and maintain in a separate trust account all amounts of tax collected by the collector pursuant to this Act and establish and maintain a separate trust account and use that trust account for no other purpose, and any failure to do so constitutes an offence.

(2) In a prosecution brought against a collector or retail vendor for a violation of subsection (1), a certificate signed by the Commissioner stating that the collector or retail vendor failed to keep such records and to make and file such returns in the form prescribed by the regulations, or failed to pay into and

maintain in a separate account taxes collected by that collector or failed to establish a separate trust account as required pursuant to subsection (1), shall be received in evidence without proof of the signature or of the official character of the person appearing to have signed the same and is *prima facie* proof of the matters contained in the certificate.

(3) Every person who, in the opinion of the Commissioner, is a wholesaler, manufacturer, importer or jobber shall, at the direction of the Commissioner, keep such records and forward to the Commissioner such copies or extracts from those records at such time and in such manner as the Commissioner requires. 1995-96, c. 17, s. 58.

Lien

59 (1) Every person who collects any tax under this Act is deemed to hold the tax in trust for payment to Her Majesty in the manner and at the time provided for under the regulations, whether or not the tax has in fact been kept separate and apart by that person, and the tax shall, until paid, form a lien and charge on the entire assets of the person's estate, and the lien is deemed to be a mortgage or secured debenture and, subject to the *Labour Standards Code*, is payable in priority to all other liens, charges or mortgages in respect of those assets.

(2) Every mortgagee, judgment creditor or other person having a lien, charge or encumbrance on property which is subject to a lien created pursuant to subsection (1), may, at any time, pay to the Minister the amount of the lien and add the amount so paid to the mortgage, judgment or other security, and has in respect thereto the same rights, remedies and privileges against the property as that person has by virtue of or under the security held by that person, and may also sue for and recover in any action or proceeding for debt the amount so paid, together with interest on the amount, against the person primarily liable to pay that amount.

(3) The lien created by subsection (1) is not a charge against a parcel registered pursuant to the *Land Registration Act* until a certificate evidencing the lien has been recorded in the register of the parcel.

(4) The Minister may record a notice of the lien referred to in subsection (1) in the parcel register of any property owned by a person to whom the lien applies and shall thereupon serve the registered owner with a copy of the lien and recording particulars.

(5) Upon satisfaction of the lien including payment of the fees for recording the lien and the release, the Minister shall record a release of the lien in the parcel registers in which the lien was recorded. 1995-96, c. 17, s. 59; 2001, c. 6, s. 124.

OBJECTION AND APPEAL

Notice of objection

60 (1) Where

(a) a taxpayer disputes liability for the amount assessed against the taxpayer; or

(b) a collector disputes liability for the amount assessed against the collector,

the taxpayer or collector, as the case may be, may personally or by a solicitor or agent, within sixty days from the date of service or mailing of a notice of assessment, serve on the Commissioner a notice of objection in duplicate setting out the reasons for the objection and all relevant facts.

(2) A notice of objection pursuant to subsection (1) shall be delivered to the office of the Commissioner or sent by mail and addressed to the Commissioner.

(3) Upon receipt of the notice of objection, the Commissioner shall, within sixty days, reconsider the matter and vacate, confirm or vary the estimate, valuation or assessment, and the Commissioner shall notify the person of the Commissioner's decision by mail. 1995-96, c. 17, s. 60.

Appeal to Utility and Review Board

61 (1) Where a person who served or caused to be served a notice of objection pursuant to Section 60 is dissatisfied with the decision of the Commissioner pursuant to subsection 60(3), the person may, within thirty days of receipt of the decision, appeal to the Nova Scotia Utility and Review Board.

(2) An appeal pursuant to subsection (1) shall be taken by

(a) filing a notice of appeal, in the form prescribed by the regulations, with the Clerk of the Nova Scotia Utility and Review Board; and

(b) giving a copy of the notice to the Minister and the Commissioner,

within thirty days of the receipt of the decision to which the appeal relates.

(3) The Nova Scotia Utility and Review Board shall hear an appeal within sixty days after the notice of appeal is filed with the Clerk of the Board or such longer period of time as agreed upon by the appellant and the Minister.

(4) The appellant and the Minister may appear at a hearing held by the Nova Scotia Utility and Review Board pursuant to this Section, either personally or by counsel, and may adduce evidence, cross-examine witnesses and make representations to the Board.

(5) After a hearing held pursuant to this Section, the Nova Scotia Utility and Review Board shall consider the matter and, within sixty days of the hearing, affirm, vary or reverse the decision of the Commissioner and forthwith

give the appellant and the Minister written notice of the decision of the Board by mail or by personal service. 1995-96, c. 17, s. 61.

Effect of irregularity

62 An estimate made by the Commissioner pursuant to Section 78 shall not be varied or disallowed due to an irregularity, informality, omission or error on the part of any person in the observing of any directory provision up to the date of the giving of the notice of the estimate. 1995-96, c. 17, s. 62.

Effect of appeal on liability

63 The giving of a notice of objection or a notice of appeal by any person, or any delay in the hearing of the appeal, does not in any way affect the due date, interest or penalties or any liability for payment provided under this Act in respect of any taxes due and payable or that have been, or should have been, collected on behalf of Her Majesty that are the subject-matter of the appeal or in any way delay the collection of the taxes. 1995-96, c. 17, s. 63.

Refund

64 Where the estimate of the Commissioner is set aside or reduced by the Commissioner or on appeal, the Minister shall refund the amount or excess amount of taxes which have been paid or collected on behalf of Her Majesty and of any additional interest or penalty imposed and paid on those taxes together with interest on the amount refunded at a rate and calculated in a manner prescribed by the regulations. 1995-96, c. 17, s. 64.

Liability of taxpayer

65 A taxpayer remains liable for the tax imposed pursuant to this Act until the tax has been collected and, in the event of failure on the part of the person selling revenue property to collect the tax, the seller shall immediately notify the Commissioner, and the taxpayer may be sued for the tax in any court of competent jurisdiction. 1995-96, c. 17, s. 65.

RECOVERY OF TAX

Debt due to Crown

66 (1) The amount of any taxes that are due and payable pursuant to this Act that have been collected on behalf of Her Majesty constitute a debt due to Her Majesty and may be recovered by action in any court as a debt due to Her Majesty, and the court may make an order as to the costs of such action in favour of or against Her Majesty.

(2) An action for the recovery of tax shall be brought by the Minister of Justice on behalf of Her Majesty and shall be tried without a jury and the burden of proving that the tax is not due or was not collected is on the person against whom the action is brought.

(3) Where default is made in the payment of any taxes that are due and payable pursuant to this Act that have been collected on behalf of Her Majesty, or any part thereof, the Commissioner may issue a certificate stating the amount so due, the amount of taxes remaining unpaid, including interest and penalties, and the name of the person by whom it is payable, and may file the certificate with a prothonotary of the Supreme Court of Nova Scotia and, when so filed, the certificate has the same force and effect and all proceedings may be taken on the certificate as if the certificate were a judgment of the Supreme Court for the recovery of a debt of the amount stated in the certificate against the person named in the certificate. 1995-96, c. 17, s. 66.

Liability of directors

67 (1) Where a corporation fails to remit an amount of tax as required pursuant to this Act, the directors of the corporation at the time the corporation was required to remit the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest thereon or penalties relating thereto.

(2) A director of a corporation is not liable pursuant to subsection (1) unless

(a) a certificate for the amount of the corporation's liability referred to in subsection (1) has been registered in the Supreme Court of Nova Scotia and execution for that amount has been returned unsatisfied, in whole or in part;

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

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

(3) A director of a corporation is not liable for a failure under subsection (1) where the director 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 Commissioner may assess any person for any amount payable by that person pursuant to this Section.

(5) An assessment pursuant to subsection (4) of any amount payable by a person who is a director of a corporation shall not be made more than two years after that person last ceased to be a director of the corporation.

(6) Where an execution referred to in clause (2)(a) has been issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(7) Where a director of a corporation pays an amount in respect of the corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty would have been entitled to had the amount not been so paid and, where a certificate that relates to the amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Commissioner is empowered to make.

(8) A director who satisfies a claim pursuant to this Section is entitled to contribution from the other directors who were liable for the claim.
1995-96, c. 17, s. 67.

Payment by third parties

68 (1) Where the Commissioner has knowledge or believes on reasonable grounds that a person is or will be, within ninety days, liable to make a payment to another person who is liable to pay or remit an amount pursuant to this Act, in this Section referred to as the "tax debtor", the Commissioner may, by a letter served personally or by mail, require the person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor, in whole or in part, to the Minister on account of the tax debtor's liability under this Act.

(2) Without limiting the generality of subsection (1), where the Commissioner has knowledge or believes on reasonable grounds that within ninety days

(a) a bank, credit union, trust company or other similar person, in this Section referred as the "institution", will loan or advance moneys to, or make payment on behalf of, or make a payment in respect of a negotiable instrument issued by a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness; or

(b) a person, other than an institution, will loan or advance moneys to, or make a payment on behalf of, a tax debtor who the Commissioner knows or believes on reasonable grounds

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within ninety days, so employed or engaged, or

(ii) where that person is a corporation, is not dealing at arms length with that person,

the Commissioner may, by a letter served personally or by mail, require the institution or person, as the case may be, to pay, in whole or in part, to the Minister on account of the tax debtor's liability under this Act the moneys that would otherwise

be so loaned, advanced or paid, and any moneys so paid to the Minister are deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor.

(3) Notwithstanding any enactment, where the Commissioner has knowledge or believes on reasonable grounds that a particular person is or will become, within ninety days, liable to make a payment to

(a) a tax debtor; or

(b) a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Commissioner may, by a letter served personally or by mail, require the particular person to pay forthwith where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor, in whole or in part, to the Minister on account of the tax debtor's liability and, on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Minister become the property of Her Majesty, notwithstanding any security interest in those moneys, and shall be paid to the Minister in priority to any such security interest.

(4) In subsection (3),

(a) "secured creditor" means a particular person who has a security interest in the property of another person or who acts for or on behalf of the particular person with respect to the security interest, and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator and any other person performing a similar function;

(b) "security interest" means any interest in property that secures payment or performance of an obligation, and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for.

(5) A receipt issued by the Commissioner for moneys paid as required pursuant to this Section is a good and sufficient discharge of the original liability to the extent of the payment.

(6) Where the Commissioner has, pursuant to this Section, required a person to pay to the Minister on account of the liability under this Section of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement is applicable in respect of all such payments to be made by the person to the tax debtor until the liability under this Section is satisfied, and operates to require

payments to the Minister out of each such payment of such amount as may be stipulated by the Commissioner in a letter served personally or by registered mail.

(7) Every person who fails to comply with a requirement under subsection (1), (3) or (6) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection (1), (3) or (6), as the case may be, to pay to the Minister.

(8) Every institution or person that fails to comply with a requirement under subsection (2) with respect to moneys to be loaned, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

- (a) the aggregate of moneys so loaned, advanced or paid;
- and
- (b) the amount that the institution or person was required under that subsection to pay to the Minister.

(9) The Commissioner may assess any person for any amount payable pursuant to this Section by the person to the Minister.

(10) An assessment of an amount payable pursuant to this Section by a person to the Minister shall not be made more than four years after the letter from the Commissioner requiring the payment is served on the person.

(11) Where an amount that would otherwise have been payable to or on behalf of the tax debtor is paid by a person to the Minister pursuant to a letter from the Commissioner served on the person pursuant to this Section or pursuant to an assessment under subsection (9), the person is deemed, for all purposes, to have paid the amount to or on behalf of the tax debtor. 1995-96, c. 17, s. 68.

Deduction or set-off

69 Where a person is indebted to Her Majesty pursuant to Sections 68 to 72, the Commissioner may require the retention by way of deduction or set-off of such amount as the Commissioner may specify out of any amount that may be or become payable to that person by Her Majesty. 1995-96, c. 17, s. 69.

Power to purchase property

70 For the purpose of collecting debts owed by a person to Her Majesty pursuant to Sections 68 to 72, the Commissioner may purchase or otherwise acquire any interest in the person's property that the Commissioner is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and may dispose of any interest so acquired in such manner as the Commissioner considers reasonable. 1995-96, c. 17, s. 70.

Garnishment

71 (1) Where the Commissioner has knowledge or believes on reasonable grounds that a person is holding moneys that were seized by a peace officer,

in the course of administering or enforcing the criminal law of Canada, from another person who is liable to make a payment under this Act, in this Section referred to as the “tax debtor”, and that are restorable to the tax debtor, the Commissioner may, by a letter served personally or by mail, require that person to turn over the moneys otherwise restorable to the tax debtor, in whole or in part, to the Minister on account of the tax debtor’s liability under this Act.

(2) A receipt issued by the Commissioner for moneys turned over as required pursuant to this Section is a good and sufficient discharge of the requirement to restore the moneys to the tax debtor to the extent of the amount so turned over. 1995-96, c. 17, s. 71.

Sale of Property

72 (1) Where a person fails to pay an amount as required pursuant to this Act, the Commissioner may give thirty days’ notice to the person by mail addressed to that person’s last known address of the Commissioner’s intention to direct that the person’s goods and chattels be seized and sold, and, if the person fails to make the payment before the expiration of the thirty days, the Commissioner may issue a certificate of the failure and direct that the person’s goods and chattels be seized.

(2) Property seized pursuant to subsection (1) shall be kept for ten days at the expense and risk of the owner and, if the owner does not pay the amount due together with all expenses within the ten days, the property seized shall be sold by public auction.

(3) Except in the case of perishable goods, notice of a sale referred to in subsection (2) setting out the time and place of the sale, together with a general description of the property to be sold, shall, at a reasonable time before the goods are sold, be published at least once in one or more newspapers of general local circulation.

(4) Any surplus resulting from a sale referred to in subsection (2), after deduction of the amount owing and all expenses, shall be paid or returned to the owner of the property seized.

(5) Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution issued by the Supreme Court of Nova Scotia are exempt from seizure pursuant to this Section. 1995-96, c. 17, s. 72.

Injunction

73 In addition to any penalties provided in this Act or the regulations, the Commissioner may apply to a judge of the Supreme Court of Nova Scotia for an injunction against any collector who, having been found guilty of an offence against this Act or the regulations, continues to sell revenue property without holding a valid registration certificate issued pursuant to this Act or the regulations or who has breached any agreement made pursuant to the regulations ordering the collector to cease selling such revenue property, until the collector has fulfilled the collector’s

obligations under this Act or the regulations and has paid the costs of the application. 1995-96, c. 17, s. 73.

Manner of exercising powers

74 The powers conferred by this Act for the recovery of taxes or money collected as taxes, by action and by filing a certificate, may be exercised separately or concurrently, or cumulatively, and the liability of the person for the payment of any tax pursuant to this Act or the liability to remit taxes collected is not affected in any way by the fact that a fine or penalty has been imposed on or paid by the person in respect of any contravention of this Act. 1995-96, c. 17, s. 74.

PENALTY AND INTEREST

Power to assess penalty

75 (1) Where the Commissioner is satisfied that a person failed to remit or pay any tax as required by this Act or the regulations, the Commissioner may assess against the person a penalty equal to five per cent of the amount not remitted or paid.

(2) In addition to the penalty referred to in subsection (1), the Commissioner may

(a) where the Commissioner is satisfied that a person wilfully failed to remit tax collected as required by this Act or the regulations, assess against the person a penalty of not less than twenty-five per cent and not more than one hundred per cent of the amount not remitted;

(b) where the Commissioner is satisfied that a person evaded the payment of tax by wilfully making a false or deceptive statement or by wilful default or fraud, assess against the person a penalty equal to twenty-five per cent of the amount evaded; or

(c) where a person fails to maintain records as prescribed by the regulations, assess a penalty of twenty-five per cent of the amount of tax due and payable.

(3) The Commissioner may, at any time,

(a) whether or not the Commissioner has assessed a penalty pursuant to subsection (1) or (2); and

(b) in respect of any period during which tax under this Act or the regulations ought to have been remitted or paid,

assess on the amount of taxes not remitted or paid as required under this Act or the regulations, interest at a rate prescribed by the Governor in Council.

(4) The penalty and interest under this Section form part of the amount of tax due or accruing due provided for in Section 59.

(5) The Commissioner may, where the Commissioner deems fit, vary an assessment made pursuant to subsection (1) or (2) within a period of sixty days from the date of the original assessment.

(6) Penalties or interest collected pursuant to this Section shall be paid to the Minister. 1995-96, c. 17, s. 75.

Penalty

75A (1) Every person who is issued tobacco stamps is liable to a penalty if the person cannot account for the tobacco stamps as being in the person's possession unless

(a) the person can demonstrate that the tobacco stamps were affixed to tobacco in the manner prescribed in the regulations and that tax has been paid on the tobacco; or

(b) in the case of tobacco stamps that were cancelled, the person can demonstrate that the tobacco stamps were returned or destroyed as directed by the Minister of National Revenue for Canada.

(2) The amount of the penalty for each tobacco stamp that cannot be accounted for is equal to the tax that would be imposed on tobacco for which the tobacco stamp was issued.

(3) A penalty that a person is liable to pay under this Section may be assessed against the person by the Commissioner.

(4) Penalties collected pursuant to this Section must be paid to the Minister. 2011, c. 8, s. 22.

AUDIT AND INSPECTION

Interpretation of Sections 77 to 81

76 In Sections 77 to 81,

(a) "auditor" means an auditor appointed pursuant to this Act and includes a member of the Royal Canadian Mounted Police and a member of a municipal police force within the meaning of regulations made pursuant to the *Police Act*;

(aa) "compliance officer" means a compliance officer appointed by the Commissioner;

(b) "documents" includes money, securities and, whether computerized or not, books, records, letters, telegrams, vouchers, invoices, accounts and statements, including financial statements;

(c) "dwelling house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes

- (i) a building that is on the same parcel of land and that is connected to it by a doorway or by a covered and enclosed passageway, and
- (ii) a unit that is designed to be mobile and to be used as a permanent or temporary residence and is being used as a permanent or temporary residence. 1995-96, c. 17, s. 76; 2001, c. 3, s. 22.

Powers and immunities of compliance officer

76A A compliance officer, in carrying out duties pursuant to this Act, has and may exercise in any part of the Province all of the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada). 2001, c. 3, s. 23.

Identification card prima facie proof

77 An identification card purporting to be signed by the Commissioner, or a person authorized by the Commissioner to issue identification cards for auditors or compliance officers, is *prima facie* proof that the person named on the card is an auditor or compliance officer within the meaning of this Act without any proof of appointment or signature. 1995-96, c. 17, s. 77; 2001, c. 3, s. 24.

Assessment powers

78 (1) An auditor or compliance officer, or any person appointed by the Commissioner, may, from time to time, and at all reasonable times, enter the business premises occupied by any person, collector or consumer, or the premises where revenue property, tobacco stamps or records are kept to determine whether this Act and the regulations are being and have been complied with, or to inspect, audit and examine books of account, records or documents, or to ascertain the quantities of revenue property, tobacco stamps purchased, on hand, sold or used by the person, collector or consumer, and whether the tax collected or payable by that person has been remitted to the Minister, and the person occupying or in charge of the premises shall answer all questions pertaining to these matters and shall produce such books of account, records or documents as may be required.

(2) Where it appears from the inspection, audit or examination of the books of account, records or documents that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the amount of tax collected or that should have been collected on the sale of revenue property and the tax due on purchase or consumption for own use in such manner and form and by such procedure as the Commissioner deems adequate and expedient, and the Commissioner shall assess the person for the amount of the tax so calculated and the person may appeal the amount of the assessment pursuant to Section 60.

(3) Where a person fails to substantiate the person's liabilities and obligations under this Act and the regulations by records kept by the person, the Commissioner, or a person designated by the Commissioner, may estimate the

unpaid tax and such estimation is deemed to be the amount of tax due and payable by the person.

(4) For the purpose of subsection (3), the Commissioner may assess a penalty of twenty-five per cent of the amount of tax due and payable by the person in addition to any other penalty.

(5) Notwithstanding subsection (10), in the discretion of the Commissioner or a person appointed by the Commissioner, any or all of the books of account, records or documents of any person may be audited for such a period or periods of time as the Commissioner, or a person designated by the Commissioner, approves, whether such approval for the period or periods of time is given before or after the audit, and the results of the audit may be applied over the audit period or any part of the audit period.

(6) A person shall make the person's books of account, records or documents available to the Commissioner, or a person designated by the Commissioner, for the purpose of allowing an estimate to be made pursuant to subsection (3).

(7) Liability to assessment is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(8) The Commissioner may give notice in writing, by personal service or by mail, to the person setting out the amount determined or estimated pursuant to this Section, and in the case of a person having more than one address, one of which is in the Province, the notice may be sent to the address in the Province.

(9) The Commissioner may, where the Commissioner deems fit, vary an assessment made pursuant to this Section within sixty days from the date of the original assessment, and such varied assessment is deemed to be an assessment made pursuant to this Section.

(10) In making an assessment pursuant to this Section, the Commissioner shall not consider a period or periods of time greater than four years prior to the date of commencement of the inspection, audit or examination of the books of account, records or documents, unless the Commissioner deems the person did not exercise the degree of care, diligence and skill to prevent an offence that a reasonably prudent person would exercise in comparable circumstances, or if there is evidence that the person has committed fraud, and the results may be applied over the period or any part of the period.

(11) Notwithstanding subsection (10), in making an assessment pursuant to this Section for tangible personal property as defined in Part II of this Act during the period April 1, 1997, to March 31, 2001, inclusive, the Commissioner shall not consider a period or periods of time greater than four years prior to April 1, 1997, unless the Commissioner deems the person did not exercise the degree of care, diligence and skill to prevent an offence that a reasonably prudent

person would exercise in comparable circumstances, or if there is evidence that the person has committed fraud, and the results may be applied over the period or any part of the period. 1995-96, c. 17, s. 78; 1997, c. 3, s. 18; 2001, c. 3, s. 25; 2005, c. 6, s. 34; 2011, c. 8, s. 23.

Right to examine and retain samples

78A For the purpose of administering and enforcing Part I of this Act and the regulations, a compliance officer, or person appointed by the Commissioner, may, without warrant, examine any internal combustion engine and its fuel system or any apparatus or storage facility that contains gasoline or diesel oil and take and retain samples of that gasoline or diesel oil. 2001, c. 3, s. 26.

Warrants and searches

79 (1) Where an auditor or compliance officer, or person appointed by the Commissioner, believes on reasonable grounds that a person is contravening or has contravened this Act, the auditor or compliance officer, or person appointed by the Commissioner, may apply to a judge of the Provincial Court or a justice of the peace for a warrant pursuant to subsection (2).

(2) Where, on an application pursuant to subsection (1), a judge of the Provincial Court or a justice of the peace is, by information on oath, satisfied that there are reasonable grounds for believing that this Act is being contravened, the judge or justice of the peace may issue a warrant authorizing an auditor or compliance officer or person appointed by the Commissioner to do one or more of the following things:

- (a) enter any dwelling house, business premises, motor vehicle, aircraft, ship or boat, cargo container or receptacle, search therein for revenue property or tobacco stamps and seize the revenue property or tobacco stamps;
- (b) make such inquiries as the auditor, compliance officer or person appointed by the commissioner considers necessary;
- (c) make copies or abstracts of any documents that may afford evidence of a contravention of this Act;
- (d) take away any documents for the purpose of making copies, as long as the copies are returned forthwith to the person from whom the documents were taken.

(3) The owner or person in charge of the dwelling house, business premises, motor vehicle, aircraft, ship or boat, cargo container or receptacle and every person found therein shall give the auditor, compliance officer or person appointed by the Commissioner all reasonable assistance to enable the auditor, compliance officer or person to carry out duties and functions pursuant to this Section, and shall furnish such information as the auditor or compliance officer, or person appointed by the Commissioner, may reasonably require, and every person who fails to do so is guilty of an offence.

(4) Notwithstanding subsection (1), an auditor or compliance officer, or person appointed by the Commissioner, may exercise the power of search referred to in subsection (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it is not practical to obtain a warrant.

(5) For the purpose of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or the loss or destruction of evidence. 1995-96, c. 17, s. 79; 2001, c. 3, s. 27; 2005, c. 6, s. 35; 2011, c. 8, s. 24.

Detention and sale of certain property

80 (1) Where, upon a search of a motor vehicle, aircraft, ship or boat, cargo container or receptacle pursuant to Section 79, revenue property or tobacco stamps are found in respect of which it is reasonable to believe an offence against this Act or the regulations has been committed, the motor vehicle, aircraft, ship or boat, cargo container or receptacle may be detained by an auditor or compliance officer, or a person appointed by the Commissioner, until the tax or any penalty or interest imposed pursuant to this Act are paid or security satisfactory to the Minister is given for the payment of the tax, penalty or interest or sold pursuant to subsection (2).

(2) A motor vehicle, aircraft, ship or boat, cargo container or receptacle detained pursuant to subsection (1) may be sold after the expiration of thirty days from the date of the detention to pay the tax and penalty and any expenses incurred in the detention and sale unless, within that period of thirty days, payment is made of the taxes and penalty imposed pursuant to this Act or the regulations, or security satisfactory to the Minister is given. 1995-96, c. 17, s. 80; 2001, c. 3, s. 28; 2005, c. 6, s. 36; 2011, c. 8, s. 25.

Power respecting revenue property

81 (1) Where a person who does not hold a valid certificate has possession or control of revenue property in respect of which the tax has not been paid, or the revenue property is transported or stored by or for that person or any other person, an auditor or compliance officer, or person appointed by the Commissioner, may seize, hold and, subject to the regulations, dispose of the revenue property.

(2) Where a person transports revenue property and that person is not in possession of a bill of lading, waybill or other document showing the origin and destination of the revenue property during such transportation, that person is guilty of an offence. 1995-96, c. 17, s. 81; 2001, c. 3, s. 29.

SECURITY

Deposit

82 (1) The Commissioner may require an agent, sub-agent, collector or applicant for a registration certificate to deposit with the Minister a bond by way of cash or other security in such amount as may be determined by the Commis-

sioner, which shall not in any case be greater than an amount equal to six times the amount of the tax estimated by the Commissioner to be the amount normally collected by the applicant or collector each month in compliance with this Act or the regulations.

(2) The estimate of the Commissioner pursuant to subsection (1) is final and conclusive for the purpose of a bond or other security under this Section.

(3) Where a person who deposited a bond or other security with the Minister pursuant to subsection (1) fails to collect or remit tax imposed pursuant to this Act, the Commissioner may, by giving written notice to the person by mail or personal service, apply the bond or other security, in whole or in part, to the amount that should have been collected, remitted or paid by the person as the amount due to Her Majesty as of the date of the notice. 1995-96, c. 17, s. 82.

CONFIDENTIALITY

Disclosure

83 Notwithstanding the *Freedom of Information and Protection of Privacy Act*, a person who has custody or control over information or records pursuant to this Act may disclose the information or records

(a) in the course of administering or enforcing this Act or the regulations;

(b) in the course of administering an enactment of the Province or the Parliament of Canada or of another province respecting the imposition of taxation;

(c) in court proceedings relating to this Act, any other enactment of the Province or of the Parliament of Canada or of another province respecting the imposition of taxation;

(ca) to the Department of Health for the purpose of administering or enforcing the *Tobacco Access Act* or the *Tobacco Act* (Canada);

(d) under an agreement that

(i) is between the Government of the Province and the Government of Canada [or] the government of another province of Canada,

(ii) relates to the administration or enforcement of an enactment of the Province, the Parliament of Canada or another province of Canada respecting the imposition of taxation, and

(iii) provides for the disclosure of information and records to, and the exchange of similar information and records with, the Government of Canada or the government of another province of Canada; or

(e) for the purpose of compilation of statistical information by the Government of the Province or the Government of Canada. 1995-96, c. 17, s. 83; 2001, c. 3, s. 30.

TAX AVOIDANCE

Consequences

84 (1) In this Section,

(a) “tax benefit” means a reduction, avoidance or referral of tax or other amount payable pursuant to this Act or an increase in a refund of tax, rebate of tax or other amount pursuant to this Act;

(b) “tax consequences” to a person means the amount of tax payable or refundable to the person pursuant to this Act or any other Act that is relevant for the purpose of computing that amount;

(c) “transaction” includes an arrangement or event.

(2) Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this Section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

(3) An avoidance transaction means any transaction

(a) that, but for this Section, would result, directly or indirectly, in a tax benefit; or

(b) that is part of a series of transactions, which series, but for this Section, would result, directly or indirectly, in a tax benefit,

unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

(4) For greater certainty, subsection (2) does not apply in respect of a transaction where it may reasonably be considered that the transaction would not result, directly or indirectly, in a misuse of the provisions of this Act, or in an abuse having regard to the provisions of this Act, other than this Section, read as a whole.

(5) Without restricting the generality of subsection (2),

(a) any deduction in computing tax or net tax payable may be allowed or disallowed, in whole or in part;

(b) any deduction or a part thereof may be allocated to any person;

(c) the nature of any payment or other amount may be recharacterized; and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, but for this Section, result, directly or indirectly, from an avoidance transaction.

(6) Where, with respect to a transaction, a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, any person, other than a person to whom a notice has been sent, shall be entitled, within sixty days after the day of mailing of the notice, to request in writing that the Commissioner make an assessment, a reassessment or an additional assessment, applying subsection (2) with respect to that transaction.

(7) Notwithstanding anything contained in this Act, the tax consequences to any person following the application of this Section shall only be determined through a notice of assessment, reassessment or additional assessment involving the application of this Section.

(8) On receipt of a request by a person pursuant to subsection (6), the Commissioner shall, within sixty days, consider the request and assess, reassess or make an additional assessment with respect to the person, except that an assessment, reassessment or an additional assessment may be made pursuant to this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6). 1995-96, c. 17, s. 84.

OFFENCE AND PENALTIES

Separate offences

85 A person contravening this Act or the regulations is guilty of an offence against this Act, and every violation in connection with a separate sale or transaction is a separate offence. 1995-96, c. 17, s. 85.

Liability of corporations

86 (1) Where a corporation commits an offence under this Act, any officer, director, employee or agent of that corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and commits the offence and, on conviction, is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

(2) Nothing in subsection (1) relieves the corporation that committed an offence under this Act from liability for the offence.

(3) In construing and enforcing this Act, the act, omission, neglect or failure of an officer, director, employee or agent of a corporation, acting within the scope of that person's employment or instructions, is the act, omission, neglect or failure of the corporation. 1995-96, c. 17, s. 86.

Penalties

87 (1) A consumer or purchaser who contravenes Part I of this Act is liable, on summary conviction, to the penalties provided for a category G offence in the *Summary Proceedings Act* or to imprisonment for a term not exceeding ninety days for a first offence or a term not exceeding one year for a second or subsequent offence, or to both fine and imprisonment.

(2) An agent, wholesaler or vendor who contravenes Part I of this Act is liable, on summary conviction, to

(a) the penalties provided for a category J offence in the *Summary Proceedings Act* or to imprisonment for a term not exceeding six months for a first offence or a term not exceeding one year for a second or subsequent offence, or to both fine and imprisonment; and

(b) a fine equal to two times the amount of tax that should have been collected, remitted or paid, as determined pursuant to this Act.

(2A) A person who sells gasoline or diesel oil to a vendor or a purchaser without holding the permit required for the sale under the regulations is liable, on summary conviction, to

(a) the penalties provided for a category J offence in the *Summary Proceedings Act* or to imprisonment for a term not exceeding one year, or to both fine and imprisonment; and

(b) a fine equal to two times the amount of tax that should have been collected, remitted or paid, as determined pursuant to this Act.

(3) Where a court or judge convicts a person of a contravention of Part I of this Act, the court or judge shall forthwith make a report of the conviction to the Commissioner who shall report the conviction to the Registrar of Motor Vehicles in the case of a person who holds a drivers licence, vehicle permit or certificate of registration issued pursuant to the *Motor Vehicle Act*.

(4) Upon receipt of a report of the conviction of a person who holds a driver's licence, vehicle permit or certificate of registration issued pursuant to the *Motor Vehicle Act*, the Registrar of Motor Vehicles shall suspend the licence, permit or certificate of registration of the vehicle in respect of which the violation was committed for a period of thirty days for a first conviction, ninety days for a second conviction and six months for any subsequent conviction.

(5) Upon receipt of a report of the conviction of a person who has been issued a permit of any kind pursuant to Part I of this Act, the Commissioner shall suspend any such permit in so far as it relates to premises, facilities, vehicles or an activity in relation to which the violation occurred for a period of sixty days for a first conviction, six months for a second conviction and one year for any subsequent conviction.

(6) Upon receipt of a report of the conviction of a person who does not hold a permit pursuant to Part I of this Act as required, the offender shall not have the right to obtain any such permit for a period of sixty days after the date of the first conviction, six months after the date of a second conviction or one year for any subsequent conviction. 1995-96, c. 17, s. 87; 2003, c. 4, s. 29.

Further penalties

88 (1) In this Section, “tangible personal property” means tangible personal property as defined in Part II of this Act.

(2) Subject to subsection (3), a person who contravenes Part II of this Act is liable, on summary conviction, to a fine of not less than five thousand dollars and not more than twenty thousand dollars and, in default of payment, to imprisonment for a term of not less than three months and not more than twelve months and, in addition, shall be ordered by the judge to pay the amount of the tax that is owing including any arrears, penalties and interest on or before such date as is fixed by the judge.

(3) A person who fails to collect the tax imposed by Part II of this Act is liable, on summary conviction, to a fine equal to two times the amount of the tax including any arrears, penalties and interest that should have been collected, as determined pursuant to this Act, and, in addition, to a penalty of not less than five thousand dollars and not more than twenty thousand dollars and, in default of payment, to imprisonment for a term of not less than six months and not more than twelve months.

(4) The Commissioner shall determine the amount of the tax referred to in subsection (3) from such information as is available to the Commissioner, and shall issue a certificate as to the amount and, except where the Commissioner deems there has been deliberate evasion of Part II of this Act, the Commissioner shall not consider a period of greater than four years in determining the amount of tax. 1995-96, c. 17, s. 88.

Penalty where not otherwise provided

89 (1) Every person who contravenes Part III of this Act where no fine is otherwise specifically provided is liable on summary conviction to a fine of not less than two hundred and fifty dollars and not more than five thousand dollars.

(2) Subject to subsection (3), a person who unlawfully possesses, purchases, sells, transports, acquires or stores tobacco, in contravention of this Act, commits an offence and is liable

(a) for a first conviction, if the quantity of tobacco is fifty cartons of cigarettes or less or capable of making cigarettes in this quantity, to

(i) a fine of not less than five hundred dollars and not more than twenty-five hundred dollars, and

(ii) a fine equal to three times the tax that would have been due had the tobacco been sold to consumers required to pay the tax,

and, in default of payment, to imprisonment for a term not exceeding ninety days;

(b) for a first conviction, if the quantity of tobacco is greater than fifty cartons of cigarettes or capable of making cigarettes in this quantity, to

(i) a fine of not less than twenty-five hundred dollars and not more than twenty-five thousand dollars, and

(ii) a fine equal to three times the tax that would have been due had the tobacco been sold to consumers required to pay the tax,

and, in default of payment, to imprisonment for a term not exceeding one hundred and eighty days;

(c) for a subsequent conviction for an offence under this subsection, to

(i) a fine of not less than five thousand dollars and not more than one hundred thousand dollars, and

(ii) a fine equal to three times the tax that would have been due had the tobacco been sold to consumers required to pay the tax,

and, in default of payment, to imprisonment for a term not exceeding one year.

(3) A

(a) manufacturer of tobacco;

(b) wholesale vendor; or

(c) *repealed 2011, c. 8, s. 27.*

(d) employee of a person referred to in clause (a) or (b),

who contravenes Part III of this Act is liable, on summary conviction, to a fine of not less than five thousand dollars and not more than one hundred thousand dollars and, in default of payment, to imprisonment for a term not exceeding two years, and in any event shall, in addition, be ordered by the judge to pay the amount of the tax that is owing, including any arrears, penalties and interest on or before such date as is fixed by the judge.

(4) A person who fails to collect the tax imposed by Part III of this Act is liable, on summary conviction, to a fine equal to the amount of the tax, including any arrears, penalties and interest that should have been collected as determined pursuant to this Act and, in addition, to a penalty of not less than

twenty-five hundred dollars and not more than twenty-five thousand dollars and, in default of payment, to imprisonment for a term not exceeding one year.

(5) Where a court or judge convicts a person of a contravention of Part III of this Act that involves the use of a vehicle to transport or store tobacco, the court or judge shall forthwith make a report of the conviction to the Commissioner who shall report the conviction to the Registrar of Motor Vehicles in the case of a person who holds a driver's licence, vehicle permit or certificate of registration issued pursuant to the *Motor Vehicle Act*.

(6) Upon receipt of a report of the conviction of a person who holds a driver's licence, vehicle permit or certificate of registration issued pursuant to the *Motor Vehicle Act*, the Registrar of Motor Vehicles shall suspend the licence, permit or certificate of registration of the vehicle in respect of which the violation was committed for a period of three months for a first conviction, six months for a second conviction and one year for any subsequent conviction. 2001, c. 3, s. 31; 2005, c. 6, s. 37; 2010, c. 25, s. 2; 2011, c. 8, s. 27.

False statements and prosecution provisions

90 (1) A person who makes a false statement that is in contravention of this Act or the regulations is guilty of an offence against this Act or the regulations.

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

(3) In any prosecution pursuant to this Act, a certificate signed or purporting to be signed by the Commissioner stating the amount of tax that should have been collected is evidence and *prima facie* proof of the amount of the 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.

(4) An information or complaint in respect of an offence contrary to this Act or the regulations shall be laid or made within six years of the time when the matter of the information or complaint arose except that, in the case of fraud, no limitation applies.

(5) Where a collector is described as a partnership on the application form, the application form is *prima facie* proof that the persons named in the application are partners registered as such pursuant to this Act or the regulations and the return form is *prima facie* proof that the partnership collected the tax.

(6) Nothing contained in this Section, nor the enforcement of any penalty under this Section, shall suspend or affect any remedy for the recovery of any tax or amount payable pursuant to this Act or the regulations.

(7) Penalties collected pursuant to this Act shall be paid to the Minister. 1995-96, c. 17, s. 90.

Effect of certain Sections of Act

91 Sections 85 to 90 apply notwithstanding the *Remission of Penalties Act*. 1995-96, c. 17, s. 91.

REGULATIONS

Regulations

92 (1) For the purpose of carrying into effect the provisions of this Act according to their true intent and of supplying any deficiency therein, and for the purpose of relaxing the strictness of the law relative to the incidence or the collection of the tax thereunder, in cases where, without relaxation, great public inconvenience or great hardship or injustice to persons or individuals could not be avoided, the Governor in Council may make such regulations as are considered necessary or advisable.

(2) Without limiting the generality of the subsection (1), the Governor in Council may make regulations

- (a) prescribing the forms to be used for the purpose of this Act or the regulations;
- (b) prescribing the form and manner of records to be kept for the purpose of this Act or the regulations;
- (c) prescribing the method of collection and remittance of tax pursuant to this Act and any condition or requirement affecting the collection and remittance of tax;
- (d) determining the remuneration and conditions of remuneration to be paid for collecting and remitting tax to the Minister pursuant to this Act;
- (e) determining the rate or rates of interest and the manner of calculating interest for the purpose of this Act;
- (f) respecting the terms and conditions of certificates required pursuant to this Act;
- (g) respecting the manner in which a person whose certificate is cancelled pursuant to this Act may dispose of any stock of tobacco that the person may own;
- (h) providing a rebate to a retailer who sells to a retail purchaser who is exempt from tax on tobacco on which the retailer has paid the tax, prescribing the terms and conditions under which such rebates may be made and prescribing the records and material to be furnished upon an application for a rebate;

(i) providing for the rebate of the tax, in whole or in part,
to

(i) religious or charitable organizations in respect of goods purchased by such organization that enter into capital investment,

(ii) the governing body of a hospital, nurses' home, school or university in respect of goods purchased by such governing body that enter directly into and become part of the construction of a hospital, nurses' home, school or university building,

(iii) students in full-time attendance at a university, trade school within the meaning of the *Trade Schools Regulation Act* or community college in respect of computers to be used by the students in pursuing their education,

(iv) persons who are visually impaired, hearing impaired or physically challenged in respect of computers to be used by those persons,

(v) other purchasers in exceptional circumstances as determined by the Commissioner,

and prescribing the terms and conditions under which rebates may be made;

(j) providing for the rebate of the tax to a person in respect of a passenger vehicle, a truck having a load capacity not exceeding three quarters of a ton or a van where that person

(i) is subject to a physiological defect or deficiency which deprives that person of the use of both of the person's limbs,

(ii) has a valid motor vehicle drivers licence, and

(iii) primarily uses the vehicle for the person's personal transportation,

and prescribing the terms and conditions under which rebates may be made;

(k) providing for the rebate of the tax paid in respect of a passenger vehicle, a truck having a load capacity not exceeding three quarters of a ton or a van where the vehicle is equipped with a device used primarily to enable wheelchairs to enter or leave the vehicle, and defining the nature of such circumstances and prescribing the terms and conditions under which rebates may be made;

(l) providing for the rebate of the tax, in whole or in part, to an organization or governing body mentioned in clause (i) or to a municipality if the organization, governing body or municipality entered into a lump-sum contract and pursuant to that contract the

contractor paid tax on goods that, if purchased by the organization or governing body, might be subject to rebate under clause (i), or if purchased by a municipality would not have been taxable;

(m) providing for the rebate of the tax to a first-time home buyer in respect of building materials used in the construction of the home to a maximum of three thousand dollars for homes constructed after October 1, 1993, and prior to April 1, 1997;

(n) refunding to any consumer or purchaser or class of consumers or purchasers the tax, or any portion of the tax, and prescribing the method or methods by which any such consumer or purchaser or class of consumers or purchasers may obtain a refund;

(o) providing for administrative fees, user fees or other similar fees;

(p) providing for the proration of exemptions pursuant to Part II of this Act;

(q) respecting tax remitted on a credit sale that subsequently results in a bad debt;

(r) defining any word or expression used but not defined in this Part;

(s) deemed necessary to carry out effectively the intent and purpose of this Part.

(3) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*. 1995-96, c. 17, s. 92; 1996, c. 5, s. 25.

PART V

MISCELLANEOUS

Transitional provisions

93 (1) Every permit, licence, approval, designation or certificate given, made or issued pursuant to one or more of the Acts listed in Section 96 that is subsisting and in force on the coming into force of this Act, is deemed to have been given, made or issued pursuant to this Act and continues in force until varied, cancelled, suspended or appealed in accordance with this Act.

(2) Where a right of appeal existed in one or more of the Acts listed in Section 96 and an appeal arises after the coming into force of this Act, the appeal provisions in this Act apply. 1995-96, c. 17, s. 93.

Health Services Tax Act amended

94 *amendments*

Tobacco Tax Act amended**95** *amendments***Repeal of certain legislation**

96 (1) Chapter 183 of the Revised Statutes, 1989, the *Gasoline and Diesel Oil Tax Act*, is repealed.

(2) Chapter 198 of the Revised Statutes, 1989, the *Health Services Tax Act*, is repealed.

(3) Chapter 470 of the Revised Statutes, 1989, the *Tobacco Tax Act*, is repealed. 1995-96, c. 17, s. 96.

Effective dates

97 (1) Sections 94 and 95 have effect on and after November 6, 1995.

(2) This Act, except Sections 94 and 95 and this Section, comes into force on such day as the Governor in Council orders and declares by proclamation. 1995-96, c. 17, s. 97.

Proclaimed - March 29, 1996
In force - April 1, 1996
