

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **488**, Approved and Ordered **JUN 26 2008**



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective July 1, 2008, the Carbon Tax Regulation, B.C. Reg. 125/2008, and the Motor Fuel Tax Regulation, B.C. Reg. 414/85, are amended as set out in the attached Schedules A and B.



Minister of Finance



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Carbon Tax Act, S.B.C. 2008, c. 40, ss. 37 (4), 84 (1), (2) and (3) (a); OIC 386/2008*

Other (specify): *Motor Fuel Tax Act, R.S.B.C. 1996, c. 317, ss. 71 (1), (2) (a), (b), (b.2), (c), (f.1), (g), (i), 37 (3), 38, 48 and 57.1; OIC 2416/85*

SCHEDULE A

1 *Section 8 (4) of the Carbon Tax Regulation, B.C. Reg. 125/2008, is amended by adding “of each year” after “August 15”.*

2 *Section 14 is repealed and the following substituted:*

Payment of refund of security

14 For the purposes of section 37 (4) of the Act, a vendor, wholesale dealer or retail dealer to whom that section applies must

- (a) on or before the 15th day of the month following the month in respect of which the vendor, wholesale dealer or retail dealer subsequently received or collected an amount referred to in section 37 (4), pay to the government the amount received or collected, and
- (b) deliver to the director a return in a form specified by the director.

3 *Section 31 is repealed and the following substituted:*

Records of taxpayers

31 A person who is required to file returns for the payment of tax under the Act must keep, at the person’s principal office or principal place of business in British Columbia, records of the person’s operations that substantiate the information provided on the person’s tax returns with respect to

- (a) the importation, purchase and use of fuel by the person,
- (b) the transfer, within the meaning of section 9 of the Act, of fuel by the person, and
- (c) the burning of a combustible by the person.

4 *Section 34 (4) is repealed and the following substituted:*

(4) A person who sells fuel must, if requested to do so by the person to whom the fuel is sold, provide that person with an invoice.

(4.1) Subsection 4 does not apply to a person selling fuel who is otherwise required under this regulation to provide an invoice to the person making the request.

5 *Section 37 (2) (a) (ii) and (c) are amended by adding “of the refund” after “the amount”.*

6 *Section 39 (2) and (3) is repealed and the following substituted:*

(2) The deposit payable to the director under subsection (1) by an IFTA commercial vehicle is equal to the greater of

- (a) \$10, or
- (b) for a deposit payable on a date during a period set out in column 2 of the table to this subsection, the applicable rate set out opposite in column 1 for

each kilometre that the IFTA commercial vehicle will travel on that trip in British Columbia, as estimated by the director in accordance with subsections (4) and (5), to an amount that is not greater than the maximum amount that is applicable, as determined in accordance with subsection (3).

Table to subsection (2)

| Column 1 Rate for each kilometre | Column 2 Period |
|-------------------------------------|---|
| 1 ¢ | During the year beginning on July 1, 2008 |
| 2 ¢ | During the year beginning on July 1, 2009 |
| 3 ¢ | During the year beginning on July 1, 2011 |
| 4 ¢ | Anytime on or after July 1, 2012 |

- (3) For a deposit payable on a date during a period set out in column 2 the maximum deposit under subsection (2) is the amount set out opposite in column 1 in the table to this subsection.

Table to subsection (3)

| Column 1 Maximum amount | Column 2 Period |
|----------------------------|---|
| \$20 | During the year beginning on July 1, 2008 |
| \$40 | During the year beginning on July 1, 2009 |
| \$60 | During the year beginning on July 1, 2011 |
| \$80 | Anytime on or after July 1, 2012 |

7 Section 40 is repealed and the following is substituted:

Refund of IFTA commercial vehicle deposit

- 40** (1) Subject to subsection (2), a person who pays a deposit under section 39 in respect of a permit authorizing a trip for an IFTA commercial vehicle is entitled to a refund of an amount, if any, determined in accordance with the following formula:

$$\text{Refund} = (D + TP) - (R \times AD)$$

where

- D = the amount of the deposit paid;
 TP = the amount of tax paid by the person for light fuel oil that was purchased in British Columbia during the trip for use in the vehicle;
 R = the rate set out in the Table to subsection (2) of section 39 to calculate the deposit paid;
 AD = the actual distance traveled by the vehicle in the Province.

- (2) A refund under subsection (1) for a trip may not exceed the amount of the deposit paid under section 39 for the trip.

Additional refund for IFTA commercial vehicle

- 40.1** If the director is satisfied that the deposit paid under section 39 for a trip less any refund paid under section 40 for that trip exceeds the tax payable under section 11 of the Act, the director must, on application, pay to the applicant a refund of the excess.

8 *Section 41 is repealed and the following substituted:*

Remittance of tax by IFTA commercial vehicle

- 41** A person who pays a deposit under section 39 in respect of a permit authorizing a trip for an IFTA commercial vehicle must, in accordance with section 11 of the Act, pay to the director the amount by which
- (a) the product of the quantity of light fuel oil used in British Columbia in the vehicle during the trip multiplied by the tax rate for light fuel oil set out in the column of the Table in Schedule 1 of the Act, that applies for the period of time in which the fuel is used in British Columbia exceeds
 - (b) the amount that equals the sum of the deposit paid plus the amount of tax paid by the person for light fuel oil that was purchased in British Columbia during the trip for use in the vehicle minus a refund, if any, paid under section 40 for the trip.

SCHEDULE B

- 1** *Section 1 (1) of the Motor Fuel Tax Regulation, B.C. 414/85, is amended by repealing the definition of “tax”.*

- 2** *Part 1 is amended by adding the following section:*

Registered consumer certificate

- 1.1** (1) In this section, “**interjurisdictional rail service**” means a person who owns or operates a commercial rail service that offers interprovincial or international rail transportation of passengers, goods or both to members of the public for a fee.
- (2) The director may issue a registered consumer certificate under section 37 of the Act to an interjurisdictional rail service.

- 3** *Section 2 is repealed and the following section is substituted:*

Collectors

- 2** (1) Subject to subsection (2), a collector must, under section 35 (1) or 38 (1) of the Act, on or before the 15th day of each month in respect of tax collected or security payable on sales in the previous month,

- (a) deliver to the director a return in a form specified by the director, and
 - (b) remit with the return referred to in paragraph (a) the amount of tax collected or security payable for that previous month.
- (2) The director may permit a collector to deliver returns and remit tax or pay security on a quarterly or annual basis.
 - (3) A collector permitted under subsection (2) to deliver returns and remit tax or pay security on a quarterly basis must deliver returns and remit tax or pay security on or before the 15th day of the first month following each 3 month period beginning on January 1, April 1, July 1 or October 1.
 - (4) A collector permitted under subsection (2) to deliver returns and remit tax or pay security on an annual basis must deliver returns and remit tax or pay security on or before April 15 of each year.
 - (5) If a collector has not collected tax or is not required to pay security on sales in the previous month, quarter or year, as applicable, the collector must nonetheless deliver to the director a return under subsection (1), (3) or (4) as applicable.

4 *The following sections are added:*

Returns – tax on use

- 2.01** (1) A person who is required to pay tax on fuel under section 4 (3), 5 (2), 6 (2), 7 (2), 8 (2), 9 (2) (b), 10 (3), 10.1 (3) or 13 of the Act must, at the same time tax is payable under that section, deliver to the director a return in a form specified by the director.
- (2) A registered consumer who has no tax payable for a month under sections 4 (3), 5 (2), 6 (2), 7 (2), 8 (2) and 9 (2) (b) of the Act must deliver to the director a return in a form specified by the director on or before the 15th day of the month following the month for which no tax is payable.
- (3) A registered consumer who has no tax payable for a month under section 10 (3) or 10.1 (3) of the Act must deliver to the director a return in a form specified by the director on or before the 20th day of the month following the month for which no tax is payable.

Returns – tax on transfer of fuel

- 2.02** A person who is required to pay tax on fuel under section 6 (3), 7 (3) or 8 (3) of the Act must deliver to the director a return in a form specified by the director on or before the 15th day of the month following the month during which the fuel was transferred.

Payment of refund of security

- 2.03** For the purposes of section 20.11 (5) of the Act, a vendor, wholesale dealer or retail dealer to whom that section applies, must
- (a) on or before the 15th day of the month following the month in respect of which the vendor, wholesale dealer or retail dealer subsequently received or collected an amount referred to in section 20.11 (5), pay to the government the amount received or collected, and

(b) deliver to the director a return in a form specified by the director.

Deputy collectors and retail dealers

2.04 A deputy collector or retail dealer referred to in section 34 (7) of the Act must, on or before the 15th day of each month in respect of tax collected in the previous month,

- (a) deliver to the director a return in a form specified by the director, and
- (b) remit with the return referred to in paragraph (a) the amount of tax collected for that previous month.

5 *The following section is added:*

Refund claims

3.01 If a person is claiming a refund of tax or security, the person must submit to the director a claim for the refund in a form that is satisfactory to the director.

6 *Section 3.1 is repealed and the following is substituted:*

Refund for bad debts

3.1 (1) The director may, under section 21 (1) of the Act, pay a refund of the portion of the amount remitted or paid to the government determined in accordance with the following formula:

$$R = TR \times \frac{WO}{TAP}$$

where

R = the amount of the refund to which the collector, deputy collector or retail dealer is entitled in respect of the sale;

TR = the tax remitted or security paid in respect of the fuel;

WO = the amount of money remaining unpaid on the sale that was written off as unrealizable or uncollectable, not including interest charges;

TAP = the total amount payable on the sale including all applicable taxes and security, but not including interest charges.

(2) Under section 21 of the Act, a collector may deduct from the taxes or security that the collector would otherwise be required to remit or pay the amount of a refund referred to in subsection (1) by the collector submitting with the return

- (a) the name and address of the buyer whose account has been written off,
- (b) the amount of the sale and the tax or security involved,
- (c) the date of the sale, and
- (d) a statement that
 - (i) the amount of tax or security being deducted has been written off as unrealizable or uncollectable,
 - (ii) the collector is of the opinion that the amount of tax or security being deducted is unrealizable or uncollectable, and

(iii) the collector will, on recovering any part of the amount written off for which a refund is obtained or a deduction is taken under this subsection, remit to the director, by the 15th day of the month following the month in which the recovery is made, the proportion of the refund or deduction that the amount recovered bears to the amount written off.

(3) A collector, deputy collector or retail dealer who, under section 21 of the Act, obtains a refund or deducts the amount of the refund from the amount of taxes or security required to be remitted or paid must retain all records of the sale in relation to which the tax was imposed or the security was payable until their disposal is authorized by section 5.02 of this regulation.

(4) If a collector, deputy collector or retail dealer intends to apply for a refund under section 21 of the Act, or a collector intends to deduct that refund from the amount required to be remitted, the collector, deputy collector or retail dealer must do so as soon as possible after writing off the collection of the tax or the security.

7 *Sections 4.1 (2) and 4.3 (2) are amended by striking out “National Transportation Agency” wherever it occurs and substituting “Canadian Transportation Agency”.*

8 *Sections 5 and 5.1 are repealed and the following substituted:*

Records of vendors, wholesale dealers and retail dealers

5 A person who is a vendor, wholesale dealer or retail dealer must keep, at the person’s principal office or principal place of business in British Columbia, records of inventories maintained by the person and records of each importation, manufacture, purchase and sale of fuel made by the person.

Records of taxpayers

5.01 A person who is required to file returns for the payment of tax under the Act must keep, at the person’s principal office or principal place of business in British Columbia, records of the person’s operations that substantiate the information provided on the person’s tax returns with respect to

- (a) the importation,
- (b) the purchase,
- (c) the transfer, within the meaning of section 6 (3), 7 (3) or 8 (3) of the Act, and
- (d) use

of fuel by the person.

Retention of records

5.02 (1) A person who is required to retain records under the Act must retain in British Columbia records required for the purposes of the Act or this regulation for a period of 5 years from the date the record is created.

(2) If a person who is required to retain records under subsection (1) makes a written application to the director for permission to destroy a record, the director may

authorize the requested destruction prior to the expiry of the period described in subsection (1).

- (3) Despite any other provision of this section, if a record might be necessary for the purposes of an appeal under section 50 or 51 of the Act, the person required to keep the records must retain the record after the expiry of the period described in subsection (1) and until the appeals under section 50 or 51 of the Act have been exhausted.

Provision of invoices

- 5.03** (1) A person who sells fuel to another person from a bulk storage facility, cardlock or terminal rack must provide an invoice to the person buying the fuel at the time of sale or within a reasonable time after the time of sale.
- (2) A vendor or wholesale dealer, other than a person referred to in subsection (1), who sells fuel to a person for resale must provide an invoice to the person buying the fuel at the time of sale.
 - (3) A person, other than a person referred to in subsection (1), who sells fuel to a registered consumer must provide an invoice to the registered consumer at the time of sale.
 - (4) A person who sells fuel must, if requested to do so by the person to whom the fuel is sold, provide that person with an invoice.
 - (5) Subsection (4) does not apply to a person selling fuel if the person is otherwise required under this regulation to provide an invoice to the person making the request.

Content of invoices

- 5.1** An invoice required to be provided by this regulation must specify
- (a) the date of the sale,
 - (b) the name and address of the person selling the fuel,
 - (c) the name and address of the person to whom the fuel is sold,
 - (d) the quantity of each type or subcategory of a type of fuel sold, and
 - (e) the rate of tax for each type or subcategory of a type of fuel sold.

9 Section 5.3 is repealed and the following substituted:

Calculation of interest if assessment exceeds refund

- 5.3** (1) This section applies to the calculation of interest under section 48 (1) of the Act if
- (a) the director makes an assessment of an amount against a person under section 43 (1), (2) or (2.1) of the Act,
 - (b) the director has determined that the person referred to in paragraph (a) is entitled to a refund under the Act in respect of taxes paid or remitted or security paid during the period of time considered by the director in making the assessment referred to in paragraph (a),

- (c) prior to the director's giving notice of the assessment for the amount referred to in paragraph (a), the application for the refund that is required by the Act is made by the person but the refund is not yet made, and
 - (d) the amount referred to in paragraph (a) is equal to or exceeds the amount of the refund referred to in paragraph (b).
- (2) In the circumstances set out in subsection (1), the director must calculate interest on the amount referred to in subsection (1) (a) as follows:
- (a) by calculating the interest, in the manner set out in section 5.2 and at the rate prescribed under the Interest Rate Under Various Statutes Regulation, B.C. Reg. 386/92, on each of the following:
 - (i) the amount referred to in subsection (1) (a);
 - (ii) the amount of the refund referred to in subsection (1) (b) as if that amount were an amount of tax or security assessed against the person on the date that the person remitted or paid the tax or security that resulted in the person's entitlement to the refund;
 - (b) by subtracting the amount calculated under paragraph (a) (ii) from the amount calculated under paragraph (a) (i);
 - (c) by calculating the interest payable on the amount of the refund referred to in subsection (1) (b) in the manner and at the rate prescribed under the Interest on Overdue Accounts Payable Regulation, B.C. Reg. 215/83;
 - (d) by adding the amount calculated under paragraph (c) to the amount calculated under paragraph (b).
- (3) If the amount calculated under subsection (2) (d) is a negative amount, the interest on the amount referred to in subsection (1) (a) is zero.

10 *Section 5.4 (1) is amended by striking out "if section 5.3 (1) (a), (b) and (c) apply, but the amount of tax" and substituting "if section 5.3 (1) (a), (b) and (c) of this regulation apply, but the amount".*

11 *The following section is added to Part 1 – General:*

Form for section 57.1 of the Act

5.5 The form set out as Form H is prescribed for purposes of section 57.1 (2) of the Act.

12 *Sections 12 and 13 are repealed and the following substituted:*

Invoices of vendor or wholesale dealer

- 12** If a vendor or wholesale dealer sells coloured fuel, the vendor or wholesale dealer must, in addition to the information required under section 5.1,
- (a) specify, on an invoice for the sale of coloured fuel, the price of the coloured fuel per unit of sale, and
 - (b) designate the coloured fuel sold as "Marked Fuel" on the invoice.

Invoices of retail dealers

- 13 If a sale of coloured fuel by a retail dealer exceeds 45 litres, the retail dealer must, with respect to that sale,
- (a) issue to the purchaser an invoice for the sale, and
 - (b) on the invoice, in addition to the information required under section 5.1, designate the coloured fuel sold as “Marked Fuel”.

13 Section 24.1 is repealed and the following is substituted:

Refund – IFTA refundable B.C. tax

- 24.1** (1) In this section, a “return” means
- (a) in relation to an IFTA licensee that received its IFTA licence from the director, a return submitted by the licensee under section 23, and
 - (b) in relation to an IFTA licensee that received its IFTA licence from an IFTA jurisdiction other than the Province, a return submitted by the licensee to that jurisdiction in accordance with IFTA.
- (2) An IFTA licensee is entitled to a refund that is payable in accordance with IFTA and calculated in accordance with subsection (3) if
- (a) the IFTA licensee files a return in accordance with IFTA, and
 - (b) during the period for which a return is prepared
 - (i) the quantity of gasoline or motive fuel purchased in the Province by the IFTA licensee exceeds
 - (ii) the quantity of gasoline or motive fuel consumed in the Province by the IFTA licensee.
- (3) A refund under subsection (2) is to be calculated by multiplying the difference between the amount referred to in subsection (2) (b) (i) and the amount referred to in subsection (2) (b) (ii) by the cents per litre as set out in column 2 or 3 of the following table, whichever is applicable, shown opposite the period in which the fuel referred to in subsection (2) (b) (i) was purchased.

Table

| Item | Column 1 Period | Column 2 Gasoline – cents per litre | Column 3 Motive fuel – cents per litre |
|------|--|---|--|
| 1 | Any time before July 1, 2008 | 14.50 | 15.00 |
| 2 | During the year beginning July 1, 2008 | 16.84 | 17.69 |
| 3 | During the year beginning July 1, 2009 | 18.01 | 19.04 |
| 4 | During the year beginning July 1, 2010 | 19.18 | 20.38 |
| 5 | During the year beginning July 1, 2011 | 20.35 | 21.73 |
| 6 | Any time on or after July 1, 2012 | 21.52 | 23.07 |

14 Section 40 is repealed and the following substituted:

Issue of motive fuel user permit

- 40** (1) The director must, on application, issue a motive fuel user permit for an IFTA commercial vehicle to a person who
- (a) brings motive fuel into the Province in the supply tank of the IFTA commercial vehicle, and
 - (b) pays a deposit equal to the greater of
 - (i) \$10, or
 - (ii) 7¢ for each kilometre that the IFTA commercial vehicle will travel in the Province, as estimated by the director in accordance with subsections (2) and (3), to a maximum of \$140.
- (2) The director may estimate the number of kilometres the IFTA commercial vehicle will travel in the Province based on the load manifests, bills of lading, trip sheets or other documentation presented by the person required to pay the deposit under subsection (1).
- (3) If, in the opinion of the director, the documentation referred to in subsection (2) is inadequate for the purpose of making an estimate under subsection (1), the director may estimate the number of kilometres by a method the director considers appropriate.

Refund of IFTA commercial vehicle deposit

- 40.1** (1) Subject to subsection (2), a person who pays a deposit under section 40 in respect of a permit authorizing a trip for an IFTA commercial vehicle is entitled to a refund of an amount, if any, determined in accordance with the following formula:

$$\text{Refund} = (D + TP) - (7 \text{ cents} \times AD)$$

where

D = the amount of the deposit paid;

TP = the amount of tax paid by the person for motive fuel that was purchased in British Columbia during the trip for use in the vehicle;

AD = the actual distance traveled by the vehicle in the Province.

- (2) A refund under subsection (1) for a trip may not exceed the amount of the deposit paid under section 40 for the trip.

Additional refund for IFTA commercial vehicle

- 40.2** If the director is satisfied that the deposit paid under section 40 for a trip less any refund paid under section 40.1 for that trip exceeds the tax payable under sections 10 (3) and 13 (2) of the Act, the director must, on application, pay to the applicant a refund of the excess.

Remittance of tax by IFTA commercial vehicle

40.3 A person who pays a deposit under section 40 in respect of a permit authorizing a trip for an IFTA commercial vehicle must, in accordance with sections 10 (3) and 13 (2) of the Act, pay to the director the amount by which

(a) the product of the quantity of motive fuel used in British Columbia in the vehicle during the trip multiplied by 15 cents per litre;

exceeds

(b) the amount that equals the sum of the deposit paid plus the amount of tax paid by the person for motive fuel that was purchased in British Columbia during the trip for use in the vehicle, minus a refund, if any, paid under section 40.1 for the trip.

15 *Section 43 (a) is amended by striking out “Division 4 of the Commercial Transport Regulations, B.C. Reg. 30/78, or”.*

16 *Sections 44 and 49 are repealed.*

17 *Section 50 (2) is amended by striking out “Sections 36, 38 and 49 do” and substituting “Section 5.02 does”.*

18 *Sections 51 and 52 are repealed and the following substituted:*

Exemption for visiting forces

51 A visiting force, as defined in section 2 of the *Visiting Forces Act* (Canada), is exempt from paying tax under the Act.

Offences

52 A person who contravenes section 2, 2.01, 2.02, 2.03, 2.04, 2.1, 5, 5.01, 5.02, 5.03, 5.1, 6 (2), 7, 8 (2), 9, 10, 11 (3), 12, 13, 16, 21, 22, 23, 24, 25, 26 (4), 42 (2) or 45 commits an offence and is liable

(a) on the first conviction, to a fine of not less than \$200 and not more than \$500, and

(b) on a subsequent conviction for contravention of the same or another provision of this regulation, to a fine of not less than \$500 and not more than \$2 000 or to imprisonment for not less than 3 months and not more than 6 months, or to both.

19 The following Form H is added:

FORM H

| | | |
|-------|---------------------------------|---|
| CREST | Province of British Columbia | Ministry of Small Business and Revenue |
|-------|---------------------------------|---|

IN THE MATTER OF THE MOTOR FUEL TAX ACT, R.S.B.C. 1996, CHAPTER 317, SECTION 57.1 AND IN THE MATTER OF THE INTEREST

OF [name]

IN

..... [P.I.D. number and full legal description of land]

CERTIFICATE OF LIEN

I certify that:

1 [name]

..... [address]

is

- (a) required to pay or remit an amount under the *Motor Fuel Tax Act* but has not paid or remitted that amount, or
- (b) an associated corporation or related individual, as defined in section 57.1 of the *Motor Fuel Tax Act*, of a person who is required to pay or remit an amount under the *Motor Fuel Tax Act* and has not paid or remitted that amount.

2 The amount of taxes and security remaining unpaid as of the date of this certificate is \$..... .

AND TAKE NOTICE that on registration of this certificate in the land title office, the amount of the indebtedness to Her Majesty the Queen in right of the Province of British Columbia is a lien against the land described above.

Dated at, British Columbia on [date]

.....
Director, *Motor Fuel Tax Act*