

1983 BILL 42

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ~~ALBERTA~~

BILL 42

TOBACCO TAX ACT

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 42

1983

TOBACCO TAX ACT

(Assented to , 1983)

TABLE OF CONTENTS

Definitions	1
Crown bound	2
Computation of tax payable	3
Tax collectors	4
Prohibitions	5
Refusal, cancellation or suspension of licence	6
Appeal to appeal board	7
Appeal to Court of Appeal	8
Accelerated payment of taxes	9
Powers of peace officers	10
Inquiry	11
Demand for information	12
Records and books of account	13
Communication of information	14
Offences and penalties	15
Penalties	16
General penalty	17
Time to lay information	18
Powers of Minister	19
Regulations	20
Repeal	21
Commencement	22

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

Definitions

1 In this Act,

(a) “consumer” means a person who

(i) purchases or receives delivery of tobacco in Alberta, or

(ii) in the case of a person ordinarily resident in Alberta or carrying on business in Alberta, brings into Alberta tobacco acquired outside Alberta

for his own use or consumption or for the use or consumption by others at his expense, or on behalf of, or as the agent for, a principal who desires to acquire the tobacco for use or consumption by himself or other persons at his expense;

(b) "Director" means the Director of Revenue Administration, Treasury Department;

(c) "importer" means a person who manufactures tobacco products or purchases tobacco outside Alberta and imports or brings tobacco into Alberta for sale or resale, as the case may be;

(d) "manufacturer" means a person who manufactures tobacco products;

(e) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(f) "peace officer" means

(i) a member of the Royal Canadian Mounted Police;

(ii) a member of a municipal police force;

(iii) a person employed by the Government of Alberta to operate or supervise a vehicle inspection station within the meaning of the *Motor Transport Act*;

(iv) a patrol officer of the Department of the Solicitor General;

(v) any person appointed by the Minister as a peace officer for the purposes of this Act;

(g) "purchase" means, with reference to tobacco, to purchase or otherwise obtain tobacco;

(h) "retailer" means a person who

(i) purchases tobacco from a manufacturer, wholesaler or importer, or

(ii) brings tobacco into Alberta

and sells that tobacco to a consumer;

(i) "tax collector" means a tax collector appointed pursuant to section 4;

(j) "tobacco" means tobacco in any form in which it is used or consumed and includes snuff;

(k) "wholesaler" means a person who

(i) purchases tobacco from a manufacturer or importer, or

(ii) brings tobacco into Alberta

and sells that tobacco to a retailer and includes a manufacturer who sells tobacco to a retailer.

Computation of
tax payable

3(1) Every consumer shall pay to Her Majesty in right of Alberta a tax computed at the rate of

- (a) 1.48¢ on every cigarette purchased by him;
- (b) 4¢ on every cigar purchased by him for a retail price of not more than 7¢;
- (c) 7¢ on every cigar purchased by him for a retail price of more than 7¢ and not more than 15¢;
- (d) 10¢ on every cigar purchased by him for a retail price of more than 15¢ and not more than 22¢;
- (e) 14¢ on every cigar purchased by him for a retail price of more than 22¢ and not more than 32¢;
- (f) 20¢ on every cigar purchased by him for a retail price of more than 32¢ and not more than 42¢;
- (g) 25¢ on every cigar purchased by him for a retail price of more than 42¢;
- (h) 16¢ on every 25 grams or part of 25 grams of any tobacco, other than cigarettes or cigars, purchased by him.

(2) Every person who sells tobacco to a consumer in Alberta shall collect the tax in respect of that tobacco from that consumer.

Tax collectors

4(1) The Minister may appoint any tax collectors required for the purposes of this Act.

(2) Any person who collects tax under this Act

- (a) shall remit the tax to a tax collector, or
- (b) in the case of a tax collector, shall remit the tax to the Minister.

Prohibitions

5(1) No person shall sell or agree to sell tobacco in Alberta for resale unless he holds a subsisting wholesaler's or importer's licence issued to him by the Director.

(2) No wholesaler shall sell or agree to sell tobacco in Alberta to a person who is not a wholesaler or retailer in Alberta unless that wholesaler is exempted by the Minister from the operation of this subsection pursuant to section 19(j).

Refusal,
cancellation
or suspension
of licence

6 The Director may refuse to issue a licence to a person or may suspend or cancel the licence of a person who, in the opinion of the Director,

- (a) refuses or neglects to account for and pay as required under the regulations money received by him as proceeds of the tax,
- (b) refuses or neglects to furnish a surety bond or bank guarantee or make other financial arrangements when so required, or

(c) contravenes the Act or the regulations or breaches the terms of a tax collection agreement to which he is a party.

Appeal to
appeal board

7(1) No person shall be refused a licence or have his licence suspended or cancelled without prior written notice served on him personally or by registered or certified mail or without being given an opportunity to be heard and to show cause why the licence should not be refused, suspended or cancelled, as the case may be.

(2) A person who has been refused a licence or has had his licence suspended or cancelled under section 6 may appeal the refusal, cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being notified of the refusal, cancellation or suspension and, in the case of a cancellation or suspension of a licence, a wholesaler or importer may continue as a wholesaler or importer until all appeals have been disposed of.

(3) The Minister shall, within 30 days of being served with a notice of appeal, appoint an appeal board to hear the appeal.

(4) The Minister shall set the time within which the appeal board is to hear the appeal and render its decision and he may extend that time.

(5) An appeal board that hears an appeal under this section may, by order,

- (a) confirm the refusal, cancellation or suspension,
- (b) direct that a licence be issued,
- (c) reinstate a cancelled licence, or
- (d) remove or vary a suspension.

(6) An appeal board appointed under this section shall consist of

- (a) 1 person appointed as chairman of the board by the Minister, and
- (b) not fewer than 2 and not more than 4 other persons appointed by the Minister

but the Minister shall not appoint employees of the Treasury Department as members of the appeal board.

(7) The Minister may pay fees and living and travelling expenses to the members of an appeal board.

Appeal to Court
of Appeal

8 The Director, or a person whose appeal is heard by an appeal board, may appeal the decision of the appeal board on a question of law or jurisdiction by filing an originating notice with the Court of Appeal within 30 days of being notified of the decision, and the Court of Appeal may make any order that an appeal board may make pursuant to section 7(5).

Financial
arrangements to
ensure payment
of taxes

9 In the event of a notice of appeal being filed from a decision to suspend or cancel a licence, the Director may require accelerated

payments of tax collected, a surety bond in an amount to be fixed by him, bank guarantees and other financial arrangements to ensure full payment of taxes owing by the wholesaler or importer.

10(1) A peace officer may at any reasonable time enter into any premises or place where any business is carried on or any property is kept and

(a) audit or examine any books and records and any account, voucher, letter, telegram or other document that relates or may relate to the tax imposed by this Act or any licence or report required under this Act;

(b) examine any property that may, in his opinion, assist him in determining or ascertaining

(i) the accuracy of an inventory,

(ii) any information that is or should be in the books and records,

(iii) the amount of any tax imposed by this Act, or

(iv) whether or not a licence or report is required under this Act;

(c) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams or other documents and retain them until they are produced in any court or administrative proceedings, as the case may be.

(2) For the purpose of determining if tax is payable under this Act or if a person has attempted to evade or has evaded the tax imposed by this Act, a peace officer may

(a) stop and detain any public vehicle, as defined in the *Motor Transport Act*, and may examine the contents of that public vehicle and any trailer that may be attached to it, including any cargo, manifests, records, accounts, vouchers, papers or things that may afford evidence respecting a contravention of this Act or the regulations, and

(b) detain any aircraft and examine the contents of that aircraft, including any cargo, manifests, records, accounts, vouchers, papers or things that may afford evidence respecting a contravention of this Act or the regulations

and the peace officer may seize and take away the cargo, manifests, records, accounts, vouchers, papers or things and retain them until they are produced in court or administrative proceedings, as the case may be.

(3) If a peace officer has reason to believe that an offence has been committed under this Act or the regulations and that more than 10 000 cigarettes or other tobacco products of a similar retail value

are held by any person, the peace officer may seize, take away, hold and dispose of those cigarettes or other tobacco products in accordance with subsections (4), (5) and (6).

(4) Subject to subsection (5), cigarettes or other tobacco products seized under subsection (3) shall be forfeited to Her Majesty in right of Alberta to be disposed of as the Minister directs.

(5) If, within 30 days after the seizure, the person who had control over the cigarettes or other tobacco products seized under subsection (3) furnishes security to the Minister for indebtedness under this Act, the seized cigarettes or other tobacco products shall be returned to that person on payment by him of any costs incurred by the Minister in seizing, taking away and holding the cigarettes or other tobacco products.

(6) If the Minister directs that the cigarettes or other tobacco products be disposed of by sale, the proceeds of that sale remaining after payment of the costs incurred by the Minister in seizing, taking away, holding and disposing of the cigarettes or other tobacco products shall be applied against the indebtedness under this Act of the person in whose control the cigarettes or other tobacco products were prior to seizure, and any remaining proceeds shall be paid to that person.

(7) No person shall hinder, prevent or interfere with any peace officer doing anything authorized by this section or attempt to hinder, prevent or interfere with that peace officer.

Inquiry

11 The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, authorize any person to make any inquiry he considers necessary and the person so authorized has all the rights, powers and immunities conferred on a commissioner under the *Public Inquiries Act*.

Demand for information

12(1) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, by a demand served personally or by registered letter or certified mail,

(a) require from any wholesaler, importer or retailer, or

(b) when a wholesaler, importer or retailer is a partnership or corporation, require from a partner or the president, manager, secretary or any director, agent or representative thereof,

any information or additional information or production of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents within a reasonable time that is stipulated in the demand.

(2) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, by a demand served personally or by registered letter or certified mail, require

(a) from any person holding or paying or liable to pay any amount to a wholesaler, importer or retailer, or

(b) from any partner, agent or official of any person holding or paying or liable to pay any amount to a wholesaler, importer or retailer

the production of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents within a reasonable time that is stipulated in the demand.

(3) The Minister may,

(a) for any purpose related to the administration or enforcement of this Act or the regulations, and

(b) with the approval of a judge of the Court of Queen's Bench on an ex parte application,

authorize in writing any peace officer or person appointed to assist the peace officer to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of this Act or the regulations, and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court or administrative proceedings, as the case may be.

(4) The Minister may, by a demand served personally or by registered letter or certified mail, require the production by any person, or by his agent, of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents in the possession or in the control of that person or his agent, for the purpose of determining what tax, if any, is collectible or payable under this Act by any wholesaler, importer, retailer or consumer, or whether a licence or report is required under this Act and production thereof shall be made within a reasonable time that is stipulated in the demand.

(5) When a book, record or other document has been seized, examined or produced under this section,

(a) the person by whom it is seized or examined,

(b) the person to whom it is produced, or

(c) a peace officer,

may make 1 or more copies of it, and a document purporting to be certified by the Minister or a person authorized by the Minister to be a copy made pursuant to this subsection is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way.

Records and
books of account

13(1) Every wholesaler, importer and retailer shall keep records and books of account, including an annual inventory, in the manner prescribed by the Minister.

(2) Records and books of accounts required to be kept under subsection (1) shall be kept

(a) at the wholesaler's, importer's or retailer's place of business or residence in Alberta, or

(b) if the wholesaler, importer or retailer has no place of business or residence in Alberta, at a place in Alberta or elsewhere approved in writing by the Minister under any terms and conditions he may impose.

(3) Notwithstanding subsection (2)(a) a wholesaler, importer or retailer may keep the records or books of account at a place in Alberta or elsewhere approved in writing by the Minister under any terms and conditions the Minister may impose.

(4) If a wholesaler, importer or retailer has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require him to keep those records and books of account that the Minister may specify and the wholesaler, importer or retailer shall keep the records and books of account so specified.

(5) Any person required by this section to keep records and books of account shall retain

(a) the records and books of account in respect of which a period is prescribed pursuant to section 19(f), together with every account and voucher necessary to verify the information contained in any record or book of account, for the prescribed period, and

(b) all records and books of account other than those referred to in clause (a), together with every account and voucher necessary to verify the information contained in any record or book of account, until the expiration of 4 years from the end of the last fiscal year to which the records and books of account relate.

(6) Where a person required by this section to keep records and books of account is a party to an appeal under section 7(2) or 8, that person shall retain every record, book of account, account and voucher necessary for dealing with the appeal until the appeal is disposed of and until any further appeal is disposed of or the time for filing any further appeal has expired.

(7) Where the Minister is of the opinion that it is necessary for the administration of this Act, he may, by a demand served personally or by registered letter or certified mail, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained in the records and books of account, for any period specified in the demand.

(8) A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained in the records and books of account, before the expiration of the period for which those records and books of account are required to be kept if written permission for their disposal is given by the Minister.

Communication
of information
restricted

14(1) Subject to subsection (2), no person employed by the Government of Alberta shall communicate or allow to be communicated to

any person not employed by the Government of Alberta any information obtained under this Act, or allow any person to inspect or have access to any written statement furnished under this Act.

(2) The Minister may

(a) communicate or allow to be communicated information obtained under this Act to, and

(b) allow inspection of or access to any written statement furnished under this Act by

any person authorized by the Minister or any person employed by the Government of Canada or the government of any province if

(c) the information and written statements will not be used for any purpose other than the administration or enforcement of a federal or provincial law that provides for the imposition of a tax, and

(d) in the case of information and statements communicated to a government, that government furnishes information or permits inspection of or access to statements on a reciprocal basis to the Minister.

Offence and
penalty

15 Any person who

(a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or other document delivered or made under this Act or the regulations,

(b) destroys, alters, mutilates or disposes of the books or records of a wholesaler, importer, retailer or consumer,

(c) makes, participates in, assents to or acquiesces in the making of false or deceptive entries in the books or records of a wholesaler, importer, retailer or consumer or omits or assents to or acquiesces in the omission of material particular to those books or records, or

(d) wilfully evades or attempts to evade compliance with this Act or the regulations

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable to a fine of not more than \$5000 or to imprisonment for not more than 2 years or to both the fine and imprisonment.

Penalties

16(1) Any person who contravenes section 3(2) or 4(2) is guilty of an offence and, in addition to any other penalty provided by this Act, shall pay a penalty of not more than 3 times the tax required to be collected under section 3(2) or required to be remitted under section 4(2), as the case may be.

(2) Any person who contravenes section 5 is guilty of an offence and, in addition to any other penalty provided by this Act, shall pay

a penalty of not more than 3 times the tax paid or payable on the tobacco sold.

(3) Any person who contravenes section 12(1), (2) or (4) is guilty of an offence and is liable to a fine of \$50 for each day during which the contravention continues.

General penalty

17 Any person who contravenes a provision of this Act or the regulations for which no other penalty is provided is guilty of an offence and is liable

(a) for a first offence, to a fine of not more than \$1000 or to a term of imprisonment of not more than 30 days, or to both the fine and imprisonment, and

(b) for any subsequent offence, to a fine of not more than \$2000 or to a term of imprisonment of not more than 6 months, or to both the fine and imprisonment.

Time for laying information or complaint

18 An information or complaint in respect of a contravention of this Act or the regulations may only be laid or made within 3 years from the day the matter of the information or complaint arose.

Powers of Minister

19 The Minister may

(a) appoint persons as peace officers for the purposes of this Act,

(b) require surety bonds, bank guarantees or other financial arrangements to be furnished or made by any person who collects the tax imposed by this Act and prescribe the form and amount of the bonds, guarantees or other financial arrangements,

(c) prescribe the returns and statements to be made by wholesalers, importers, manufacturers and retailers of tobacco, the information to be given in those returns and statements, by whom and in what manner they are to be made and the time within which those returns and statements shall be filed,

(d) assess and reassess tax owing under this Act and any interest on it,

(e) prescribe forms and provide for their use,

(f) prescribe any records and books of account required to be kept by wholesalers, importers and retailers, and the period of time those records and books of account shall be kept,

(g) prescribe the manner of accounting for and paying over of tax imposed by this Act,

(h) prescribe the time period within which or the times at which tax collected under this Act shall be remitted to the Minister,

(i) require accelerated payments of tax collected by a tax collector or any other person who collects tax,

(j) exempt any wholesaler from the operation of section 5(2) subject to any terms and conditions that he may impose, and

(k) authorize those persons to whom information may be communicated or who may inspect or have access to statements furnished under this Act for the purposes of section 14(2).

Regulations

20 The Lieutenant Governor in Council may make regulations

- (a) defining any word used in this Act but not defined in this Act;
- (b) prescribing the remuneration to be paid to tax collectors;
- (c) establishing a system of licences for wholesalers and importers;
- (d) excluding any class or form of tobacco products from this Act;
- (e) exempting any person or class of persons from the payment of the tax imposed by this Act;
- (f) providing for the refund of the whole or any part of the tax paid under this Act and prescribing the records and material to be furnished on any application for a refund;
- (g) prescribing the rate of interest payable on tax owing;
- (h) prescribing terms and conditions in respect of the appointment of tax collectors for the purposes of section 4 and respecting any agreements that may be entered into with those tax collectors.

Repeal

21 The *Tobacco Tax Act*, being chapter T-5 of the Revised Statutes of Alberta 1980, is repealed.

Commencement

22 This Act shall be deemed to have come into force on March 25, 1983.