

1987 BILL 48

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 48

TOBACCO TAX AMENDMENT ACT, 1987

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 48

1987

TOBACCO TAX AMENDMENT ACT, 1987

(Assented to _____, 1987)

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

1 *The Tobacco Tax Act is amended by this Act.*

2 *Section 1 is amended*

(a) *by adding the following after clause (c):*

(c.1) "judge" means a judge of the Court of Queen's Bench;

(b) *by repealing clause (f) and substituting the following:*

(f) "officer" means

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

(ii) a police officer;

(iii) a special constable appointed under the *Police Act*;

(iv) any person appointed by the Minister as an officer for the purposes of this Act;

3(1) *Section 3 is amended*

(a) *by repealing subsection (1)(h) and substituting the following:*

(h) \$0.0064 on every gram or part of a gram of any tobacco, other than cigarettes and cigars, purchased by him.

(b) *by repealing subsection (1) as amended by section 3(1)(a) of this Act and substituting the following:*

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

(a) \$0.04 on every cigarette purchased by him;

(b) \$0.10 on every cigar purchased by him for a retail price of not more than \$0.20;

(c) \$0.20 on every cigar purchased by him for a retail price of more than \$0.20 and not more than \$0.40;

(d) \$0.30 on every cigar purchased by him for a retail price of more than \$0.40 and not more than \$0.60;

Explanatory Notes

1 This Bill will amend chapter T-5.1 of the Statutes of Alberta, 1983.

2 Section 1(f) presently reads:

1 In 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;

3 Section 3 presently reads in part:

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.

(e) \$0.50 on every cigar purchased by him for a retail price of more than \$0.60 and not more than \$1;

(f) \$0.75 on every cigar purchased by him for a retail price of more than \$1 and not more than \$1.50;

(g) \$1 on every cigar purchased by him for a retail price of more than \$1.50;

(h) \$0.015 on every gram or part of a gram of any tobacco, other than cigarettes and cigars, purchased by him.

(c) *by adding the following after subsection (1):*

(1.1) Where the amount of tax payable computed at the rate under subsection (1) is a fraction of a cent, the amount shall be rounded to the next higher cent.

(2) *Subsection (1)(a) applies to tobacco other than cigarettes and cigars purchased after September 30, 1985.*

(3) *Subsection (1)(b) and (c) apply after March 20, 1987.*

4 *Section 4(2) is repealed and the following is substituted:*

(2) A person who collects tax under this Act shall remit the tax

(a) to the Minister where

(i) the person is a tax collector,

(ii) the tobacco has not at any time been sold by a person who is a tax collector, or

(iii) the Minister so directs,

or

(b) to a tax collector where the person acquires the tobacco from a person who is a tax collector.

5 *Section 5(1) is repealed and the following is substituted:*

5(1) No person shall

(a) sell or agree to sell tobacco in Alberta for resale unless the person holds a subsisting wholesaler's licence for that purpose issued by the Minister, or

(b) import or bring tobacco into Alberta and sell or agree to sell that tobacco to a consumer unless the person holds a subsisting importer's licence for that purpose issued by the Minister.

6 *Section 6 is amended by striking out "Director" wherever it occurs and substituting "Minister".*

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

4 Section 4(2) presently reads:

(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.

5 Section 5(1) presently reads:

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.

6 Section 6 presently reads:

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.

7 Section 8 is amended by striking out “Director” and substituting “Minister”.

8 Section 9 is amended by striking out “Director” and substituting “Minister”.

9 Sections 10, 11 and 12 are repealed and the following is substituted:

10(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 a 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, officer, agent or representative of the partnership or corporation,

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 an amount for or paying or liable to pay any amount to a wholesaler, importer or retailer, or

(b) from any partner, director, officer or agent of any person holding an amount for 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, 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 person, 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.

10.1 The Minister may

(a) require a wholesaler, importer or retailer, in a particular case,

(i) to keep any record,

7 Section 8 presently reads:

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).

8 Section 9 presently reads:

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.

9 Sections 10, 11 and 12 presently read:

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).

- (ii) to make any return,
- (iii) to comply with a specified method of accounting, or
- (iv) to make an inventory of tobacco as of a specified time,

for a purpose related to this Act or the regulations;

(b) extend the time for making a return or statement under this Act;

(c) prescribe the form of any agreement or other document used in the administration of this Act.

11(1) In this section and sections 12 and 12.1,

(a) “documents” includes money, securities and any of the following, whether computerized or not: books, records, letters, telegrams, vouchers, invoices, accounts and statements, financial or otherwise;

(b) “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 within the curtilage of a dwelling-house 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 that is being used as a permanent or temporary residence.

(2) An officer may, at all reasonable times, for any purpose related to the administration of this Act,

(a) inspect, audit or examine the books and records of a wholesaler, importer or retailer and any document of the wholesaler, importer or retailer or of any other person that relates or may relate to the information that is or should be in the books or records of the wholesaler, importer or retailer or to any amount payable by or to him under this Act, and

(b) require the production for inspection, audit or examination of all books, records or documents that are or may be relevant to the inspection, audit or examination,

and for those purposes the officer may, if he has reasonable grounds to believe that books, records or documents described in clause (a) or (b) are likely to be found in any premises or place,

(c) subject to subsection (5), enter into the premises or place, and

(d) require the owner or manager of the premises or place and any other person on the premises or at the place to give him all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and, for that purpose, require the owner or manager to attend at the premises or place with him.

(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.

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.

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

(3) Subject to subsection (5), an officer may at any reasonable time enter into any premises or place where any business is carried on or any property is kept and examine any property that may, in his opinion, assist him in determining or ascertaining

- (a) the accuracy of an inventory,
- (b) any information that is or should be in the books and records,
- (c) the amount of any tax imposed by this Act, or
- (d) whether or not a licence or report is required under this Act.

(4) If, on an ex parte application by the Minister, a judge is satisfied by information on oath that

- (a) there are reasonable grounds to believe that there are in any premises or place other than a dwelling-house books, records or documents described in subsection (2)(a) or (b) or property described in subsection (3), and
- (b) entry into the premises or place is necessary for the administration of this Act,

he may issue a warrant authorizing an officer named in the warrant to enter the premises or place and to exercise any of the powers referred to in subsections (2) and (3), subject to the conditions specified in the warrant.

(5) If the premises or place referred to in subsection (2) or (3) is a dwelling-house, an officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (6).

(6) If, on an ex parte application by the Minister, a judge is satisfied by information on oath

- (a) that there are reasonable grounds to believe that a dwelling-house is the premises or a place referred to in subsection (2) or (3),
- (b) that entry into the dwelling-house is necessary for any purpose relating to the administration of this Act, and
- (c) that entry into the dwelling-house has been refused or that there are reasonable grounds to believe that entry into it will be refused,

he may issue a warrant authorizing an officer named in the warrant to enter that dwelling-house subject to the conditions specified in the warrant, but if the judge is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration of this Act, he shall

- (d) order the occupant of the dwelling-house to provide reasonable access to the officer to any books, records, documents or property that are being or should be kept in the dwelling-house, and

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.

(e) make any other order that is appropriate in the circumstances to carry out the purposes of this Act

to the extent that access has been or may be expected to be refused and that the books, records, documents or property are being kept or may be expected to be kept in the dwelling-house.

(7) In executing a warrant issued under this section, the officer named in the warrant shall not use force unless he is specifically authorized to do so in the warrant.

12(1) A judge may, on ex parte application by the Minister, issue a warrant in writing authorizing any person named in the warrant to enter and search any building, receptacle or place for any document or thing that may afford evidence as to the commission of an offence under this Act and to seize and, as soon as practicable, bring the document or thing before, or make a report in respect of it to, a judge, who shall deal with it in accordance with this section.

(2) An application under subsection (1) shall be supported by information on oath establishing the facts on which the application is based.

(3) A judge shall issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act has been committed,

(b) a document or thing that may afford evidence of the commission of the offence is likely to be found, and

(c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

(4) A warrant issued under subsection (1) shall refer to the offence for which it is issued, shall identify the building, receptacle or place to be searched and the person alleged to have committed the offence and shall be reasonably specific as to the document or thing to be searched for and seized.

(5) Any person who executes a warrant under subsection (1) may seize, in addition to the document or thing referred to in subsection (1), any other document or thing that he believes on reasonable grounds affords evidence of the commission of an offence under this Act and shall as soon as practicable bring the document or thing before, or make a report in respect of it to, a judge, who shall deal with it in accordance with this section.

(6) Subject to subsection (7), if any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of it is made to a judge, the judge shall, unless the Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

(7) If any document or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of it is made to a judge, the judge may, of his own motion or on summary application by a person with an interest in the document or thing, on 3 clear days' notice of the application to the Deputy Attorney General, order that the document or thing be returned to the person from whom it was seized or to the person who is otherwise legally entitled to it, if the judge is satisfied that the document or thing

(a) will not be required for an investigation or a criminal proceeding, or

(b) was not seized in accordance with the warrant or this section.

(8) The person from whom a document or thing is seized pursuant to this section is entitled, at all reasonable times and subject to any reasonable conditions that are imposed by the Minister, to inspect the document or thing and to obtain 1 copy of the document at the expense of the Minister.

(9) Where cigarettes or other tobacco products are seized under this section, they shall be held and disposed of in accordance with subsections (10), (11) and (12).

(10) Subject to subsection (11), cigarettes or other tobacco products that are seized shall be forfeited to Her Majesty in right of Alberta to be disposed of as the Minister directs.

(11) If, within 30 days after the seizure, the person who had control over the cigarettes or other tobacco products furnishes security to the Minister for indebtedness under this Act, the 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.

(12) 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.

12.1(1) If any book, record, paper or other document has been seized, examined or produced under sections 10 to 12, the person by whom it is seized or examined or to whom it is produced or any officer of the Treasury Department may make, or cause to be made, 1 or more copies.

(2) A document purporting to be certified by the Minister or a person authorized by the Minister to be a copy made pursuant to this section shall be admitted in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

12.2 No person shall hinder, molest or interfere with any person doing anything that he is authorized by or pursuant to sections 10 to 12.1 to do or prevent or attempt to prevent any person doing that thing and, notwithstanding any other law to the contrary, a person shall, unless he is unable to do so, do everything he is required by or pursuant to sections 10 to 12.1 to do.

10 Section 19(a) is amended by striking out "peace officers" and substituting "officers".

10 Section 19(a) presently reads:

19 The Minister may

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