

1997 BILL 24

First Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 24

TOBACCO TAX AMENDMENT ACT, 1997

MR. STRANG

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

BILL 24

1997

TOBACCO TAX AMENDMENT ACT, 1997

(Assented to _____, 1997)

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

Amends SA
1983 cT-5.1

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

2 Section 1 is amended

(a) by renumbering clause (a) as clause (a.01) and by adding the following before clause (a.01):

(a) “arm’s length” means arm’s length as defined in section 251 of the *Income Tax Act* (Canada);

(b) by adding the following after clause (d):

(d.1) “marked for sale in Alberta”, with respect to the packaging of tobacco, means that the package is marked in accordance with, and by a person authorized pursuant to, the regulations;

(c) by adding the following after clause (g):

(g.1) “registration” means a registration of an exempt sale retailer under regulations made under section 20(g.02);

3 Section 3.2(4) is repealed and the following is substituted:

- (4) No person shall possess more than
- (a) 1000 cigarettes, or
 - (b) 1000 grams of fine cut tobacco,

Explanatory Notes

1 Amends chapter T-5.1 of the Statutes of Alberta, 1983.

2 Adds definitions.

3 Section 3.2(4) presently reads:

(4) No consumer shall possess more than

(a) 1000 cigarettes, or

(b) 1000 grams of fine cut tobacco,

the packaging of which is not marked for sale in Alberta, unless the person holds a subsisting wholesaler's or importer's licence.

4 Section 5(3) is amended

- (a) by striking out "for resale";
- (b) by striking out "or importer's".

5 Section 6 is amended by renumbering it as section 6(1) and by adding the following after subsection (1):

(2) The Minister may refuse to issue a licence to a person who is not dealing at arm's length with a person whose application for a licence has been refused or whose licence has been suspended or cancelled.

6 Section 6.2 is amended by adding the following after clause (b):

- (b.1) refuses to register a person,
- (b.2) suspends or cancels the registration of a person,

the packaging of which is not marked for sale in Alberta.

4 Section 5(3) presently reads:

(3) Unless authorized by the Minister, no retailer shall acquire tobacco in Alberta for resale except from a person who holds a subsisting wholesaler's or importer's licence.

5 Section 6 presently reads:

6 The Minister 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 Minister,

- (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,*
- (c) contravenes this Act or the regulations or a statute or regulation of another jurisdiction that governs the sale of tobacco in that other jurisdiction,*
- (d) has any director, officer or employee who has contravened this Act or the regulations or a statute or regulation of another jurisdiction that governs the sale of tobacco in that other jurisdiction, or*
- (e) breaches the terms of a tax collection agreement to which that person is a party.*

6 Section 6.2 presently reads:

6.2 Where the Minister

- (a) refuses to issue a licence or to renew a licence to a person,*
- (b) suspends or cancels a licence of a person,*
- (c) makes an assessment of tax, interest or penalty payable by a person, or*
- (d) refuses to issue a refund to a person.*

7 Section 7(1) is amended by adding the following after clause (c):

- (c.1) to not being registered,
- (c.2) to his registration being suspended or cancelled,

8 Section 7.3(3)(b) is amended by adding the following after subclause (i):

- (i.1) in the case of the refusal, suspension or cancellation affecting a registration, direct, as the case may be, that, subject to any terms or conditions as the Court considers appropriate,
 - (A) the registration be issued,
 - (B) the suspension be removed, or
 - (C) the registration be reinstated,

9 Section 9.2 is repealed and the following is substituted:

the Minister shall notify that person in writing of the action or decision taken by the Minister.

7 Section 7(1) presently reads:

7(1) A person who objects

- (a) to not being issued a licence,*
- (b) to his licence not being renewed,*
- (c) to his licence being suspended or cancelled,*
- (d) to an assessment of tax, interest or penalty, or*
- (e) to not being issued a refund,*

may, within 90 days of the day of mailing of the notice, serve on the Minister a notice of objection in the form provided by the Minister setting out the reasons for the objection and the relevant facts.

8 Section 7.3(3) presently reads:

(3) The Court may, in hearing an appeal,

- (a) dismiss the appeal, or*
- (b) allow the appeal and*
 - (i) in the case of the refusal, suspension or cancellation affecting a licence, direct, as the case may be, that*
 - (A) the licence be issued,*
 - (B) the licence be renewed,*
 - (C) the suspension be removed, or*
 - (D) the licence be reinstated,**subject to any terms or conditions as the Court considers appropriate,*
 - (ii) in the case of an assessment, quash or vary the assessment, or*
 - (iii) in the case of a refusal to issue a refund, direct that a refund be issued in an amount as the Court may direct.*

9 Payment by third parties.

Payment by
third party

9.2(1) If the Minister has knowledge or suspects that a person is or will be, within one year, liable to make any payment to a person who owes an amount under this Act (in this section referred to as the debtor), the Minister may, by written notice, require the person to pay the money otherwise payable to the debtor in whole or in part to the Minister on account of the amount owing by the debtor under this Act.

(2) Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

- (a) a bank, credit union, trust corporation, loan corporation or other similar person (in this section referred to as the “institution”) will lend or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a 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 lend or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects
 - (i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or
 - (ii) if that person is a corporation, is not dealing at arm’s length with that person,

the Minister may by written notice require the institution or person, as the case may be, to pay in whole or in part to the Minister on account of the amount owing by the debtor under this Act the money that would otherwise be so lent, advanced or paid, and any money so paid to the Minister is deemed to have been lent, advanced or paid, as the case may be, to the debtor.

(3) The receipt of the Minister for money paid under this section is a good and sufficient discharge of the amount owing by the debtor to the extent of that payment.

(4) A person who, after receiving a notice under subsection (1), discharges any liability to the debtor without complying with a requirement under this section is liable to pay to Her Majesty in right of Alberta the lesser of

- (a) an amount equal to the liability discharged, and

(b) the amount that the person was required under this section to pay to the Minister.

(5) An institution or other person that, after receiving a notice under subsection (2), fails to comply with a requirement under this section with respect to money to be lent, advanced or paid is liable to pay to Her Majesty in right of Alberta an amount equal to the lesser of

(a) the total of money so lent, advanced or paid, and

(b) the amount that the institution or person was required under that subsection to pay to the Minister.

(6) If the person who is or is about to become liable carries on business under a name or style other than his own name, the notice under subsection (1) or (2) may be addressed to the name or style under which he carries on business and, in the case of personal service, is deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(7) If the persons who are or are about to become liable carry on business in partnership, the notice under subsection (1) or (2) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

10 The following is added after section 9.2:

Liability of
directors for
failure to remit

9.21(1) Where a corporation has failed to remit tax collected by that corporation, the directors of the corporation at the time the corporation was required to remit the tax collected are jointly and severally liable, together with the corporation, to pay that tax collected and any interest or penalties relating to it.

(2) A director is not liable under subsection (1) unless

(a) a certificate for the amount of the corporation's liability referred to in subsection (1) has been filed in the Court under section 9.1(2) 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

10 Liability of directors for failure to remit.

claim for the amount of the corporation's liability referred to in subsection (1) has been proved within 6 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 it 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 6 months after the date of the assignment or receiving order.

(3) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) may be commenced more than 2 years after the director last ceased to be a director of that corporation.

(4) Where execution referred to in subsection (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(5) Where a director pays an amount in respect of a 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 in right of Alberta would have been entitled to had that amount not been so paid, and where a certificate that relates to that amount has been filed, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(6) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

11 Section 11(3) is amended by adding “, property” after “records”.

11 Section 11(3) presently reads:

(3) Where an officer on reasonable grounds believes that the records or documents referred to in subsection (2) are located in any premises or place, the officer may, at any reasonable time,

*(a) subject to subsection (4), enter the premises or place,
and*

*(b) 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*

12 Section 11.1(4) is amended by adding “, other than a seizure of tobacco in or near a vehicle,” after “subsection (3)”.

13 Section 14(2)(c) is amended by striking out “that provides for the imposition of a tax”.

14 The following is added after section 14.2:

Assessment of
refund
overpayment

14.21(1) The Minister may, within 4 years from the end of the calendar year in which a refund has been made, assess

- (a) any overpayment of a refund made to a retailer exempted under a regulation made under section 20(g.01), and
- (b) interest on that amount calculated in the manner prescribed in the regulations.

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.

12 Section 11.1(4) presently reads:

(4) Following a seizure under subsection (3) the officer shall, within a reasonable time,

(a) furnish a judge of the Provincial Court with an affidavit stating that he has reasonable and probable grounds to believe that the person named in the affidavit has committed an offence under this Act or the regulations, or

(b) return the vehicle and any things seized to the person from whom they were seized.

13 Section 14(2) presently reads:

(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.

14 Refund overpayments.

(2) Liability for the amount of an overpayment is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(3) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding a return or information so delivered, or if no return or information has been delivered, assess the amount of the overpayment.

(4) If the Minister establishes that the overpayment is attributable to neglect, carelessness or wilful default, or to any fraud that the person committed in making a return or in supplying any information under this Act or in omitting to disclose any information that is to be disclosed under this Act, the Minister may at any time assess a penalty equal to the amount of the overpayment including any interest.

15 Section 14.3 is amended by striking out “section 14.1 or 14.2” wherever it occurs and substituting “this Act”.

16 Section 15.1(1) is amended by striking out “consumer” and substituting “person”.

15 Section 14.3 presently reads:

14.3(1) Unless it is varied or vacated on an objection or appeal,

(a) an assessment made under section 14.1 or 14.2 is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it, and

(b) the amount assessed in an assessment made under section 14.1 or 14.2 is, for the purposes of collection and recovery, deemed to be a tax owing under this Act and to be conclusively established as a debt due to Her Majesty in right of Alberta.

(2) Every person assessed under section 14.1 or 14.2 shall, within 30 days of the service of the notice of assessment, pay the amount assessed against him, whether or not an objection to or appeal from the assessment is outstanding.

16 Section 15.1(1) presently reads:

15.1(1) A consumer who contravenes section 3(1) or 3.2(4) 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 fine and imprisonment, and

(b) on a subsequent offence, to a fine of not more than \$5000 or to a term of imprisonment of not more than 6 months or to both fine and imprisonment.

17 Section 20 is amended by adding the following after clause (g.01):

(g.02) respecting the registration of retailers who sell tobacco to persons who are not required to pay tax under this Act and the cancellation and suspension of those registrations;

17 New regulation-making powers.