

1999 BILL 9

Third Session, 24th Legislature, 48 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 9

TOBACCO TAX AMENDMENT ACT, 1999

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 9

1999

TOBACCO TAX AMENDMENT ACT, 1999

(Assented to _____, 1999)

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 adding the following after clause (a.01):

(a.02) “black stock” means black stock as defined in the *Excise Tax Act* (Canada);

(b) by repealing clause (d.1) and substituting the following:

(d.1) “marked for tax-paid sale in Alberta”, with respect to the packaging of tobacco products on which tax is payable, 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 (e):

(e.1) “not marked for tax-paid sale in Alberta”, with respect to tobacco products, includes

(i) black stock,

(ii) stamped or marked in accordance with any statute of a province, other than Alberta, to indicate that the tobacco products are intended for retail sale in a particular province or in particular provinces,

Explanatory Notes

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

2 Section 1 presently reads in part:

1 In this Act,

(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;

(iii) stamped or marked in accordance with the law of a country other than Canada, to indicate that the tobacco products are intended for retail sale in that country, or

(iv) not marked or stamped;

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

(j.01) “tobacco products” means cigarettes and fine cut tobacco;

3 Section 3.2 is repealed and the following is substituted:

Tobacco not
marked for
tax-paid sale

3.2(1) No wholesaler or importer shall, in Alberta, purchase, possess, store, sell or offer for sale tobacco products that are not marked for tax-paid sale in Alberta unless the wholesaler or importer has written permission from the Minister to do so and the Minister is satisfied

(a) in the case of tobacco products that are black stock, that the wholesaler or importer will be selling the tobacco products to an exempt-sale retailer, or

(b) that the tobacco products will be transported out of Alberta for resale.

(2) No retailer shall, in Alberta, purchase, possess, store, sell or offer for sale tobacco products that are not marked for tax-paid sale in Alberta unless, in the case of tobacco products that are black stock, the retailer is an exempt-sale retailer.

(3) No person shall, in Alberta, purchase or possess tobacco products that are black stock unless the person is

(a) permitted to do so under subsection (1) or (2), or

(b) exempted under regulations made under section 20(e).

(4) Subject to subsection (3), no person shall possess more than 1000 grams of tobacco products that are not marked for tax-paid sale in Alberta, except a wholesaler or importer who possesses the tobacco products in accordance with subsection (1).

4 The following is added after section 14:

3 Section 3.2 presently reads:

3.2(1) In this section, "tobacco products" means cigarettes and fine cut tobacco.

(2) No wholesaler or importer shall purchase, possess, store, sell or offer for sale in Alberta tobacco products, the packaging of which is not marked for sale in Alberta, unless

(a) he sells or intends to sell those tobacco products to an exempt sale retailer or he intends to transport those tobacco products out of Alberta for resale, and

(b) he has written permission from the Minister.

(3) No retailer shall purchase, possess, store, sell or offer for sale in Alberta tobacco products, the packaging of which is not marked for sale in Alberta, unless he is an exempt sale retailer and those tobacco products are sold or are intended for sale in accordance with the regulations.

(4) No person 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.

(5) On the coming into force of this section, section 3.1 is repealed.

4 Black stock.

Black stock

14.01(1) If a person purchases or otherwise possesses tobacco products that are black stock in contravention of section 3.2, the Minister may assess the person a penalty in the amount equal to the tax that would have been payable if the tobacco products were not black stock and were sold to a consumer in Alberta.

(2) A person exempted under regulations made under section 20(e) who purchases more than 1000 grams of tobacco products that are black stock in a calendar week must

(a) at the time of purchase,

(i) advise the seller that the person's weekly purchases of tobacco products have exceeded 1000 grams, and

(ii) advise the seller of the intended disposition or use of the tobacco products,

and

(b) maintain records of the disposition or use of the tobacco products,

and the seller must record the intended disposition or use on a voucher completed in accordance with the regulations.

(3) If a person purchases more than 1000 grams of tobacco products in contravention of subsection (2), the Minister may assess a penalty equal to the tax on the amount of tobacco products purchased in that week that would have been payable if the tobacco products were not black stock.

5 Section 15.1 is amended

(a) in subsection (1) by striking out "3.2(4)" and substituting "3.2(3) or (4)";

(b) in subsection (2) by striking out "3(2), 3.2(2) or (3)" and substituting "3(2), 3.2(1) or (2)";

(c) by repealing subsection (2)(c)(ii) and substituting the following:

(ii) in the case of an offence under section 3.2(1) or (2), would have been payable under section 3 if the tobacco products were marked for tax-paid sale in Alberta and sold to a consumer in Alberta, and

5 Section 15.1 presently reads:

15.1(1) A person 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.

(2) A person who contravenes section 3(2), 3.2(2) or (3), 4(2) or 5 is guilty of an offence and is liable

6 Section 19(b), (c), (f), (g) and (h) are repealed.

- (a) *for a first offence, to a fine of not more than \$10 000 or to a term of imprisonment of not more than 6 months or to both a fine and imprisonment,*
- (b) *for a 2nd offence, to a fine of not more than \$25 000 or to a term of imprisonment of not more than one year or to both a fine and imprisonment, and*
- (c) *in addition to the penalties in clauses (a) and (b), to a penalty of not more than 3 times the amount of tax that,*
 - (i) *in the case of an offence under section 3(2) or 4(2), should have been collected and remitted by the person,*
 - (ii) *in the case of an offence under section 3.2(2) or (3), would have been payable under section 3 were the cigarettes or fine cut tobacco, as the case may be, marked for sale in Alberta and sold to a consumer in Alberta, and*
 - (iii) *in the case of an offence under section 5, would have been payable under section 3 were the tobacco sold to a consumer.*

(3) *Every person who*

- (a) *marks tobacco without holding a permit issued under the regulations, or*
- (b) *being the holder of a permit to mark tobacco, refuses or neglects to mark packages of tobacco in accordance with the regulations*

is guilty of an offence and is liable to a fine of not more than \$1 000 000 or to imprisonment for a term not exceeding 3 years, or to both a fine and imprisonment.

(4) *Every person who, being the holder of a permit to mark tobacco, contravenes any condition or restriction contained in the permit or any other requirement specified in the regulations is guilty of an offence and is liable to a fine of not more than \$10 000.*

(5) *Every person who has received permission from the Minister to purchase and sell tobacco that is not marked for sale in Alberta and who contravenes this Act or the regulations or any condition or restriction contained in the authorization is guilty of an offence and is liable to a fine of not more than \$10 000.*

6 Section 19 presently reads in part:

19 *The Minister may*

- (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*

7 Section 20 is amended by adding the following after clause (i):

- (j) respecting the 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 must be kept;
- (k) requiring surety bonds, bank guarantees or other financial arrangements to be furnished or made by any person who collects or remits tax pursuant to this Act and prescribing the form and amount of the bonds, guarantees or other financial arrangements;
- (l) respecting returns to be made to the Minister, including the person required to make them;
- (m) respecting records to be kept under this Act;
- (n) respecting the collection and remittance of tax under this Act.

8 Sections 6 and 7 come into force on Proclamation.

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 or any person who sells tobacco to any wholesaler, importer, manufacturer or retailer 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,*
- (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,*

7 Section 20 presently reads in part:

20 The Lieutenant Governor in Council may make regulations

- (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;*
- (i) requiring packages containing tobacco to be marked and governing the marking of those packages.*

8 Coming into force.