

Bill 35
Mr. Cao

BILL 35

2003

TOBACCO TAX AMENDMENT ACT, 2003

(Assented to , 2003)

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

Amends RSA 2000 cT-4

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

2 Section 1 is amended

(a) by repealing clause (d) and substituting the following:

- (d) “consumer” means a person who purchases or acquires tobacco in Alberta
 - (i) for consumption or use by that person,
 - (ii) for consumption or use by another person at the first person’s expense, or
 - (iii) on behalf of, or as the agent for, a principal for consumption or use by the principal or by another person at the principal’s expense;

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

- (e.1) “customs officer” means an officer as defined in section 2 of the *Customs Act* (Canada) who is employed at a customs office in Alberta;

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

- (f.1) “importing consumer” means a person who
- (i) ordinarily resides or carries on business in Alberta, and
 - (ii) imports or sends tobacco into Alberta, or acquires or receives delivery of tobacco in Alberta,
 - (A) for consumption or use by that person,
 - (B) for consumption or use by another person at the first person’s expense, or
 - (C) on behalf of, or as the agent for, a principal for consumption or use by the principal or by another person at the principal’s expense;

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

- (k.1) “postal agent” means the Canada Post Corporation established under the *Canada Post Corporation Act* (Canada) and its officers, employees and agents if the Minister of National Revenue has entered into a written agreement with the Canada Post Corporation under which agreement the Canada Post Corporation is authorized by the Minister of National Revenue and agrees to collect, as agent of the Minister of National Revenue, duties as defined in the *Customs Act* (Canada) respecting mail delivered into Alberta;

3 Section 3 is amended by adding the following after subsection (1):

- (1.01)** An importing consumer shall, on importing or sending tobacco into Alberta or acquiring or receiving delivery of tobacco in Alberta through a port of entry from a place outside of Canada,
- (a) report immediately to a customs officer,
 - (b) provide the customs officer with all the information that is required by the customs officer regarding the tobacco, and

- (c) pay to the customs officer as agent of Her Majesty in right of Alberta the same amount of tax as would have been payable under subsection (1) if the tobacco had been purchased in Alberta.

(1.02) An importing consumer shall, at the time of receiving delivery of tobacco in Alberta by mail from a place outside of Canada,

- (a) provide the postal agent where the tobacco is received with all the information that is required by the postal agent regarding the tobacco, and
- (b) pay to the postal agent as agent of Her Majesty in right of Alberta the same amount of tax as would have been payable under subsection (1) if the tobacco had been purchased in Alberta.

(1.03) If neither subsection (1.01) nor (1.02) applies, an importing consumer shall, at the time of importing or sending tobacco into Alberta or acquiring or receiving delivery of tobacco in Alberta, pay to Her Majesty in right of Alberta the same amount of tax as would have been payable under subsection (1) if the tobacco had been purchased in Alberta.

(1.04) Subsections (1.01) and (1.02) do not apply to tobacco in respect of which no tax is payable under Division III of Part IX of the *Excise Tax Act* (Canada).

(1.05) Subsection (1.03) does not apply if no tax would be payable under Division III of Part IX of the *Excise Tax Act* (Canada) if the tobacco were imported, sent, acquired or received from a location outside of Canada.

(1.06) If an importing consumer fails or refuses to comply with subsection (1.01) or (1.02), the customs officer or postal agent, as the case may be, shall detain the tobacco.

(1.07) Tobacco detained under subsection (1.06) must be dealt with as follows:

- (a) if, before the end of 60 days after the start of the detention, the tax payable on the tobacco at the time of

its detention, related interest and penalties and any expenses related to the detention are paid and subsection (1.01)(b) or (1.02)(a) has been complied with, the tobacco must be returned to the importing consumer;

- (b) if the tax, related interest and penalties and expenses referred to in clause (a) are not paid within the time limit referred to in that clause or subsection (1.01)(b) or (1.02)(a) has not been complied with, the tobacco is forfeited to Her Majesty in right of Alberta and may be disposed of as directed by the Minister.

4 Section 4 is amended

(a) by repealing subsection (2)(b) and substituting the following:

- (b) in the case of tobacco products that are black stock, the retailer is
 - (i) an exempt sale retailer, or
 - (ii) a duty free shop as defined in the *Excise Tax Act* (Canada).

(b) by repealing subsection (3) and substituting the following:

- (3)** No person shall, in Alberta, purchase or possess tobacco products that are black stock unless the person
- (a) is permitted to do so under subsection (1) or (2),
 - (b) is exempted under the regulations made under section 48(e), or
 - (c) purchases tobacco products at a duty free shop as defined in the *Excise Tax Act* (Canada) on leaving Alberta and, on importing or sending those tobacco products into Alberta or acquiring or receiving delivery of those tobacco products in Alberta, provides evidence that the tax payable to Her Majesty in right of Alberta has been paid on the tobacco products in accordance with section 3(1.01), (1.02) or (1.03).

(c) by repealing subsection (4) and substituting the following:

(4) Subject to subsection (3), no person shall possess more than 200 cigarettes or 200 grams of manufactured tobacco that are not marked for tax-paid sale in Alberta except

- (a) a wholesaler or importer who possesses the tobacco products in accordance with subsection (1), or
- (b) a person who provides evidence that the tax payable to Her Majesty in right of Alberta has been paid on the tobacco products under section 3(1.01), (1.02) or (1.03).

5 The following is added after section 5:

Tax collection agreement

5.1(1) The Minister may, on behalf of the Government of Alberta, enter into a tax collection agreement with the Government of Canada respecting the administration and enforcement of this Act in relation to tobacco referred to in section 3(1.01) and (1.02).

(2) No action or other proceeding for damages shall be instituted against a customs officer acting pursuant to an agreement mentioned in subsection (1) for any loss or damage suffered by any person by reason of anything done, attempted, caused or permitted to be done or omitted to be done in good faith by the customs officer

- (a) pursuant to or in the performance or supposed performance of any duty pursuant to this Act, the regulations or the agreement, or
- (b) pursuant to or in the exercise or supposed exercise of any power given by this Act, the regulations or the agreement.

6 Section 22(a) is amended by striking out “or retailer” and substituting “, retailer or importing consumer”.

7 Section 33 is amended

(a) in subsections (2) and (3) by striking out “1000 grams” wherever it occurs and substituting “400 grams”;

(b) by adding the following after subsection (3):

(4) The Minister may, at the Minister’s discretion, require a seller to obtain approval from the Minister in advance of a sale of tobacco products that is in excess of the amount specified in subsection (2).

8 This Act, except section 7, comes into force on Proclamation.

Explanatory Notes

1 Amends chapter T-4 of the Revised Statutes of Alberta 2000.

2 Adds definitions.

3 Section 3 presently reads:

3(1) Every consumer who purchases tobacco in Alberta shall at the time of purchase of the tobacco pay to Her Majesty in right of Alberta a tax computed at the following rates:

(a) on every cigarette purchased by that consumer, \$0.16;

- (b) on every cigar purchased by that consumer, 183% of the taxable price of the cigar, with the tax payable on each cigar being not less than \$0.35 per cigar nor more than \$8.00 per cigar;*
- (c) on every gram or part of a gram of any tobacco, other than cigarettes or cigars, purchased by that consumer, \$0.16.*

(1.1) For the purposes of subsection (1), the taxable price of a cigar is the following amount multiplied by 1.3:

- (a) if the cigar was manufactured in Canada, the manufacturer's selling price, including any charges for delivery or transportation and any duty and excise tax imposed under the laws of Canada, except for the tax imposed by Part IX of the Excise Tax Act (Canada);*
- (b) if the cigar was manufactured outside Canada, the importer's selling price, including any charges for delivery or transportation and any duty and excise tax imposed under the laws of Canada, except for the tax imposed by Part IX of the Excise Tax Act (Canada).*

(1.2) Notwithstanding subsection (1.1), if the manufacturer or importer of a cigar is also the retailer of the cigar, the taxable price of the cigar is the price the consumer paid for it, including any charges for delivery or transportation but not including the tax payable under this Act or the tax imposed by Part IX of the Excise Tax Act (Canada).

(2) 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.

(3) 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 presently reads in part:

(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

- (a) the retailer has written permission from the Minister to do so, or*
- (b) 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 48(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).

5 Tax collection agreement.

6 Section 22 presently reads in part:

22 The Minister may

- (a) require a wholesaler, importer or retailer, in a particular case,*
 - (i) to keep any record,*
 - (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;

7 Section 33 presently reads in part:

(2) A person exempted under regulations made under section 48(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.

8 Coming into force.