

## BILL 47

2003

### TOBACCO TAX AMENDMENT ACT, 2003 (NO. 2)

(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 adding the following after clause (m):**

(m.1) “responsible representative” means a trustee in  
bankruptcy, assignee, liquidator, administrator, receiver,  
receiver-manager or any other similar person  
administering, winding up, controlling or otherwise  
dealing with a property or business of a tax collector;

**(b) in clause (r) by adding “, tobacco sticks” after “cigarettes”.**

#### **3 Section 3(1) is amended**

**(a) in clause (a) by adding “or tobacco stick” after “cigarette”;**

**(b) in clause (b) by striking out “183%” and substituting  
“95%”, by striking out “\$0.35” and substituting “\$0.15”  
and by striking out “\$8.00” and substituting “\$5.00”;**

**(c) in clause (c) by adding “, tobacco sticks” after “cigarettes”.**

**4 Section 4(4) is amended by adding “, 200 tobacco sticks” after “cigarettes”.**

**5 Section 4.1 is amended**

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

(a.1) more than 1000 tobacco sticks,

**(b) in clause (d) by striking out “products”.**

**6 Section 6 is repealed and the following is substituted:**

**Special account**

**6** The Minister may require a person who collects taxes under this Act to deposit the amount collected into an account in the name of the Minister or an account in trust for the Minister at a financial institution specified by the Minister.

**7 The following is added after section 19:**

**Responsible representatives**

**19.1(1)** For the purposes of this Act, where a person is a responsible representative of a tax collector at any time,

(a) the responsible representative is jointly and severally liable with the tax collector

(i) to pay each amount that is payable under this Act by the tax collector at or before that time and that remains unpaid, to the extent that the responsible representative is at that time in possession or control, in the capacity of responsible representative, of property that belongs or belonged to, or that is or was held for the benefit of, the tax collector, and

- (ii) to perform any obligation or duty imposed under this Act on the tax collector at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the responsible representative acting in that capacity,

and

- (b) any action or proceeding in respect of the tax collector taken under this Act at or after that time by the Minister may be taken in the name of the responsible representative acting in that capacity and, when taken, has the same effect as if it had been taken directly against the tax collector and, if the tax collector is no longer a tax collector, as if the tax collector continued to be a tax collector.

**(2)** A responsible representative shall, before distributing any property over which the responsible representative has control in that capacity as the responsible representative, obtain a certificate from the Minister certifying that all amounts

- (a) for which the tax collector is liable under this Act up to the date of the certificate, and
- (b) for the payment of which the responsible representative is or can reasonably be expected to become liable in that capacity as the responsible representative

have been paid or that security for the payment of the amounts has been accepted by the Minister.

**(3)** If a responsible representative distributes property over which the responsible representative has control in that capacity as the responsible representative without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection, the responsible representative is personally liable for the payment of those amounts to the extent of the value of the property distributed, and the Minister may assess the responsible representative for the amounts in the same manner and with the same effect as if it were an assessment under this Act of the tax collector for whose property or business the responsible representative is responsible.

(4) For the purposes of subsections (2) and (3), an appropriation by a responsible representative of a tax collector of property in the possession or control of the responsible representative acting in that capacity is deemed to be a distribution of the property to a person.

**Liability in respect of transfers by insolvent tax collectors**

**19.2(1)** If property is transferred at any time by a tax collector to a person with whom the tax collector does not deal at arm's length at that time and the tax collector is insolvent or becomes insolvent because of the transfer or because of the transfer and one or more other transactions, the person is jointly and severally liable with the tax collector to pay the liability under this Act of the tax collector equal to the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given for the property, but nothing in this subsection limits the liability of the tax collector under any other provisions of this Act.

(2) If

- (a) property is transferred at any time from a person (in this subsection referred to as the "transferor") to another person (in this subsection referred to as the "transferee") with whom the transferor does not deal at arm's length,
- (b) the transferor is liable because of subsection (1) or this subsection to pay an amount of the liability of another person (in this subsection referred to as the "debtor") under this Act, and
- (c) it can reasonably be considered that one of the reasons of the transfer would, but for this subsection, be to prevent the enforcement of this section,

the transferee is jointly and severally liable with the transferor and the debtor to pay an amount of the debtor's liability under this Act equal to the lesser of the amount of the liability that the transferor was liable to pay at that time and the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at the time of the consideration given for the property, but nothing in this subsection limits the liability of the debtor or the transferor under any provision of this Act.

(3) The Minister may at any time assess a person in respect of any amount payable because of this section.

(4) Where a person has become jointly and severally liable with a tax collector under this section in respect of part or all of a liability under this Act of the tax collector,

- (a) a payment by the person on account of that person's liability discharges the joint liability to the extent of the payment, but
- (b) a payment by the tax collector on account of that tax collector's liability discharges the person's liability only to the extent that the payment operates to reduce the tax collector's liability to an amount less than the amount in respect of which the person is, by this section, made jointly and severally liable.

**8 Section 20(2) is amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding the following after clause (c):**

- (d) a compromise or arrangement has been proposed under the *Companies' Creditors Arrangement Act* (Canada) in respect of the corporation.

**9 Section 48 is amended by adding the following after clause (r):**

- (s) respecting the licensing of persons who produce tear tape and prescribing the terms and conditions of licences.

**10(1) Sections 2(b), 3(a) and (c), 4 and 5(a) come into force on Proclamation.**

**(2) Section 3(b) is deemed to have come into force on August 1, 2003.**

**Explanatory Notes**

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

**2** Section 1 presently reads in part:

*1 In this Act,*

- (m) "registration" means a registration of an exempt sale retailer under regulations made under section 48(i);*
- (r) "tobacco products" means cigarettes and fine cut tobacco;*

**3** Section 3(1) 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.*

**4** Section 4(4) presently reads:

*(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** Section 4.1 presently reads:

*4.1 No consumer shall, without a permit issued under the regulations, possess*

- (a) *more than 1000 cigarettes,*
- (b) *more than 1000 grams of fine cut tobacco,*
- (c) *cigars that in total contain more than 1000 grams of tobacco, or*
- (d) *any combination of tobacco products containing more than 1000 grams of tobacco.*

**6** Section 6 presently reads:

*6 Where a person has possession of or control over funds that are collected as taxes under this Act, that person holds those funds in trust for the Minister.*

**7** Responsible representatives. Liability in respect of transfer by insolvent tax collectors.

**8** Section 20(2) presently reads:

- (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 18(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 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.*

**9** Regulation-making power.

**10** Coming into force.