

2007 Bill 37

Third Session, 26th Legislature, 56 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 37

**TOBACCO TAX
AMENDMENT ACT, 2007**

THE MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 37

2007

TOBACCO TAX AMENDMENT ACT, 2007

(Assented to _____, 2007)

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(k) is amended by adding “, except in clause (k.1) and sections 8(1)(d), 21(1)(b) and (2)(b) and 43,” after “means”.

3 Section 3(1) is amended

(a) in clause (a) by striking out “\$0.16” and substituting “\$0.185”;

(b) in clause (b)

(i) by striking out “\$0.15” and substituting “\$0.175”;

Explanatory Notes

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

2 Section 1(k) presently reads:

(k) “officer” means

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

(ii) a police officer;

(iii) a peace officer appointed under the Peace Officer Act for the purposes of this Act;

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

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 or tobacco stick purchased by that consumer, \$0.16;

- (ii) **by striking out “\$5.00” and substituting “\$5.80”;**
- (c) **in clause (c) by striking out “\$0.16” and substituting “\$0.185”.**

4 Section 11 is amended

- (a) **in subsection (2) by striking out “certified mail or”;**
- (b) **in subsection (4) by striking out “certified mail,”;**
- (c) **by adding the following after subsection (4):**

(5) Notwithstanding subsection (4), if the person indicates in the notice of objection that the person wishes to appeal immediately to the Court and waives reconsideration of the action or decision by the Minister, the Minister may on receipt of the notice of objection consent to an immediate appeal by serving a notice of consent on the person by registered letter or personal service.

(6) If the Minister consents to an immediate appeal under subsection (5), the person may within 90 days after service of the notice of consent appeal to the Court pursuant to section 12(2).

5 The following is added after section 11:

- (b) *on every cigar purchased by that consumer, 95% of the taxable price of the cigar, with the tax payable on each cigar being not less than \$0.15 per cigar nor more than \$5.00 per cigar;*
- (c) *on every gram or part of a gram of any tobacco, other than cigarettes, tobacco sticks or cigars, purchased by that consumer, \$0.16.*

4 Section 11 presently reads:

11(1) A person who objects

- (a) to not being issued a licence,*
- (b) to the person's licence not being renewed,*
- (c) to the person's licence being suspended or cancelled,*
- (d) to not being registered,*
- (e) to the person's registration being suspended or cancelled,*
- (f) to an assessment of tax, interest or penalty, or*
- (g) to not being issued a refund,*

may, within 90 days after 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.

(2) A notice of objection under this section shall be served by being sent by certified mail or registered letter addressed to the Minister.

(3) The Minister may accept a notice of objection under this section notwithstanding that it was not served in the manner required by subsection (2).

(4) On receipt of a notice of objection, the Minister shall with all due dispatch reconsider the action or decision taken by the Minister and shall vacate, confirm or vary that action or decision and notify the objector of the Minister's decision by certified mail, registered letter or personal service.

5 Extension of time by the Minister and by the Court.

Extension of time by Minister

11.1(1) Where no notice of objection has been served under section 11 within the time limited by that section for doing so, a person described in section 11(1) may apply to the Minister for an extension of the time for serving the notice of objection.

(2) An application made under subsection (1) must set out the reasons why the notice of objection was not served within the time otherwise limited by section 11 for doing so.

(3) An application made under subsection (1) shall be served by being sent by registered letter addressed to the Minister and accompanied with a copy of the notice of objection.

(4) The Minister may accept an application made under subsection (1) notwithstanding that it was not served in the manner required by subsection (3).

(5) On receipt of an application made under subsection (1), the Minister shall with all due dispatch consider the application and grant or refuse it and notify the person who made the application of the decision in writing.

(6) Where an application made under subsection (1) is granted, the notice of objection is deemed to have been served on the day on which notification of the decision was mailed or otherwise communicated in writing to the person who made the application.

(7) No application may be granted under this section unless

- (a) the application is made within one year after the expiration of the time otherwise limited by section 11 for serving a notice of objection, and
- (b) the person who made the application demonstrates that
 - (i) within the time otherwise limited by section 11 for serving the notice, the person
 - (A) was unable to act or to instruct another to act in the person's name, or

- (B) intended in good faith to object to the action or decision,
- (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
- (iii) the application was made as soon as circumstances permitted.

Extension of time by Court

11.2(1) A person who has made an application under section 11.1 may apply to the Court to have the application granted after

- (a) the Minister has refused the application, or
- (b) 90 days has elapsed after service of the application under section 11.1 and the Minister has not notified the person of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed or otherwise communicated to the person in writing.

(2) An application under subsection (1) must be made by filing with the clerk of the Court, and serving on the Minister by registered letter, an originating notice accompanied with the documents referred to in section 11.1(3) and the notification, if any, referred to in section 11.1(5).

(3) The Court may grant or dismiss an application made under subsection (1) and, in granting an application, may impose any terms it considers just or order that the notice of objection is deemed to have been served on the date of its order.

(4) No application may be granted under this section unless

- (a) the application under section 11.1 was made within one year after the expiration of the time otherwise limited by section 11 for serving a notice of objection, and
- (b) the person who made the application demonstrates that

- (i) within the time otherwise limited by section 11 for serving the notice, the person
 - (A) was unable to act or to instruct another to act in the person's name, or
 - (B) intended in good faith to object to the action or decision,
- (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
- (iii) the application under section 11.1 was made as soon as circumstances permitted.

6 Section 12(3) is amended by striking out “certified mail or”.

7 The following is added after section 16:

Documents deemed signed

16.1 A document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister or an official authorized by the Minister to exercise powers or perform duties of the Minister under this Act is deemed to have been signed, made and issued by the Minister or the official unless called into question by the Minister or by a person acting for the Minister or for the Crown.

8 The following is added after section 19.2:

Amounts in jeopardy

19.3(1) In this section, “judge” means a judge of the Court.

(2) Where, on ex parte application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed against a

6 Section 12(3) presently reads:

(3) A notice of appeal shall be served on the Minister by being sent by certified mail or registered letter addressed to the Minister.

7 Documents deemed signed.

8 Amounts in jeopardy.

person would be jeopardized by a delay in the collection of it, the judge shall, on the terms the judge considers reasonable in the circumstances, authorize the Minister to file a certificate under section 18 notwithstanding that the 30 days referred to in section 37(2) has not yet elapsed.

(3) Where a judge is satisfied that the receipt of a notice of assessment by a person in respect of an amount assessed against the person would likely jeopardize the collection of that amount, an authorization under subsection (2) may be granted by the judge notwithstanding that the notice of assessment in respect of that amount has not been served on the person at or before the time the application is made.

(4) Statements contained in an affidavit filed in support of an application under this section may be based on belief with the grounds for it.

(5) An authorization granted under this section in respect of a person must be served on the person by the Minister within 72 hours after it is granted except where the judge orders the authorization to be served at some other time specified in the authorization, and where a notice of assessment has not been served on the person at or before the time of the application, the notice of assessment must be served together with the authorization.

(6) For the purpose of subsection (5), service on a person must be effected by

- (a) personal service on the person, or
- (b) service in accordance with directions, if any, of a judge.

(7) Where service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

(8) Where a judge has granted an authorization under this section in respect of a person, the person may, on 6 clear days' notice to the Deputy Minister of Justice and Deputy Attorney General, apply to a judge to review the authorization.

(9) An application under subsection (8) must be made

- (a) within 30 days from the day on which the authorization was served on the person in accordance with this section, or
- (b) within any further time a judge may allow, on being satisfied that the application was made as soon as practicable.

(10) An application under subsection (8) may, on the application of the person, be heard in private if the person establishes to the satisfaction of the judge that the circumstances of the case justify private proceedings.

(11) On an application under subsection (8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make any other order the judge considers appropriate.

(12) Where any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect to it, a judge may give any direction with respect to it that, in the judge's opinion, is appropriate.

(13) No appeal lies from an order of a judge made pursuant to subsection (11).

9 Section 20 is amended

(a) by adding the following after subsection (2):

(2.1) Notwithstanding subsection (2), a director is not liable under subsection (1) if the director exercised due diligence in attempting to ensure the corporation remitted the tax.

(2.2) The Minister shall not take action to collect an amount owed by a director under this section until

- (a) all reasonable efforts to collect an amount from the corporation have been made by the Minister, and
- (b) the director has been notified in writing of the director's liability under this section.

9 Section 20 presently reads:

20(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 18(2) and execution for that amount has been returned unsatisfied in whole or in part,

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

(3) A notice under subsection (2.2)(b) may not be sent more than 2 years after the director last ceased to be a director of the corporation.

10 Section 21 is amended by striking out “or certified mail” wherever it occurs.

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

10 Section 21 presently reads in part:

21(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,*

11 Section 22.1 is repealed and the following is substituted:

Waiver or cancellation of penalties or interest

22.1 Notwithstanding the *Financial Administration Act*, the Minister may, on application by a person within 4 calendar years from the end of the calendar year in which a penalty or interest is assessed against the person,

- (a) waive or cancel all or any portion of any penalty or interest payable under this Act by the person, or
- (b) refund all or any portion of any penalty or interest paid under this Act by the person.

12 Section 31(7) is amended by striking out “or certified mail”.

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 the person's 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 that person's 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 of any required document shall be made within a reasonable time that is stipulated in the demand.

11 Section 22.1 presently reads:

22.1 Notwithstanding the Financial Administration Act, the Minister may at any time waive or cancel the imposition of or liability for any penalty or interest imposed or payable under this Act.

12 Section 31(7) presently reads:

(7) Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by a demand served personally or by registered letter or certified mail, require any person required by this section to keep records and books of account to retain those records and books of account, together with every

13 Section 32 is repealed and the following is substituted:

Communication of information

32(1) Information collected under this Act by the Minister may be disclosed to the Government of Canada or the government of a province or territory as necessary for the purpose of administering or enforcing a taxation statute of Canada or of that province or territory if the Government of Canada or government of that province or territory supplies the Government of Alberta with similar information under an information-sharing agreement.

(2) A person who receives information under subsection (1) holds that information subject to the same prohibitions and restrictions respecting communication of the information that apply to the Minister.

(3) Notwithstanding subsection (2), a person may communicate information to any person engaged or employed in the investigation or prosecution of offences under the *Criminal Code* (Canada) solely for the purpose of the investigation and prosecution of an offence.

(4) The Minister may, in accordance with the regulations, disclose information, including personal information, about a tax collector, importer, manufacturer, wholesaler, retailer, duty free shop, marking permit holder, tear tape producer, consumer or other person where the information is required by the person to whom it is disclosed

- (a) for the purpose of complying with this Act or the regulations, or
- (b) to determine if the person whom the information is about is complying with this Act or the regulations.

(5) The Minister may, in accordance with the regulations, publish the following information about a tax collector, importer, manufacturer, wholesaler, retailer, duty free shop, marking permit holder or tear tape producer:

- (a) the name of the person;
- (b) the address of the person;

account and voucher necessary to verify the information contained in the records and books of account, for any period specified in the demand.

13 Section 32 presently reads:

32(1) Subject to subsection (2), no person employed by the Government of Alberta shall communicate or allow to be communicated to any person not employed by the Government of Alberta any information obtained under this Act, or allow any person to inspect or have access to any written statement furnished under this Act.

(2) Subject to subsection (3), 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 or territory.

(3) The Minister may act under subsection (2) only if

(a) the information and written statements will not be used for any purpose other than the administration or enforcement of a federal, provincial or territorial law, and

(b) 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.

(c) any other information prescribed by regulation.

(6) The Minister may collect and use information, including personal information, as necessary for the purposes of formulating or analyzing tax, fiscal or enforcement policy.

(7) The Minister may publish or disclose to any person for any purpose information collected under this Act that

(a) is readily available,

(b) is in a summarized or statistical form, and

(c) cannot, directly or indirectly, be associated with or identify a particular person.

14 Section 33(3) is amended by adding “in excess of 400 grams” before “purchased”.

15 The following is added after section 37:

Small amount owing

37.1(1) Notwithstanding the *Financial Administration Act*, if a notice of assessment indicates an amount owing or a refund of less than the amount prescribed by regulation under subsection (3), the Minister may

(a) in the case of an amount owing, not collect it, or

(b) in the case of a refund, not pay it unless specifically requested by the person to whom the amount is payable.

(2) A request under subsection (1)(b) must be made no later than the day on which all rights of objection and appeal with respect to the assessment expire.

14 Section 33(3) presently reads:

(3) If a person purchases more than 400 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.

15 Small amounts owing.

(3) The Minister may by regulation prescribe the amount for the purposes of subsection (1).

16 Section 39 is repealed and the following is substituted:

Service, etc.

39(1) Except where this Act provides otherwise, where a notice or other document is to be served on or is to be sent or given to a person by the Minister or an officer under this Act, the notice or document may be served on or sent or given to

- (a) a person other than a corporation or cooperative,
 - (i) by being mailed to the person by ordinary or registered mail addressed to the person to whom the notice or document is directed at that person's last address known to the Minister,
 - (ii) by personal service, or
 - (iii) if the person has provided the Minister with a fax number, by fax to that number,
 - (b) a corporation,
 - (i) in accordance with section 256 of the *Business Corporations Act*,
 - (ii) by registered mail addressed to the corporation at the corporation's last address known to the Minister, or
 - (iii) if the corporation has provided the Minister with a fax number, by fax to that number,
- and
- (c) a cooperative,
 - (i) in accordance with section 347 of the *Cooperatives Act*,
 - (ii) by registered mail addressed to the cooperative at the cooperative's last address known to the Minister, or

16 Section 39 presently reads:

39(1) Where a notice or other document is to be served on or is to be sent or given to a person by the Minister or an officer under this Act, the notice or document may be served on or sent or given to

- (a) a person other than a corporation,*
 - (i) by being mailed to the person by ordinary, certified or registered mail addressed to the person to whom the notice or document is directed at that person's last address known to the Minister, or*
 - (ii) by personal service,*
- (b) a corporation,*
 - (i) in accordance with section 256 of the Business Corporations Act, or*
 - (ii) by registered mail addressed to the corporation at the corporation's last address known to the Minister,*

and

- (c) a cooperative*
 - (i) in accordance with section 347 of the Cooperatives Act, or*
 - (ii) by registered mail addressed to the cooperative at the cooperative's last address known to the Minister.*

(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than the person's own name, the notice or document,

- (a) for the purposes of being mailed, may be addressed to the name or style under which the person carries on business,*
and

(iii) if the cooperative has provided the Minister with a fax number, by fax to that number.

(2) If the person on or to whom a notice or other document is to be served, sent or given under this Act carries on business under a name or style other than the person's own name, the notice or document,

- (a) for the purposes of being mailed or faxed, may be addressed to the name or style under which the person carries on business, and
- (b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

- (a) for the purposes of being mailed or faxed, may be addressed to the partnership name, and
- (b) for the purposes of personal service, is deemed to have been served if it
 - (i) has been served on one of the partners, or
 - (ii) has been left with an adult person employed at the place of business of the partnership.

17 The following is added after section 44:

Offence exemption

44.1 Without limiting any rule of law relating to the immunity of the Crown, sections 40 to 44 do not apply to the carrying out of powers and duties involving investigations or undercover operations related to the enforcement of this Act by a person who, at the time of the contravention, is

- (a) an employee of the Crown under the Minister's administration, or

(b) for the purposes of personal service, is deemed to have been served if it has been left with an adult person employed at the place of business of the person to whom the notice or document is directed.

(3) If the persons on or to whom a notice or other document is to be served, sent or given under this Act carry on business in partnership, the notice or document,

(a) for the purposes of being mailed, may be addressed to the partnership name, and

(b) for the purposes of personal service, is deemed to have been served if it

(i) has been served on one of the partners, or

(ii) is left with an adult person employed at the place of business of the partnership.

17 Offence exemption.

- (b) an officer.

18 The following is added after section 46.1:

Certificates as evidence

46.2 In a prosecution for an offence under this Act or the regulations,

- (a) a certificate of the Minister stating that the defendant is or is not a tax collector, importer, manufacturer, wholesaler, retailer, duty free shop, marking permit holder or tear tape producer at a time or during a period of time specified in it,
 - (b) a certificate of a person designated or appointed by the Minister stating the results of the examination of any substance referred to in the certificate and stating
 - (i) that the substance is or is not tobacco or a tobacco product, or
 - (ii) if the substance is tobacco or a tobacco product, the type of tobacco or tobacco product,
- or
- (c) a certificate of the Minister stating that a person named in the certificate is an officer for the purposes of this Act

shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the matters stated in it without any proof that the certificate was signed by the person purporting to sign it or of the appointment of the person signing it.

19 Section 48 is amended by adding the following after clause (s):

- (t) respecting the disclosure and publication of information for the purposes of section 32;
- (u) prescribing anything required or authorized by this Act to be prescribed by regulation.

18 Certificates of evidence.

19 Additional regulation-making authority.

20 Section 3 is deemed to have come into force on April 20, 2007.

20 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To