

2009 Bill 39

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 39

TOBACCO TAX AMENDMENT ACT, 2009

THE MINISTER OF FINANCE AND ENTERPRISE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 39

2009

TOBACCO TAX AMENDMENT ACT, 2009

(Assented to _____, 2009)

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 (e):

(e.01) “Crown” means the Crown in right of Alberta;

(b) in clause (f) by adding “or for resale” after “sale to a consumer”;

(c) by adding the following after clause (f.1):

(f.2) “licensed” means holding a valid and subsisting licence issued under this Act;

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

(k.01) “person” includes a partnership, a trust and an Indian band;

(e) by repealing clause (n) and substituting the following:

(n) “retailer” means a person who purchases tobacco from a licensed wholesaler or licensed importer for resale, but

Explanatory Notes

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

2 Section 1(f), (n) and (t) presently read:

(f) *“importer” means a person who imports or brings tobacco into Alberta for sale to a consumer;*

(n) *“retailer” means a person who sells or offers for sale tobacco to a consumer;*

(t) *“wholesaler” means a person who sells or offers for sale tobacco to a retailer or to another wholesaler, and includes a manufacturer who sells or offers for sale tobacco to a retailer.*

only in relation to tobacco purchased from the licensed wholesaler or licensed importer;

(f) by repealing clause (t) and substituting the following:

- (t) “wholesaler” means a person, including a manufacturer, who sells, or offers for sale, tobacco for resale.

3 Section 3 is amended

(a) in subsection (1)

- (i) in clause (a) by striking out “\$0.185” and substituting “\$0.20”;**

- (ii) in clause (b)**

- (A) by striking out “95%” and substituting “103%”;**

- (B) by striking out “\$0.175” and substituting “\$0.20”;**

- (C) by striking out “\$5.80” and substituting “\$6.27”;**

- (iii) in clause (c) by striking out “\$0.185” and substituting “\$0.30”;**

(b) in subsection (1.1):

- (i) in clause (a) by adding “before any volume discount” after “selling price”;**

- (ii) by repealing clause (b) and substituting the following:**

- (b) if the cigar was manufactured outside Canada, the importer’s selling price before any volume discount.

(c) by adding the following after subsection (1.1):

(1.11) For the purpose of subsection (1.1)(b), the importer’s selling price of a cigar is

- (a) the price charged by the importer, or

3 Section 3 presently reads in part:

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, \$0.185;*
- (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 \$0.175 per cigar nor more than \$5.80 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, \$0.185.*

(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).*

(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.

- (b) if the importer sells the cigar to a party not dealing at arm's length with the importer, who in turn sells the cigar, the price charged by that party,

whichever is greater, and includes 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).

- (d) **in subsection (2) by striking out** “subsection (1)” **and substituting** “subsection (1)(b)”;

- (e) **by adding the following after subsection (2):**

(2.1) The amount of tax payable computed under subsection (1)(a) or (c) shall be computed by multiplying the applicable tax rate by the total number of cigarettes, tobacco sticks or grams of tobacco, as the case may be, purchased by the consumer at that time, and where the resulting amount of tax payable includes a fraction of a cent, the amount shall be rounded to the next higher cent.

- (f) **in subsection (3) by adding** “at the time of sale” **after** “that consumer”;

- (g) **by adding the following after subsection (3):**

(4) For the purposes of this Act, if a person does not collect the tax pursuant to subsection (3), the person is nevertheless deemed to have collected the tax at the time of sale.

4 Section 4 is amended

- (a) **by repealing subsections (1) and (2) substituting the following:**

Tobacco not marked for tax-paid sale

4(1) Subject to subsections (3) and (4), no person 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 person

- (a) is a licensed wholesaler or licensed importer and has written permission from the Minister to do so, and

(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:

4(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.*

- (i) in the case of tobacco products that are black stock, the wholesaler or importer will be selling the tobacco products to an exempt sale retailer, or
 - (ii) the tobacco products will be transported out of Alberta for resale;
- (b) is a retailer and
- (i) has written permission from the Minister to do so, or
 - (ii) in the case of tobacco products that are black stock, is
 - (A) an exempt sale retailer, or
 - (B) a duty free shop as defined in the *Excise Tax Act* (Canada).
- (b) in subsection (3)(a) by striking out “or (2)”;**
- (c) in subsection (4)(a) by striking out “wholesaler or importer” and substituting “licensed wholesaler or licensed importer”.**

5 Section 4.1 is repealed and the following is substituted:

Limits on possession of tobacco

4.1 No person shall possess

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

unless the person establishes that the person

(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
 - (i) an exempt sale retailer, or*
 - (ii) a duty free shop as defined in the Excise Tax Act (Canada).**

(4) Subject to subsection (3), no person shall possess more than 200 cigarettes, 200 tobacco sticks 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,*
- (a.1) more than 1000 tobacco sticks,*
- (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 containing more than 1000 grams of tobacco.*

- (f) has been issued a permit to do so under the regulations,
or
- (g) is a licensed wholesaler, licensed importer, retailer or
marking permit holder, or possesses tobacco on behalf of
any of them.

6 Section 5(2) is repealed and the following is substituted:

- (2)** A person other than a tax collector who collects or is
deemed to have collected tax under this Act shall remit the tax,
 - (a) if the person has purchased the tobacco from a tax
collector,
 - (i) to the tax collector at the time of purchase, or
 - (ii) to the Minister, if the Minister has so directed,
 - or
 - (b) in a case other than that provided for in clause (a), to the
Minister in the manner and at the times specified by the
Minister.
- (3)** A tax collector shall remit the tax collected or deemed to
have been collected in accordance with the regulations.

7 The following is added after section 6:

Late filing penalty

6.1 If a person fails to submit a return as and when required by
this Act or the regulations, the Minister may assess against the
person a penalty in the amount that is the greater of \$25 for
each day of default and 5% of any unremitted tax, to a
maximum of \$1000.

8 Section 7 is repealed and the following is substituted:

Prohibitions

7(1) No person shall

6 Section 5(2) presently reads:

5(2) A person who collects tax under this Act shall remit the tax

(a) to a tax collector where

(i) the person acquires from another person who is a tax collector the tobacco that is being taxed, and

(ii) the Minister has not directed otherwise,

or

(b) in a case other than that provided for under clause (a), to the Minister.

7 Late filing penalty.

8 Section 7 presently reads:

7(1) No person shall

- (a) sell or agree to sell tobacco in Alberta for resale unless the person is a licensed wholesaler or licensed importer,
- (b) import or bring tobacco into Alberta for resale unless the person is a licensed importer, or
- (c) purchase tobacco in Alberta from a person who is not a retailer, licensed wholesaler or licensed importer.

(2) Except as authorized by subsection (1), no wholesaler shall sell or agree to sell tobacco in Alberta unless the wholesaler is exempted by the Minister from the operation of this subsection pursuant to section 47(e).

(3) No person shall sell, offer for sale or purchase tobacco in Alberta for an amount less than the aggregate of the tax payable under this Act and any applicable federal taxes and duties.

9 The following is added after section 17:

Amounts recoverable as debts

17.1 Taxes, penalties, interest and other amounts owing under this Act are debts recoverable by the Crown in an action in debt.

Set-off

17.2(1) If a person to whom an amount is owing under this Act owes money to the Crown, the Minister may, instead of making a payment to that person, apply the whole or any part of the payment owing to the person to reduce or eliminate the debt the person owes to the Crown.

(2) Where the Minister applies a payment under subsection (1), the Minister shall notify the person referred to in subsection (1) of the reduction or elimination of the debt.

10 Section 19 is amended by adding the following after subsection (2):

(2.1) If a person who receives a notice under subsection (1) or (2) is liable to make a payment jointly to the debtor and one or more other persons, for the purposes of this section it is deemed that the money payable is divided into as many equal portions as there are persons who are owed the money jointly and that

- (a) *sell or agree to sell tobacco in Alberta for resale unless the person holds a subsisting wholesaler's licence for that purpose issued by the Minister, or*
 - (b) *import or bring tobacco into Alberta and sell or agree to sell that tobacco to a consumer unless the person holds a subsisting importer's licence for that purpose issued by the Minister.*
- (2) *No wholesaler shall sell or agree to sell tobacco in Alberta to a person who is not a wholesaler or retailer in Alberta unless that wholesaler is exempted by the Minister from the operation of this subsection pursuant to section 47(e).*
- (3) *Unless authorized by the Minister, no retailer shall acquire tobacco in Alberta except from a person who holds a subsisting wholesaler's licence.*

9 Sections added respecting amounts recoverable as debts and set-off.

10 Section 19 presently reads:

19(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 referred to in this section 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 debtor is the unconditional and sole owner of one portion of the money.

(2.2) The Minister, the debtor and any person who is owed the money jointly with the debtor may, within 30 days of the written notice being given under subsection (1) or (2), apply to the Court

- (a) for an order that the debtor is entitled to a smaller or greater portion of the money, and
- (b) for appropriate relief.

(2.3) Notice of an application under subsection (2.2) must be served

- (a) if the applicant is the debtor or a person who is owed the money jointly with the debtor, on all the other persons who are owed the money jointly and the Minister, or
- (b) if the applicant is the Minister, on all the persons who are owed the money jointly.

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 referred to in this section 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.

11 Section 21(1)(a) is amended by adding “or a person related to or associated with, within the meaning of subsection 251(2) or 256(1) of the *Income Tax Act* (Canada), a wholesaler, importer or retailer” **after** “retailer”.

(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 the person's own name, the notice under subsection (1) or (2) may be addressed to the name or style under which the person 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.

11 Section 21(1) presently reads:

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

- (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,*

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.

12 Section 24 is repealed and the following is substituted:

Search and seizure without warrant

24(1) An officer who on reasonable grounds believes

- (a) that a contravention of this Act or the regulations is being or has been committed, and
- (b) that obtaining a warrant would cause a delay that could result in the loss or destruction of
 - (i) evidence, or
 - (ii) anything used in the contravention of this Act or the regulations,

may without a warrant and, if necessary, by reasonable force stop a vehicle or enter any premises or place, other than a dwelling house, and search for anything that the officer believes on reasonable grounds

- (c) affords evidence of the contravention, or
- (d) is being used or was used, in the last 60 days, in contravention of this Act or the regulations.

(2) If an officer stops a vehicle or enters any premises or place, other than a dwelling house, the person in charge of the vehicle or the owner or occupant of the premises or place must

- (a) give the officer all reasonable assistance in connection with the entry and search, and
- (b) make reasonable efforts to provide all information that the officer may reasonably require for purposes of the administration and enforcement of this Act and the regulations.

(3) An officer who, in making a search under subsection (1), finds anything that the officer believes on reasonable grounds

- (a) affords evidence of a contravention of this Act or the regulations, or

12 Section 24 presently reads:

24(1) An officer who on reasonable and probable grounds believes

- (a) that a contravention of this Act or the regulations is being or has been committed, and*
- (b) that obtaining a warrant would cause a delay that could result in the loss or destruction of evidence*

may without warrant and, if necessary, by reasonable force stop a vehicle or enter any premises or place, other than a dwelling house, and search it for anything that the officer believes on reasonable and probable grounds affords evidence of the contravention.

(2) If an officer stops a vehicle or enters any premises or place, other than a dwelling house, the person in charge of the vehicle or the owner or occupant of the premises or place must

- (a) give the officer all reasonable assistance in connection with the entry and search, and*
- (b) make reasonable efforts to provide all information that the officer may reasonably require for purposes of the administration and enforcement of this Act and the regulations.*

(3) An officer who, in making a search under subsection (1),

- (a) finds anything that the officer believes on reasonable and probable grounds affords evidence of a contravention of this Act or the regulations may seize that thing, and*
- (b) when a vehicle is searched, if the officer believes on reasonable and probable grounds that the vehicle was used in contravention of this Act or the regulations, may seize that vehicle.*

(4) Following a seizure under subsection (3), other than a seizure of tobacco in or near a vehicle, the officer shall, within a reasonable time,

- (a) furnish a judge of the Provincial Court with an affidavit stating that the officer 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) is being used or was used, in the last 60 days, in the contravention of this Act or the regulations

may seize that thing.

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

- (a) furnish a judge of the Provincial Court with an affidavit stating that the officer has reasonable grounds to believe that the person named in the affidavit has contravened this Act or the regulations, or
- (b) return anything seized to the person from whom it was seized.

(5) The judge on receipt of an affidavit under subsection (4) may order that the affidavit be served on the person referred to in the affidavit and may set down a date to hear the matter and order that anything seized be

- (a) retained by the Crown until final disposition of the charge, or
- (b) returned to the person from whom it was seized.

(6) If anything seized is returned under subsection (5)(b), the judge may order the person to whom it is returned

- (a) to hold it as bailee for the Crown until final disposition of the charge, and
- (b) to produce it if it is required with respect to proceedings related to the charge.

(7) Following a seizure under subsection (3)(b), the officer shall, within 90 days from the seizure,

- (a) subject to the regulations, return anything seized to the person from whom it was seized, or
- (b) on notice to the person from whom the thing was seized, make an application to the Provincial Court or, in the circumstances described in the regulations, to the Court of Queen's Bench, for an order under subsection (8).

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

(5) The judge on receipt of an affidavit under subsection (4) may order that the affidavit be served on the person referred to in the affidavit and set down a date to hear the matter and may order that the vehicle and any other thing seized be

(a) retained by the Crown until final disposition of the charge, or

(b) returned to the person from whom they were seized.

(6) If a vehicle or any other thing seized is returned under subsection (5)(b), the judge may order the person to whom it is returned

(a) to hold it as bailee for the Crown until final disposition of the charge, and

(b) to produce it if it is required with respect to proceedings related to the charge.

(7) If a vehicle is seized and the person charged with an offence in respect of which the vehicle was used is not the registered owner of the vehicle, the officer shall notify the registered owner as soon as possible.

(8) Where an application is made under subsection (7)(b), the judge may order that anything seized be

- (a) retained by the Crown until final disposition of any related charge,
- (b) forfeited to the Crown, or
- (c) subject to the regulations, returned to the person from whom it was seized, or to a person establishing to the satisfaction of the judge that the person has an interest in the property.

(9) The owner of, or a person with an interest in, anything seized under this section may, on 2 clear days' notice to the Minister within 90 days from the seizure, make an application to the Court of Queen's Bench for return of that thing.

(10) If a vehicle is seized and the person charged with an offence in respect of which the vehicle was used is not the registered owner of the vehicle, the officer shall notify the registered owner as soon as possible.

13 The following is added after section 24:

Search and seizure with warrant

24.1(1) Where a justice of the peace or a judge of the Provincial Court is satisfied by information on oath of an officer that there are reasonable grounds to believe that a contravention of this Act or the regulations has occurred, the justice of the peace or the judge may issue a warrant to authorize the officer to do all or any of the following:

- (a) enter and search any premises or place named in the warrant;
- (b) stop and search any vehicle described in the warrant;
- (c) seize and remove anything that may have been used in the last 60 days in the contravention of this Act or the regulations.

(2) Under the authority of a warrant issued pursuant to subsection (1), the officer may do all or any of the following:

13 Search and seizure with warrant.

- (a) at any time, enter and search any premises or place named in the warrant;
 - (b) at any time, stop and search any vehicle described in the warrant;
 - (c) open and examine any trunk, box, bag, parcel, closet, cupboard or other receptacle that the officer finds in the premises, place or vehicle;
 - (d) require the production of and examine any records or property that the officer, on reasonable grounds, believes may contain information related to a contravention of this Act or the regulations;
 - (e) seize and remove from any premises, place or vehicle searched anything that may have been used in the last 60 days in the contravention of this Act or the regulations.
- (3)** Following a seizure pursuant to subsection (2)(e), the officer shall, within 90 days from the seizure,
- (a) subject to the regulations, return anything seized to the person from whom it was seized, or
 - (b) on notice to the person from whom the thing was seized, make an application to the Provincial Court or, in the circumstances described in the regulations, to the Court of Queen's Bench, for an order under subsection (4).
- (4)** Where an application is made under subsection (3)(b), the judge may order that anything seized be
- (a) retained by the Crown until final disposition of any related charge,
 - (b) forfeited to the Crown, or
 - (c) subject to the regulations, returned to the person from whom it was seized, or to a person establishing to the satisfaction of the judge that the person has an interest in the property.
- (5)** The owner of, or a person with an interest in, anything seized under this section may, on 2 clear days' notice to the

Minister within 90 days from the seizure, make an application to the Court of Queen's Bench for return of that thing.

(6) If a vehicle is seized and the person charged with an offence in respect of which the vehicle was used is not the registered owner of the vehicle, the officer shall notify the registered owner as soon as possible.

(7) This section does not apply to searches and seizures relating to anything that may afford evidence of a contravention of this Act or the regulations.

14 Section 28 is repealed and the following is substituted:

Disposition of things forfeited

28 When anything is forfeited to the Crown under this Act, the Minister may

- (a) sell or otherwise dispose of it, or
- (b) retain it for use by the Crown.

15 Section 33 is amended

- (a) in subsection (1) by adding "3 times" after "equal to";
- (b) by repealing subsections (2) and (3) and substituting the following:

(2) A person exempted under regulations made under section 48(e) who purchases, exempt from tax, in a calendar week

- (a) more than 400 cigarettes or tobacco sticks, or
- (b) any combination of tobacco that would give rise to an amount of tax that is the same or greater than the amount of tax payable on 400 cigarettes or tobacco sticks if the tobacco were not exempt

must

- (c) at the time of purchase,

14 Section 28 presently reads:

28 Things seized that are forfeited to the Crown in right of Alberta under this Act shall be disposed of or destroyed under the direction of the Minister of Justice and Attorney General.

15 Section 33 presently reads:

33(1) If a person purchases or otherwise possesses tobacco products that are black stock in contravention of section 4, 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 48(e) who purchases more than 400 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 400 grams, and

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

and

- (i) advise the seller that the person's weekly purchases of tobacco have exceeded the limits set out in clause (a) or (b), as the case may be, and
- (ii) advise the seller of the intended disposition or use of the tobacco,

and

(d) maintain records of the disposition or use of the tobacco, and the seller must record the intended disposition or use on a voucher completed in accordance with the regulations.

(3) If a person purchases tobacco in contravention of subsection (2), the Minister may assess a penalty equal to the tax on the amount of tobacco in excess of the limits set out in subsection (2) that would have been payable if the tobacco were not exempt from tax.

16 Section 34 is amended

(a) in subsection (1)(a) by adding “or is deemed to have collected” **after** “collected”;

(b) by adding the following after subsection (1):

(1.1) The Minister may, within 4 years from the end of the calendar year in which the tax becomes payable, assess

- (a) any tax payable under this Act, and
- (b) interest on that tax calculated in the manner prescribed in the regulations.

17 Section 35(1) is amended by adding “3 times” **after** “equal to”.

(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 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 in excess of 400 grams purchased in that week that would have been payable if the tobacco products were not black stock.

(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).

16 Section 34(1) presently reads:

34(1) The Minister may, at any time the Minister considers reasonable, assess

(a) any tax that any person, as agent of the Minister, has collected and has failed to remit, and

(b) interest on that tax calculated in the manner prescribed in the regulations.

17 Section 35(1) presently reads:

35(1) Subject to subsection (2), the Minister may, within 4 years from the end of the calendar year in which tax was to have been collected and remitted, assess against a person who failed to collect tax in accordance with this Act, a penalty equal to the tax that the person failed to collect.

18 Section 38(1) is amended by striking out “25%” and substituting “50%”.

19 Section 40 is amended

- (a) by striking out “or” at the end of clause (c), adding “or” at the end of clause (d) and adding the following after clause (d):**
 - (e) fails to comply with an order or direction of the Minister under this Act,
- (b) by striking out “\$10 000” and substituting “\$20 000”.**

18 Section 38(1) presently reads:

38(1) Where

- (a) a person owes an amount to the Crown under this Act, and*
- (b) the Minister is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to*
 - (i) neglect, carelessness or wilful default by or on behalf of that person, or*
 - (ii) fraud or evasion committed by or on behalf of that person,*

the Minister may determine the amount owing by that person and assess against the person a penalty in the amount of 25% of the amount owing.

19 Section 40 presently reads:

40 Any person who

- (a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or other document delivered or made under this Act or the regulations,*
- (b) destroys, alters, mutilates or disposes of the books or records of a wholesaler, importer, retailer or consumer,*
- (c) makes, participates in, assents to or acquiesces in the making of false or deceptive entries in the books or records of a wholesaler, importer, retailer or consumer or omits or assents to or acquiesces in the omission of material particular to those books or records, or*
- (d) wilfully evades or attempts to evade compliance with this Act or the regulations*

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable to a fine of not more than \$10 000 or to imprisonment for not more than 2 years or to both fine and imprisonment.

20 Section 41 is amended

(a) in subsection (1)

- (i) by adding “or (1.01)” after “3(1)”;**
- (ii) in clause (a) by striking out “\$5000” and substituting “\$10 000”;**
- (iii) in clause (b) by striking out “\$15 000” and substituting “\$30 000”;**

(b) in subsection (2)

- (i) by adding “4.1,” before “5(2)”;**
- (ii) in clause (a) by striking out “\$10 000” and substituting “\$20 000”;**
- (iii) in clause (b) by striking out “\$25 000” and substituting “\$50 000”;**

(c) in subsections (4) and (5) by striking out “\$10 000” and substituting “\$20 000”.

20 Section 41(1) and (2) presently read:

41(1) A person who contravenes section 3(1) or 4(3) or (4) is guilty of an offence and liable

- (a) for a first offence, to a fine of not more than \$5000 or to a term of imprisonment of not more than 30 days or to both fine and imprisonment, and*
- (b) for a subsequent offence, to a fine of not more than \$15 000 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(3), 4(1) or (2), 5(2) or 7 is guilty of an offence and liable

- (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 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 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(3) or 5(2), should have been collected and remitted by the person,*
 - (ii) in the case of an offence under section 4(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*
 - (iii) in the case of an offence under section 7, would have been payable under section 3 were the tobacco sold to a consumer.*

(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 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

21 Section 44 is amended

- (a) in clause (a) by striking out “\$5000” and substituting “\$10 000”;**
- (b) in clause (b) by striking out “\$15 000” and substituting “\$30 000”.**

22 Section 46.2(a) is repealed and the following is substituted:

- (a) a certificate of the Minister stating that a person is or is not a tax collector, licensed importer, manufacturer, licensed wholesaler, retailer, duty free shop, marking permit holder or tear tape producer at a time or during a period of time specified in it,**

restriction contained in the authorization is guilty of an offence and liable to a fine of not more than \$10 000.

21 Section 44 presently reads:

44 Any person who contravenes a provision of this Act or the regulations for which no other penalty is provided is guilty of an offence and liable

- (a) for a first offence, to a fine of not more than \$5000 or to a term of imprisonment of not more than 30 days, or to both fine and imprisonment, and*
- (b) for a subsequent offence, to a fine of not more than \$15 000 or to a term of imprisonment of not more than 6 months or to both fine and imprisonment.*

22 Section 46.2 presently reads:

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

23 Section 48 is amended

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

(e.1) respecting any matter relating to the issuance, possession, use or cancellation of identification cards;

(b) in clause (r) by striking out “consumer” and substituting “person”;

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

(t.1) respecting the seizure of anything and the return of anything seized under this Act;

(t.2) respecting the circumstances under which an application under section 24(7) or 24.1(3) must be made to the Court of Queen’s Bench;

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

(v) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.

24 In the following provisions, “Her Majesty in right of Alberta” is struck out and “the Crown” is substituted:

section 3(1), (1.01)(c), (1.02)(b), (1.03) and (1.07)(b);
section 4(3)(c) and (4)(b);
section 19(4) and (5);
section 20(5);
section 37(1)(b).

certificate was signed by the person purporting to sign it or of the appointment of the person signing it.

23 Additional regulation-making powers added. Section 48(r) presently reads:

48 The Lieutenant Governor in Council may make regulations

(r) respecting permits and the eligibility criteria for permits to allow a consumer to possess tobacco in excess of the amounts set out in section 4.1;

24 Substituting “the Crown” for “Her Majesty in right of Alberta”.

25 In the following provisions, “in right of Alberta” is struck out:

section 25(1), (4) and (5);
section 27(3);
section 45(1).

26(1) Sections 3 and 15(b) are deemed to have come into force on April 8, 2009.

(2) Sections 12, 13, 14 and 23(b) come into force on Proclamation.

25 Removing reference to “in right of Alberta” after “Crown”.

26 Coming into force.

