

1970

## c 463 Tobacco Tax Act

Ontario

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## CHAPTER 463

## The Tobacco Tax Act

## 1. In this Act,

Interpre-  
tation

- (a) "consumer" means any person who,
- (i) in Ontario, purchases or receives delivery of tobacco, or
  - (ii) in the case of a person ordinarily resident in Ontario or carrying on business in Ontario, brings into Ontario tobacco acquired outside Ontario,

for his own use or consumption or for the use or consumption by others at his expense, or on behalf of, or as the agent for, a principal who desires to acquire the tobacco for use or consumption by him or other persons at his expense, but does not include a dealer;

- (b) "dealer" means any person who in Ontario sells tobacco or offers or keeps tobacco for sale, either at wholesale or at retail;
- (c) "Minister" means the Minister of Revenue;
- (d) "package" includes a box, tin or other container in which tobacco is sold at retail;
- (e) "regulations" means the regulations made under this Act;
- (f) "retail dealer" means any person who sells tobacco to a consumer;
- (g) "retail sale" means a sale to a consumer;
- (h) "tobacco" means tobacco in any form in which it is used or consumed, and includes snuff;
- (i) "Treasurer" means the Treasurer of Ontario and Minister of Economics;
- (j) "wholesale dealer" means any person who sells in Ontario tobacco for the purpose of resale. 1965, c. 130, s. 1; 1970, c. 9, s. 1, *amended*.

2.—(1) Every consumer shall pay to Her Majesty in right of Ontario a tax computed at the rate of,

Tax on  
consumer

- (a) four-tenths of 1 cent on every cigarette purchased by him;

- (b) one-half of 1 cent for every 5 cents or part thereof of the price at retail of every cigar purchased by him;
- (c) 2.5 cents per ounce or part thereof of any tobacco, other than cigarettes or cigars, purchased by him. 1968, c. 137, s. 1; 1968-69, c. 130, s. 1.

Collection of tax

(2) The tax imposed by this Act shall be collected from the consumer by the retail dealer as agent of the Minister at the time of the sale to the consumer and shall be remitted by the retail dealer to the Minister at the time and in the manner prescribed by the regulations. 1965, c. 130, s. 2 (2); 1970, c. 9, s. 2.

M.L.A.s not disqualified

(3) No person acting as agent under subsection 2 shall thereby be made ineligible as a member of the Assembly. 1965, c. 130, s. 2 (3).

Wholesale dealer's permit

**3.—**(1) No person shall sell tobacco in Ontario for resale unless he holds a subsisting wholesale dealer's permit issued to him under this Act.

Retail vendor's permit required  
R.S.O. 1970, c. 415

(2) No person shall sell tobacco in Ontario to a consumer unless such person holds a subsisting vendor's permit issued to him under *The Retail Sales Tax Act*.

Sale to retail vendor

(3) No wholesale dealer shall sell tobacco in Ontario to a person who does not hold a subsisting vendor's permit issued to him under *The Retail Sales Tax Act*. 1965, c. 130, s. 3.

Suspension or cancellation of wholesale dealer's permit

**4.** The Minister may suspend or cancel the permit of any wholesale dealer who,

- (a) refuses or neglects to account for and pay as herein required moneys received by him as proceeds of the tax; or
- (b) refuses or neglects to furnish a surety bond when so required under the regulations,

but, before a suspension or cancellation is made, the wholesale dealer shall be afforded an opportunity to appear before the Minister to show cause why the permit should not be suspended or cancelled, as the case may be. 1970, c. 9, s. 3.

Tobacco brought into or received in Ontario

**5.** Every person ordinarily resident in Ontario or carrying on business in Ontario who brings into Ontario or who receives delivery in Ontario of tobacco acquired for value by him for his own consumption or use or for the consumption or use by other persons at his expense, or on behalf of, or as agent for, a principal who desires to acquire such tobacco for the consumption or use by such principal or other persons at his expense, shall immediately

report the matter in writing to the Minister and shall supply the Minister with the invoice and all other pertinent information required from him by the Minister in respect of the consumption or use of such tobacco, and shall pay to Her Majesty in right of Ontario the same tax in respect of the consumption and use of such tobacco as would have been payable if the tobacco had been purchased in Ontario. 1965, c. 130, s. 5; 1970, c. 9, s. 4.

**6.**—(1) No wholesale dealer shall dispose of his stock through a sale in bulk as defined in *The Bulk Sales Act* without first obtaining a certificate in duplicate from the Minister that all taxes collectable or payable under this Act by such wholesale dealer have been paid. Sales of tobacco under R.S.O. 1970, c. 52

(2) Every person purchasing tobacco stock through a sale in bulk as defined in *The Bulk Sales Act* shall obtain from the wholesale dealer selling such stock the duplicate copy of the certificate furnished under subsection 1, and if he fails to do so, he is responsible for payment to the Treasurer of all taxes collectable or payable under this Act by the wholesale dealer thus disposing of his tobacco stock through a sale in bulk. 1970, c. 9, s. 5. Idem

**7.** No retail dealer shall advertise or hold out or state to the public or to any consumer directly or indirectly that the tax or any part thereof imposed by this Act will be assumed or absorbed by the retail dealer or that it will not be considered as an element in the price to the consumer or, if added, that it or any part thereof will be refunded. 1965, c. 130, s. 6. Absorption of tax

**8.**—(1) Every person who collects any tax imposed by this Act shall be deemed to hold it in trust for Her Majesty in right of Ontario and shall pay it over to the Treasurer at the time and in the manner prescribed by the regulations or by agreement made under the regulations. 1965, c. 130, s. 7. (1). Tax moneys are trust moneys

(2) If any person who has collected any tax imposed by this Act fails to pay it over to the Treasurer at the time and in the manner prescribed by the regulations or by agreement made under the regulations, as the case may be, the amount thereof becomes a debt due to Her Majesty in right of Ontario and is a lien upon the property in Ontario of the person in default and, subject to the *Bankruptcy Act* (Canada), has priority over all other claims of other persons, and it shall bear interest at the rate prescribed by the regulations from the day the amount was due until it is paid. 1970, c. 9, s. 6. Default in payment over to Treasurer  
R.S.C. 1952, c. 14

**9.**—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or Investigation

anything is done in connection with any business or any books or records are or should be kept pursuant to this Act, and may,

- (a) audit or examine any books and records and any account, voucher, letter, telegram or other document that relates or may relate to the tax imposed by this Act;
- (b) examine the property described by an inventory or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or the amount of any tax imposed by this Act;
- (c) require a dealer liable to collect or pay over or considered possibly liable to collect or pay over tax imposed under this Act, or, if such dealer is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof and any other person on the premises of such dealer to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination, either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises or place with him; and
- (d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams or other documents and retain them until they are produced in any court proceedings. 1965, c. 130, s. 8 (1); 1970, c. 9, s. 7 (1).

Demand for  
information,  
etc., from  
dealers

(2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any dealer or, if any such dealer is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof any information or additional information or production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents, within such reasonable time as is stipulated therein. 1965, c. 130, s. 8 (2); 1970, c. 9, s. 7 (2).

Idem,  
from  
dealer's  
debtors

(3) The Minister may, for any purpose related to the administration or enforcement of this Act and the regulations, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding or paying or liable to pay any amount to a dealer, or from any partner, agent or official of any such person, partnership, syndi-

cate, trust or corporation, production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents, within such reasonable time as is stipulated therein. 1965, c. 130, s. 8 (3); 1970, c. 9, s. 7 (3).

(4) The Minister may, for any purpose related to the administration or enforcement of this Act and the regulations, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon an *ex parte* application, authorize in writing any officer of the Department of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations, and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings. 1965, c. 130, s. 8 (4); 1970, c. 9, s. 7 (4).

Authority  
to enter  
and search

(5) The Minister may, by registered letter or by a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his or its agent or officer, for the purpose of determining what tax, if any, is collectable or payable under this Act by any dealer or consumer, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand. 1965, c. 130, s. 8 (5); 1970, c. 9, s. 7 (5).

Production  
of records,  
etc.

(6) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Department of Revenue, may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this subsection is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way. 1965, c. 130, s. 8 (6); 1970, c. 9, s. 7 (6).

Copies

(7) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do, or prevent or attempt to prevent any person doing any such thing. 1965, c. 130, s. 8 (7).

Interference

Inventory  
report

(8) The Minister at any time for any purpose related to the administration or enforcement of this Act and the regulations may require a dealer to complete an inventory report showing all tobacco in his possession in respect of which the tax imposed by this Act has not been paid. 1970, c. 9, s. 7 (7).

Inquiry

**10.**—(1) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, authorize any person to make such inquiry as the Minister considers necessary with reference thereto. 1965, c. 130, s. 9 (1); 1970, c. 9, s. 8, *amended*.

Powers

(2) For the purpose of an inquiry under subsection 1, the person authorized to make the inquiry has all the powers and authority that may be conferred upon a commissioner under *The Public Inquiries Act*. 1965, c. 130, s. 9 (2).

R.S.O. 1970,  
c. 379

False  
returns

**11.**—(1) Every person charged with the collection of the tax imposed by this Act and every officer, agent or employee of every such person who signs any return or statement required by this Act or the regulations containing any false statement is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Idem,  
corpora-  
tions

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. 1965, c. 130, s. 10.

Information  
to be secret

**12.**—(1) Subject to subsection 2, no person employed by the Government of Ontario shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any written statement furnished under this Act. 1965, c. 130, s. 11 (1).

Communi-  
cation of  
information  
to other  
jurisdictions

- (2) The Minister may,
- (a) communicate or allow to be communicated information obtained under this Act; or
  - (b) allow inspection of or access to any written statement furnished under this Act,

to any person employed by the government of Canada or any province of Canada, provided that the information and written statements obtained by such government for the purpose of any Act that imposes a tax are communicated or furnished on a reciprocal basis to the Minister, and provided that the information and written statements will not be used for any purpose other than the administration or enforcement of a federal or provincial

law that provides for the imposition of a tax. 1965, c. 130, s. 11 (2); 1970, c. 9, s. 9.

**13.** Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable, for a first offence, to a fine of not less than \$100 and not more than \$500 or to a term of imprisonment of not less than ten days and not more than thirty days, or to both, and, for any subsequent offence, to a fine or not less than \$500 and not more than \$1,000 or to a term of imprisonment of not less than three months and not more than six months, or to both. 1965, c. 130, s. 12.

General penalty

**14.** Any information with respect to any contravention of this Act or the regulations may be laid within three years from the time when the matter of such information arose, and not afterwards. 1965, c. 130, s. 13.

Information to be laid within three years

**15.** The fines imposed for offences under this Act are payable to the Treasurer. 1965, c. 130, s. 14.

Disposition of fines

**16.** The Lieutenant Governor in Council may make regulations,

Regulations

- (a) providing for the collection of the tax imposed by this Act and designating the persons by whom it is to be collected;
- (b) prescribing the remuneration to be paid to the persons who collect the tax imposed by this Act;
- (c) requiring surety bonds to be furnished by the persons who collect the tax imposed by this Act, and prescribing the form and amount of such bonds;
- (d) providing for the accounting for and paying over of the tax imposed by this Act, and regulating the time and manner of such accounting and payment;
- (e) prescribing the returns and statements to be made by importers, manufacturers and dealers of tobacco, the information to be given in such returns and statements, and by whom and in what manner they are to be made;
- (f) providing for the extension of time for making returns;
- (g) establishing a system of permits for wholesale dealers;
- (h) respecting agreements between the Minister and the persons who collect the tax imposed by this Act, and providing for their use;
- (i) prescribing the rate of interest payable on accounts payable to or to be remitted to the Treasurer under this Act;



- (j) excluding any class of tobacco products from this Act;
  - (k) exempting any class of persons from the payment of the tax imposed by this Act;
  - (l) providing for the refund of the whole or any part of the tax paid under this Act, and prescribing the records and material to be furnished upon any application for a refund;
  - (m) providing for the appointment of such inspectors, officers and other persons as may be necessary for the proper carrying out of this Act;
  - (n) prescribing forms and providing for their use;
  - (o) authorizing or requiring the Deputy Minister or any other officer of the Department of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
  - (p) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1965, c. 130, s. 16; 1970, c. 9, s. 11.
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