

1977

## c 11 The Tobacco Tax Amendment Act, 1977

Ontario

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## CHAPTER 11

**An Act to amend The Tobacco Tax Act***Assented to July 12th, 1977*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 2 of *The Tobacco Tax Act*, being <sup>s. 2(1),</sup> chapter 463 of the Revised Statutes of Ontario, 1970, <sup>re-enacted</sup> as re-enacted by the Statutes of Ontario, 1972, chapter 16, section 1 and amended by the Statutes of Ontario, 1976, chapter 24, section 1, is repealed and the following substituted therefor:

(1) Every consumer shall pay to Her Majesty in right of <sup>Tax on</sup> Ontario a tax computed as follows: <sup>consumer</sup>

- (a) ninety-six one-hundredths of 1 cent on every cigarette purchased by him;
- (b) thirty-five one-hundredths of 1 cent on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by him;
- (c) 2 cents on every cigar purchased by him for a price at retail of not more than 7 cents;
- (d) 4 cents on every cigar purchased by him for a price at retail of more than 7 cents but not more than 10 cents; and
- (e) 6 cents on every cigar purchased by him for a price at retail of more than 10 cents but not more than 15 cents, and thereafter an additional 2 cents for each additional 5 cents that the price at retail of a cigar purchased by him exceeds 15 cents.

- (2) The said section 2 is amended by adding thereto the <sup>s. 2,</sup> following subsection: <sup>amended</sup>

Amounts in  
lieu of tax

(4) Where any person selling tobacco receives any payment made as or in lieu of the tax payable under this Act, such payment shall be dealt with and accounted for as tax under this Act, and any person who fails to deal with and account for such payment in accordance with this Act and the regulations is liable to the same penalties and fines, and is guilty of the same offences, as would apply if the payment were the tax payable under this Act, and the Minister may collect and receive such payment by the same remedies and procedures as are provided by this Act or the regulations for the collection and enforcement of the tax payable under this Act.

s. 6(1),  
re-enacted

2. Subsection 1 of section 6 of the said Act is repealed and the following substituted therefor:

Sales of  
tobacco  
under  
R.S.O. 1970,  
c. 52

(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 or that such person has entered into an arrangement satisfactory to the Minister for the payment of such taxes or for securing their payment.

s. 8(2),  
amended

- 3.—(1) Subsection 2 of section 8 of the said Act is amended by striking out “and it shall bear interest at the rate prescribed by the regulations from the day the amount was due until it is paid” in the eighth, ninth and tenth lines.

s. 8(3) (a, b),  
re-enacted

- (2) Clauses *a* and *b* of subsection 3 of the said section 8, as enacted by the Statutes of Ontario, 1976, chapter 24, section 2, are repealed and the following substituted therefor:

(a) \$700; or

(b) the aggregate of,

(i) 4 per cent of the tax collected by him in such period and shown in a return that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected is \$75 or more,

(ii) \$3 for each return with respect to tax collected by him in such period that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected exceeds \$3 and is less than \$75, and

- (iii) the tax collected by him in such period and shown on a return that is made in accordance with this Act and the regulations and in which the tax shown to have been so collected does not exceed \$3,

4. The said Act is amended by adding thereto the following sections:

ss. 8a-8e,  
10a, 10b,  
11a, 11b,  
enacted

8a.—(1) Every person designated a collector according to the regulations shall, without notice or demand, deliver to the Minister, at the time and in the manner prescribed by the regulations, a return of tax, that he, as agent of the Minister, is responsible to collect, and shall, at the time and in the manner prescribed by the regulations, remit such tax with his return.

Returns by  
collector

(2) Every return shall be verified by a certificate of the person designated a collector according to the regulations and, if such person is not an individual, of any one of its officers or servants or its resident manager or representative in Ontario, certifying that the financial and other statements of information included therein or attached thereto are in agreement with the books of such person and exhibit truly, correctly and completely all information for the period covered by the return.

Idem

(3) Every person designated a collector according to the regulations who files a return after the time prescribed by the regulations shall pay, when assessed therefor, a penalty of,

Penalty for  
late filing

(a) \$10; or

(b) 5 per cent of the tax payable by him and 5 per cent of the tax collectable by him,

whichever is the greater, but in no case shall such penalty be more than \$500.

(4) Every person designated a collector according to the regulations who fails to file a return as required by this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of \$200.

Offence

(5) Every person designated a collector according to the regulations who fails to complete the information required in the return to be delivered to the Minister under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of \$200.

Idem



## Assessment

8b.—(1) The Minister may, at any time he considers reasonable, assess or reassess any tax that any person, as agent of the Minister, has collected and has failed to remit and any tax, interest or penalty, as the case may be, payable by him for which he has not accounted.

Assessment  
on inspection

(2) Where it appears from an inspection, audit or examination of the books of account, records or documents of any consumer or dealer that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax collectable or payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of tax that any person as agent of the Minister has collected and has failed to remit and the amount of the tax, interest or penalty, as the case may be, payable by him for which he has not accounted.

Notice of  
Assessment

(3) Where the Minister has made an assessment under subsection 1 or 2, he shall deliver a notice of assessment by personal service or shall send such notice of assessment by mail or registered mail to the person so assessed at his last known address, or where the person has more than one address, one of which is in Ontario, to his address in Ontario, and the amount of the assessment shall, subject to subsection 4, be remitted to the Treasurer by the person so assessed within thirty days from the date of personal service or mailing of the notice of assessment.

## Idem

(4) Where the Minister has made an assessment under subsection 1 or 2, the notice of assessment may provide that the amount assessed is payable forthwith.

Continuation  
of liability  
for tax

(5) Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister  
not bound  
by returns

(6) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding that any return or information has been delivered, assess the tax payable under this Act.

Assessment  
valid and  
binding

(7) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

## Idem

(8) The amount of any assessment is payable within the time required by the notice of assessment whether or not

an objection or appeal from the assessment is made or taken.

8c.—(1) Any amount that is payable or to be remitted to the Treasurer under this Act or the regulations, or that is payable as a penalty imposed under this Act otherwise than a penalty imposed as a result of a prosecution for an offence under this Act, bears interest at the rate prescribed by the regulations from the day on which the amount should have been paid or remitted to the day of payment. Unpaid taxes to bear interest

(2) Any payment to the Treasurer under this Act that is not a fine shall first be applied to any interest payable by the person making a payment or on whose account payment is made. Payment applied first to interest

(3) Where, owing to special circumstances, it is considered inequitable that the whole amount of interest payable by any person under this Act be paid, the Minister may exempt the person from any payment of the whole or any part of such interest. Exemption from payment of interest

8d.—(1) Where a person objects to an assessment made under section 8b, he may, within ninety days from the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the form prescribed by the regulations setting out the reasons for the objection and all relevant facts. Notice of objection

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

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. Reconsideration

8e.—(1) After the Minister has given the notification required by subsection 3 of section 8d, a person who has served notice of objection under section 8d may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 3 of section 8d and an appeal under this section shall not be made to the Divisional Court. Appeal

(2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate Appeal, how instituted

in the form prescribed by the regulations and by filing a copy thereof with the Registrar of the Supreme Court or with the local registrar of the Supreme Court for the county or district in which the person appealing resides or has his place of business.

Service

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

Content of  
notice of  
appeal

(4) The person appealing shall set out in the notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in supporting his appeal.

Reply to  
notice of  
appeal

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

Matter  
deemed  
action

(6) Upon the filing of the material referred to in subsection 5, the matter shall be deemed to be an action in the court.

Disposition  
of appeal

(7) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Idem

(8) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

Procedure

(9) The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure



relating to appeals, apply to every matter that is deemed to be an action under subsection 6, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

(10) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act. <sup>Irregularities</sup>

(11) The time within which a notice of objection under subsection 1 of section 8*d* or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. <sup>Extension of time</sup>

10*a*.—(1) Upon default of payment of an amount assessed under section 8*b*, <sup>Recovery of tax</sup>

(*a*) the Minister may bring an action for recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

(*b*) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment or remittance under this Act is located or situate for the amount of the tax, interest and penalty or any of them owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person, partnership, syndicate, trust or corporation to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, <sup>Compliance to be proved by affidavit</sup>



be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies  
for recovery  
of tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty in right of Ontario.

Garnishment

106.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability  
of debtor

(3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount he was required under this section to pay to the Treasurer, whichever is the lesser.

Service of  
garnishee

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under a name and style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

Idem

(5) Where persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be 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.

(6) Subject to *The Wages Act*, where the Minister has under this section required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter or letter served personally.

Garnishment  
of wages  
R.S.O. 1970,  
c. 486

(7) Where any person, without reasonable excuse, has failed to remit to the Treasurer the moneys as required under this section, the Minister may apply before a judge of the Supreme Court for an order directing such person to remit the moneys which he has failed to remit.

Failure  
to remit

. . . . .

11a. Every dealer who has failed to collect tax that he is responsible to collect under this Act or the regulations shall pay a penalty, when assessed therefor, equal to not more than twice the amount of tax that he failed to collect.

Penalty for  
failure to  
collect

11b. Any officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of any act that is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Liability of  
officers of  
corporations

5. Section 13 of the said Act is amended by adding thereto the following subsection:

s. 13,  
amended

(2) Every person who purchases tobacco for resale from any person who is not designated a collector according to the regulations is guilty of an offence and on summary conviction is liable to a fine of not less than the amount of tax that would be exigible on the tobacco so purchased by him if such tobacco had been purchased by a consumer and not more than an amount equal to twice the amount of such tax so ascertained and is in addition liable to imprisonment for a term not exceeding six months.

Offence



ss. 15a, 15b,  
enacted

6. The said Act is further amended by adding thereto the following sections:

Over-  
payments

15a.—(1) Where a person has remitted to the Treasurer a greater amount of money for a period than was required by this Act to be remitted for that period, or a greater amount than was payable by the person, the Treasurer shall either refund the overpayment or, at the option of the Minister, apply the amount of the overpayment to liability of the person with respect to a previous or subsequent period, in which latter case the Minister shall notify the person of such action.

Idem

(2) Where an amount in respect of an overpayment is refunded or applied on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing on the day the overpayment arose and ending with the day of refunding or application on other liability, unless the amount of interest so calculated is less than \$5 in which event no interest need be paid or applied under this subsection.

Idem

(3) Where by a decision of the Minister under section 8d or by a decision of the court it is finally determined that the tax payable under this Act by a person is less than the amount assessed by the assessment to which objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment of tax, the interest payable under subsection 2 on the overpayment shall be computed at the rate prescribed by the regulations.

Refunds

15b. Any amount refunded under this Act in excess of the amount to which the person receiving the refund was entitled shall be deemed to be tax owing to the Treasurer, and the sections of this Act relating to the assessment (including objection and appeal therefrom) and collection of taxes apply *mutatis mutandis* to the said amount.

s. 16 (1) (n),  
repealed

7. —(1) Clause n of subsection 1 of section 16 of the said Act is repealed.

s. 16,  
amended

- (2) The said section 16, as amended by the Statutes of Ontario, 1972, chapter 16, section 2 and 1976, chapter 24, section 3, is further amended by adding thereto the following subsection:

Minister  
may  
prescribe  
forms

(1a) The Minister may make regulations prescribing any form required by this Act or the regulations or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.



8. The tax levied and collected under *The Tobacco Tax Act* in respect of purchases of tobacco made during the period from and including the 20th day of April, 1977 to and including the 29th day of April, 1977 that would have been lawfully levied and collected had subsection 1 of section 2 of *The Tobacco Tax Act*, as re-enacted by subsection 1 of section 1 of this Act, been in force during that period shall be deemed to have been lawfully levied and collected. Tax deemed lawfully levied
- 9.—(1) This Act, except subsection 2 of section 3, shall be deemed to have come into force on the 28th day of June, 1977. Commencement
- (2) Subsection 2 of section 3 shall be deemed to have come into force on the 1st day of April, 1977. Idem
10. The short title of this Act is *The Tobacco Tax Amendment Act, 1977*. Short title

