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c 13 Tobacco Tax Amendment Act, 1990

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CHAPTER 13

An Act to amend the Tobacco Tax Act

Assented to June 28th, 1990

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

1.—(1) Clause 1 (a) of the Tobacco Tax Act is amended by striking out "but does not include a dealer" in the twelve and thirteenth lines.

(2) Section 1 of the Act, as amended by the Statutes of Ontario, 1981, chapter 4, section 1 and 1985, chapter 22, section 1, is further amended by adding the following clauses:

(ba) "designated warehouse" means a location designated by the Minister for the purpose of storing unmarked cigarettes;

(bb) "exporter" means a person who takes or causes to be taken out of Ontario tobacco in bulk and who may be accountable for the tax on such tobacco to the jurisdiction receiving the tobacco;

(bc) "importer" means a person who brings or causes to be brought into Ontario tobacco in bulk;

(bd) "interjurisdictional transporter" means the operator of a motor vehicle, the operator or shipping agent of record of a vessel, the operator of railway equipment on rails or the operator of an aircraft who engages in the transportation of tobacco in bulk and who operates for such purposes,

(i) one or more motor vehicles licensed or required to be licensed under the Highway Traffic Act inside and outside Ontario,

(ii) one or more vessels under the Canada Shipping Act,
(iii) railway equipment on rails in connection with and as part of a public transportation system inside and outside Ontario, or

(iv) aircraft, the operator of which is approved as a carrier of goods or passengers under the Aeronautics Act (Canada) or regulations made thereunder, or the National Transportation Act, 1987 (Canada), or regulations made thereunder,

and includes the consignee or consignor of tobacco in bulk who is not the holder of a permit to mark cigarettes;

(be) “manufacturer” means a person who manufactures, fabricates or produces tobacco products for distribution, sale or storage in Ontario;

(bf) “marked cigarettes” means packages of cigarettes, cartons and cases that are marked or stamped with an indicium as required under the regulations;

(bg) “mark-point” means a location designated by the Minister for the purposes of marking cigarettes;

(ca) “motor vehicle” means a machine operated, propelled or driven otherwise than by muscular power;

(cb) “operator” means, when used with reference to a motor vehicle other than a motor vehicle designed for use as a vessel, an aircraft or railway equipment operated on rails,

(i) the registered owner, provided the motor vehicle is not leased to another person or, if leased, that the period of the lease is less than thirty-one consecutive days, or

(ii) the lessee, if the motor vehicle is leased for more than thirty consecutive days;

(da) “prescribed” means prescribed by the regulations;
(db) "registered importer" means an importer to whom a registration certificate has been issued under this Act;

(dc) "registered wholesaler" means a wholesaler to whom a wholesaler's permit has been issued under this Act;

(ga) "tax" includes penalties and interest;

(ha) "tobacco in bulk" means 10,000 or more cigarettes, 200 or more cigars, or ten kilograms or more of any tobacco, other than cigarettes or cigars.

(3) Clause 1 (j) of the Act is repealed and the following substituted:

(j) "wholesaler" means a person who sells in Ontario tobacco for the purpose of resale, and includes a person who operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by another person.

2.—(1) Clauses 2 (1) (a) and (b) of the Act, as re-enacted by the Statutes of Ontario, 1988, chapter 65, section 1, are repealed and the following substituted:

(a) 4.83 cents on every cigarette purchased by the consumer;

(b) 4.83 cents on every gram or part thereof of any tobacco, other than cigarettes or cigars purchased by the consumer; and

(2) Subsection 2 (2) of the Act is amended by striking out "prescribed by the regulations" in the fifth line and substituting "provided under this Act".

(3) Subsection 2 (4) of the Act is amended by adding at the end thereof "and, for the purposes of the assessment and collection of such payment, the person receiving such payment as or in lieu of the tax payable under this Act is deemed to be a collector".
(4) Subsection 2 (5) of the Act, as enacted by the Statutes of Ontario, 1982, chapter 17, section 1, is repealed and the following substituted:

(5) Where a collector or a registered importer has made an assignment of his or her book debts, whether by way of specific or general assignment, or in any other manner disposes of his or her present or future right to collect his or her book debts, the assignment does not include the portion of the book debts that the collector or importer, as agent for the Minister, charged the person to whom he or she sold the tobacco as tax under this Act, and any such assignee or any other person who collects the book debts shall be deemed to be a collector under this Act and shall collect, remit and account under this Act and the regulations for the unassigned portion.

(5) Section 2 of the Act, as amended by the Statutes of Ontario, 1981, chapter 4, section 2, 1982, chapter 17, section 1, 1983, chapter 25, section 1, 1985, chapter 22, section 2, 1986, chapter 41, section 1 and 1988, chapter 65, section 1, is further amended by adding the following subsections:

(6) Every consumer is liable for the tax imposed by this Act until the consumer has paid it.

(7) Every person who knowingly fails to pay the tax imposed by this section when required by this Act to do so is guilty of an offence and on conviction is liable to a fine of not less than $200 and, if greater, not more than double the amount of the tax payable by that person.

(8) Every person who fails to comply with subsection (2) is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than $50,000.

3. Section 3 of the Act is repealed and the following substituted:

3.—(1) No person shall sell or deliver in Ontario tobacco for resale unless the person holds a wholesaler's permit issued to the person in such form and manner as the Minister requires.

(2) The Minister may, as a requirement for the issuance of a wholesaler's permit, impose such reasonable conditions and restrictions as the Minister considers appropriate.

(3) No person shall purchase or receive delivery in Ontario of tobacco from a wholesaler who does not hold a whole-
saler's permit issued under this section or from an importer who does not hold a registration certificate issued under this Act.

(4) No wholesaler shall sell or deliver in Ontario tobacco to a person who does not hold a vendor’s permit issued to the person under the Retail Sales Tax Act.

(5) No person shall sell or deliver in Ontario tobacco to a consumer unless the person holds a vendor's permit issued to the person under the Retail Sales Tax Act.

(6) Every wholesaler shall forthwith notify the Minister in writing of all changes in the name or nature of the wholesaler’s business or of the termination of the business.

(7) Every person who,

(a) operates as a wholesaler without obtaining a wholesaler's permit required under this section; or

(b) being the holder of such a permit contravenes any condition or restriction contained in the permit or any other requirements specified in this section,

is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than $10,000, plus, in respect of a conviction under clause (a), to a fine of not less than three times the tax imposed on consumers under section 2 on all tobacco sold by the person during the period the person did not hold a wholesaler’s permit.

4.—(1) Section 3a of the Act, as enacted by the Statutes of Ontario, 1988, chapter 65, section 2, is amended by striking out “prescribed by the regulations” in the fifth line and substituting “provided under this Act”.

(2) Section 3a is further amended by adding the following subsections:

(2) Every collector shall collect the tax collectable and payable under this Act from every person to whom the collector sells or delivers tobacco in Ontario, and shall remit the tax, as well as the tax, if any, on all tobacco in respect of which the collector is a consumer, to the Treasurer at the times and in the manner required by this Act and the regulations.

(3) Subsection (2) does not apply to require a collector to collect tax under this Act on the sale by the collector of
tobacco to another collector who is not a consumer in respect of the tobacco.

(4) Every retail dealer who is not a collector or a registered importer shall collect the tax on tobacco sold or delivered by the retail dealer to a consumer and pay the tax over to the collector, registered importer or registered wholesaler from whom the retail dealer purchased tobacco.

(5) Every wholesaler who is not a collector or registered importer shall collect, as agent for the Minister, the tax imposed by this Act from the retail dealer to whom the wholesaler sells or delivers tobacco and shall pay the tax over to the collector or registered importer from whom the wholesaler purchased the tobacco.

(6) Every importer shall collect, as agent for the Minister, the tax collectable or payable under this Act from every person to whom the importer sells or delivers tobacco in Ontario, and shall remit the tax, as well as the tax, if any, in respect of which the importer is a consumer, to the Treasurer at the times and in the manner required by this Act and the regulations.

(7) For the purpose of ensuring and facilitating the collection of tax under this Act, the Minister may enter into such arrangements and agreements as the Minister considers appropriate.

(8) Every collector, importer, wholesaler or retail dealer who refuses or neglects to collect tax in accordance with this Act is guilty of an offence and on conviction is liable to a fine of not less than the amount of tax that such person refused or neglected to collect, plus a fine of not less than $500 and not more than $10,000.

5. The Act is amended by adding the following sections:

3b.—(1) Every importer of tobacco in bulk into Ontario and every exporter of tobacco in bulk out of Ontario shall apply for and the Minister shall issue a registration certificate in such form and manner as the Minister requires.

(2) The Minister may, as a requirement for the issuance of a registration certificate, impose such reasonable conditions and restrictions as the Minister considers appropriate.

(3) Every registered importer shall, at the times and in the manner required by this Act and the regulations, collect and remit to the Treasurer the tax collectable and payable under
this Act from every person to whom the registered importer has sold tobacco and the tax on all tobacco in respect of which the registered importer is a consumer.

(4) Subsection (3) does not apply to require a registered importer to collect tax under this Act on the sale of tobacco by the registered importer to a collector who is not a consumer in respect of the tobacco.

(5) Every registered importer is deemed to be an agent of the Minister to collect the tax imposed by this Act from every person to whom the registered importer sells tobacco.

(6) Every dealer who purchases or acquires tobacco from an importer who does not hold a registration certificate issued to the importer under this section shall, at the time and in the manner prescribed, remit to the Treasurer the tax collectable and payable on the tobacco purchased or acquired by the dealer.

(7) Every registered importer or exporter who is an interjurisdictional transporter shall keep in the possession of the driver of any motor vehicle operated on behalf of the importer or exporter a notarial copy of the registration certificate issued to the importer or exporter.

(8) A registered importer or exporter shall provide an interjurisdictional transporter transporting the importer’s or exporter’s tobacco with a notarial copy of the registration certificate issued to the importer or exporter.

(9) Every exporter shall forward to the Minister the prescribed information in respect of the tobacco to be exported in the prescribed form and manner.

(10) Following delivery of the tobacco by the exporter to a location outside Ontario, the exporter shall file the required return in the prescribed manner and provide evidence satisfactory to the Minister that the tobacco has been exported out of Ontario.

(11) An exporter who fails to comply with subsections (9) and (10) shall pay a penalty, when assessed therefor, on the tobacco exported or to be exported equal to the tax that would be payable on the tobacco exported or to be exported had it been sold to a consumer in Ontario.

(12) Every importer or exporter shall forthwith notify the Minister in writing of all changes in the name or nature of the
importer's or exporter's business or of the termination of the business.

(13) Every person who operates as an importer or exporter in Ontario without holding a registration certificate required by this section, or who contravenes any condition or restriction contained in the registration certificate issued to the person or who contravenes any other requirement specified in this section is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than $10,000, plus, in respect of a conviction for operating as an importer or exporter without holding a registration certificate, to a fine of not less than three times the tax payable by consumers under section 2 on all tobacco imported into or exported out of Ontario by the person during the period the person did not hold a registration certificate.

(14) Every person who purchases or receives tobacco from an importer who does not hold a registration certificate issued under this Act is guilty of an offence and on conviction is liable to a fine of not less than the tax payable by a consumer under section 2 on the tobacco so purchased by the person.

3c.—(1) Every interjurisdictional transporter shall apply for and the Minister shall issue a registration certificate in such form and manner as the Minister requires.

(2) The Minister may, as a requirement for the issuance of a registration certificate, impose such reasonable conditions and restrictions as the Minister considers appropriate.

(3) Every interjurisdictional transporter shall complete a uniform manifest form provided by the Minister in respect of every shipment of tobacco in bulk transported by the interjurisdictional transporter into or out of Ontario.

(4) Before undertaking to transport tobacco in bulk into or out of Ontario, an interjurisdictional transporter shall obtain the notarial copy of the registration certificate required to be provided under subsection 3b (8).

(5) When transporting tobacco in bulk, every interjurisdictional transporter shall keep in the possession of the driver of the motor vehicle in which the tobacco in bulk is being transported,

(a) the interjurisdictional transporter's registration certificate issued under subsection (1);
(b) a uniform manifest form completed in accordance with subsection (3); and

(c) if the tobacco in bulk is being transported for an importer or exporter, the notarial copy of the registration certificate obtained in accordance with subsection (4) or the transit permit issued under subsection 3g (1) to the owner of the tobacco in bulk being transported.

(6) Where any person authorized for the purpose by the Minister has reasonable cause to believe that an interjurisdictional transporter does not hold a registration certificate or is transporting tobacco in bulk on behalf of an exporter who does not hold a registration certificate issued under section 3b, the person may, without a warrant, stop and detain any vehicle being operated in Ontario by the interjurisdictional transporter and require the person to produce for examination the documents specified in subsection (5).

(7) Where, following a detention under subsection (6), the person fails to produce the documents specified in subsection (5), a person authorized for the purpose by the Minister may, without a warrant but subject to subsections (8), (9) and (11), seize, impound, hold and dispose of the tobacco, unless the interjurisdictional transporter complies with subsection (9).

(8) Despite subsection (7), no seizure, impounding, holding or disposal shall be made if the driver of the vehicle detained under subsection (6) provides proof satisfactory to the person making the detention,

(a) that the driver holds a registration certificate issued under subsection (1);

(b) as to the quantity and destination of the tobacco being transported; and

(c) that the importer or exporter for whom the tobacco is being transported, if such is the case, holds a registration certificate under subsection 4a (1) or holds a transit permit issued under subsection 3g (1) to the owner of the tobacco being transported.

(9) Tobacco seized under subsection (7) shall be forfeited to Her Majesty to be disposed of as the Minister directs unless, within thirty days following the seizure, the person from whom the tobacco was seized, or the owner of the tobacco, pays to the Treasurer an amount, as a penalty, equal to
the tax that would be payable under subsection 2 (1) if the
tobacco were sold to a consumer in Ontario.

Application  
(10) Where tobacco has been seized under subsection (7)
and the person from whom the tobacco has been seized, or
the owner of the tobacco, claims to have the right to posses-
sion of the tobacco, the person or owner may apply within
thirty days following the seizure, to the Supreme Court to
establish the right to possession of the tobacco.

Right to possession  
(11) For the purposes of an application under subsection
(10), the applicant has the right to possession of the tobacco
if,

(a) the driver of the vehicle, when the tobacco was
seized, held a notarial copy of the registration certi-
ficate issued under this Act to the interjurisdictional
transporter;

(b) in the case of tobacco transported on behalf of an
importer or exporter, the driver of the vehicle,
when the tobacco was seized, held a notarial copy
of the registration certificate issued under this Act
to the importer or exporter or held a notarial copy
of the transit permit issued under this Act to the
owner of the tobacco; and

(c) the driver of the vehicle, when the tobacco was
seized, held a uniform manifest form completed in
accordance with this Act, or the operator of the
vehicle delivered the completed uniform manifest
form to the Minister within five days of the seizure.

Disposition of application  
(12) If, upon application under subsection (10), the court is
satisfied that the applicant has the right to possession of the
tobacco, the court may order the tobacco be returned to the
applicant or that the proceeds of sale of the tobacco be paid
to the applicant.

Disposal of tobacco pending disposition  
(13) If a final order is not made under subsection (12)
within sixty days after the filing of the application under sub-
section (10), the Minister may dispose of the tobacco and
retain the proceeds pending the determination of the appli-
cation.

Forfeiture of tobacco  
(14) Upon dismissal of the application under subsection
(12) and the expiry of the appeal period therefrom, the
tobacco is forfeited to Her Majesty to be disposed of as the
Minister directs.
(15) If a sale of tobacco is directed under subsection (9) or (14) or if the proceeds of the sale are retained under subsection (13) and the application is dismissed, the proceeds of the sale remaining after payment of the costs incurred by the Minister in seizing, storing and disposing of the tobacco and after payment of the penalty under subsection (9) shall be paid to the person from whom the tobacco was seized or to the owner of the tobacco.

(16) Every interjurisdictional transporter transporting tobacco in bulk into or out of Ontario who fails to produce any of the documents required to be kept in the possession of the driver under subsection (5) is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than $1,000 for each document not produced.

3d.—(1) Every manufacturer shall apply for and the Minister shall issue a registration certificate in such form and manner as the Minister requires.

(2) The Minister may, as a requirement for the issuance of a registration certificate, impose such reasonable conditions and restrictions as the Minister considers appropriate.

(3) Every manufacturer shall forthwith notify the Minister of all changes in the name or nature of the manufacturer’s business or of the termination of the business.

(4) Every person who operates as a manufacturer in Ontario without holding a registration certificate required by this section, or who, being the holder of a registration certificate, contravenes any condition or restriction contained in the registration certificate or any other requirement specified in this section, is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than $10,000, plus, in respect of a conviction for operating as a manufacturer without holding a registration certificate, to a fine of not less than an amount equal to three times the tax imposed on consumers under section 2 on all tobacco manufactured by the person during the period the person did not hold a registration certificate.

3e.—(1) No person shall sell to a consumer required to pay tax under this Act a package of cigarettes or a carton or case that contains packages of cigarettes unless the package, carton or case is marked or stamped in accordance with the regulations.
(2) No person shall mark packages of cigarettes, cartons or cases unless the person holds a permit to mark cigarettes issued to the person under the regulations.

(3) No person shall stamp packages of cigarettes, cartons or cases unless the person holds a permit to stamp cigarettes issued to the person under the regulations.

(4) The Minister may, as a requirement for the issuance of a permit to mark or stamp cigarettes under the regulations, impose such reasonable conditions and restrictions as the Minister considers appropriate.

(5) The Minister may specify the number and location of mark-points that the holder of a permit to mark or stamp cigarettes may establish and operate and the person shall not mark or stamp cigarettes at any other location.

(6) No person shall store unmarked cigarettes at a location other than a mark-point or a designated warehouse.

(7) The Minister may cancel or suspend a permit to mark or stamp cigarettes issued to a person who permits the marking or stamping of cigarettes at a location not specified by the Minister under subsection (5).

(8) Every holder of a permit to stamp cigarettes shall account for all indicia received from the Minister as required by the regulations.

(9) Any indicia for which the holder of a permit to mark or stamp cigarettes fails to account under the regulations shall be deemed to have been affixed to packages of cigarettes or cartons, as the case may be, and sold to consumers liable to pay tax under this Act, and the holder of the permit shall pay a penalty equal to the tax, when assessed therefor.

(10) Every person who marks or stamps cigarettes without holding a permit issued by the Minister under the regulations, or who, being the holder of a permit, contravenes any condition or restriction contained in the permit or any other requirement specified in this section, is guilty of an offence and on conviction is liable to a fine of not less than $500 and not more than $10,000, plus, in respect of a conviction for marking or stamping cigarettes without holding a permit, to a fine of not less than an amount equal to three times the tax imposed on consumers under section 2 on all packages of cigarettes or cartons marked by the person during the period that the person did not hold the permit.
(11) Every holder of a permit to mark cigarettes who refuses or neglects to mark packages of cigarettes, cartons or cases in accordance with the regulations is guilty of an offence and on conviction is liable to a fine of not less than $50,000 and not more than $1,000,000.

(12) Every holder of a permit to stamp cigarettes who refuses or neglects to stamp packages of cigarettes, cartons or cases in accordance with the regulations is guilty of an offence and on conviction is liable to a fine of not less than $5,000 and not more than $500,000.

3f.—(1) No person shall purchase, possess, store or sell unmarked cigarettes in Ontario unless the person has applied for and been issued a permit to purchase and sell unmarked cigarettes under the regulations.

(2) The Minister may attach such reasonable conditions and restrictions to a permit to purchase and sell unmarked cigarettes as the Minister considers necessary to ensure that the unmarked cigarettes received by the applicant for the permit will be dealt with in accordance with this Act and the regulations.

(3) Every holder of a permit to purchase and sell unmarked cigarettes shall forthwith notify the Minister in writing of all changes in the name or nature of the person's business or of the termination of the business.

(4) Every person who, being the holder of a permit to purchase and sell unmarked cigarettes, sells or permits the sale of unmarked cigarettes to another person who is liable to collect or to pay tax under this Act shall pay a penalty, when assessed therefor, equal to the tax on all unmarked cigarettes so sold or permitted to be sold.

(5) Every person who, being the holder of a permit to purchase and sell unmarked cigarettes, contravenes this Act or the regulations or any condition or restriction contained in the person's permit is guilty of an offence and on conviction is liable to a fine of not less than $1,000 and not more than $10,000, plus a fine of not less than an amount equal to three times the amount of tax, if any, that should have been paid or remitted by the person in compliance with this Act or the regulations.

3g.—(1) Every person who is not a registered importer or exporter under this Act and who wishes to transport or cause to be transported tobacco in bulk owned by the person from a location outside Ontario, through Ontario and continuing to
another location outside Ontario shall apply to the Minister for a transit permit prior to the transport.

(2) The Minister may, as a requirement for the issuance of a transit permit, impose such reasonable conditions, including the posting of security, as the Minister considers appropriate.

(3) Every person to whom a transit permit is issued under this section and who is an interjurisdictional transporter shall keep in the possession of the driver of any motor vehicle operated by the holder of the transit permit a notarial copy of the permit.

(4) Every interjurisdictional transporter who is transporting tobacco in bulk on behalf of a person to whom a transit permit has been issued under subsection (1) shall secure from the person notarial copies of the transit permit.

(5) A transit permit is not valid in respect of the transport of marked cigarettes.

6. Section 4 of the Act is repealed and the following substituted:

4.—(1) The Minister may refuse to designate a person under subsection 3a (1) or to issue a registration certificate or permit under this Act or the regulations if,

(a) the person has not paid all of the tax that the person is liable to pay under this Act;

(b) the person, or any officer, director, shareholder, employee or partner of the person,

(i) has failed to pay a fine levied upon conviction under this Act,

(ii) has been convicted of an offence of fraud or tax evasion within the previous five years, or

(iii) held a registration certificate or permit issued under this Act or the regulations that was cancelled within the preceding five years;

(c) the person fails to satisfy the Minister of the person's ability to perform the conditions proposed by the Minister to be contained in the designation, registration or permit; or
(d) the person fails to provide security as required by subsection 4a (2).

(2) The Minister may suspend or cancel the designation of a collector or the registration certificate or permit issued to a person under this Act or the regulations if the person contravenes or permits the contravention of any provision of this Act or the regulations or of any condition or restriction contained in the designation, registration certificate or permit.

(3) Where the Minister proposes to take action under subsection (1), (2) or 3e (7), the Minister shall, before the refusal, suspension or cancellation is made, afford the person the opportunity to appear before the Minister to show cause why the designation, the registration certificate or the permit should not be refused, suspended or cancelled, as the case may be.

(4) Despite subsection (3), where a collector, a holder of a registration certificate or a holder of a permit under this Act or the regulations fails to deliver a return as required by this Act and the regulations or fails to remit the tax payable by the person, the Minister may, by notice in writing to the person stating the reasons therefor, suspend forthwith the designation, registration certificate or permit, but the person may, within 180 days of the service of the notice, request a hearing before the Minister on a day to be fixed not more than ten days from the date of the receipt of the request by the Minister, to determine whether the suspension may be rescinded and, if so, upon what conditions the suspension may be rescinded.

(5) A notice under subsection (1), (2) or (4) is properly served by personal service or by registered mail sent to the last known address of the person referred to in the subsection.

4a.—(1) The Minister may demand information or additional information from any person for the purposes of evaluating the suitability of a person to be a collector, registered importer, or exporter, or to hold a permit to mark or stamp cigarettes or to purchase and sell unmarked cigarettes, or to ascertain the amount of security to be furnished by a person in accordance with subsection (2) and the person shall deliver the information or further information the Minister requires within the time specified in the Minister's demand.

(2) The Minister may demand security in a form acceptable to the Minister from,
(a) every collector in an amount equivalent to the average three months’ tax collectable and payable by the collector calculated for the twelve-month period preceding the date of the Minister’s demand, or $1,000,000, whichever is the greater;

(b) every importer who acquires marked cigarettes outside Ontario for distribution in Ontario, in an amount equal to the greater of $500,000 or the average three months’ tax that would be collectable and payable by the importer calculated on the basis of the twelve-month period immediately preceding the date of the Minister’s demand, if the cigarettes were sold to a consumer in Ontario in the twelve-month period;

(c) every exporter in an amount specified by the Minister upon the forwarding to the Minister of information required in respect of tobacco to be exported for the purposes of subsection 3b (9);

(d) every person who applies for or is the holder of a permit to mark cigarettes in an amount equal to the greater of $1,000,000 or the average three months’ tax that would be collectable and payable by the person calculated on the basis of the twelve-month period preceding the Minister’s demand if the production of marked cigarettes were sold to consumers in Ontario during the twelve-month period;

(e) every person who applies for or is the holder of a permit to stamp cigarettes in an amount equal to the greater of $500,000 or the average three months’ tax that would be collectable and payable by the person calculated on the basis of the twelve-month period preceding the Minister’s demand if the production of stamped cigarettes were sold to consumers in Ontario during the twelve-month period; and

(f) every person who applies for or is the holder of a permit to purchase or sell unmarked cigarettes in an amount equal to the greater of $500,000 or the average three months’ tax that would be collectable or payable by the person calculated on the basis of the twelve-month period preceding the Minister’s demand, if the person’s acquisition of unmarked cigarettes were marked cigarettes that were sold to consumers in Ontario during the twelve-month period.
(3) Every person shall, upon receipt of a demand under subsection (2), forthwith furnish the amount of security to the Minister.

(4) The Minister may, at any time, increase or decrease the amount of security furnished or to be furnished under subsection (2).

(5) Where the Minister has, under this Act, assessed any person who has provided security under subsection (2), all or any part of the security may be paid into the Consolidated Revenue Fund in satisfaction of all or any part of the person's assessed liability.

7. Section 9 of the Act, as amended by the Statutes of Ontario, 1989, chapter 72, section 85, is repealed and the following substituted:

9.—(1) Every collector, importer, exporter, interjurisdictional transporter, wholesaler, manufacturer, or holders of a permit to mark or stamp cigarettes or to purchase and sell unmarked cigarettes, or holder of a transit permit shall deliver to the Minister such returns as the Minister requires for the purpose of this Act,

(a) without notice or demand at the time and in the manner prescribed; or

(b) on or before the day designated in the demand of the Minister served by personal service or by registered mail.

(2) Every return shall be verified by the certificate of the person required to file the return, and if the person is not an individual, of its president or resident manager or representative in Ontario, that the financial and other statements of information included in or attached to the return are in agreement with the books of the person and contain true, correct and complete information for the period covered by the return.

(3) Every person who fails to make a return as required under subsection (1) shall pay a penalty, when assessed therefor, of 10 per cent of the tax collectable and the tax payable by the person, to a maximum of $50,000 in respect of each return.

(4) Every person who fails to make a return as required under subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than 5
per cent of the amount of tax that would have been reported had the person's return been properly completed and filed.

(5) Every person who fails to complete the information required in a return required under subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than $200 and not more than $5,000.

(6) The Minister may enlarge the time for making a return before or after the time for making it.

(7) Declarations and affidavits in connection with returns under this Act may be taken before any person having authority to administer an oath or affirmation, or before any person specifically authorized for that purpose by the Lieutenant Governor in Council, but a person so specifically authorized shall not charge a fee therefor.

8. Section 9a of the Act, as enacted by the Statutes of Ontario, 1986, chapter 41, section 2, is repealed and the following substituted:

9a.—(1) Every collector or importer shall, with the return required under subsection 9 (1), transmit the tax payable or payable and collectable by the collector or importer.

(2) A collector or importer who transmits less than the amount of tax payable or payable and collectable by the collector or importer shall pay to the Treasurer interest at the prescribed rate upon the deficiency from the date of default until the date of transmission of the deficiency to the Treasurer.

(3) Despite subsection (1), a collector may retain the amount of a refund for which the collector has made application under this Act or the regulations until the refund for which the collector has applied is, in whole or in part, approved or refused by the Minister and notification thereof is sent to the collector.

(4) Despite subsection (3), upon receiving a statement of disallowance under subsection 10 (2a) in respect of the application referred to in subsection (3), the collector shall, with the collector's next return or at such earlier time as is specified in the statement of disallowance, whether or not an objection or appeal therefrom has been made or taken, transmit to the Treasurer the amount of any refund refused, together with interest thereon at the rate prescribed for the period during which the amount was retained by the collector and, upon being notified of the approval of any refund
claimed, the collector may, subject to section 27, retain the amount so approved.

(5) Subsection (3) only applies to a collector, who, in a return filed by the collector in accordance with this Act and the regulations, shows that tax under this Act is to be remitted by the collector and who, at the time the return is delivered to the Minister, has also applied for a refund under this Act or the regulations.

(6) Every person who is required to pay over to a collector or registered importer or to remit to the Treasurer the tax imposed by this Act and who fails to pay over or remit the tax is guilty of an offence and on conviction is liable to a fine of not less than an amount equal to 25 per cent of the tax and not more than an amount equal to twice the amount of the tax that should have been paid over or remitted.

9.—(1) Section 10 of the Act, as amended by the Statutes of Ontario, 1985, chapter 22, section 3, is further amended by adding the following subsection:

(1) Every person who fails to collect tax that the person 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 the person failed to collect.

(2) Subsection 10 (2) of the Act is amended by striking out "consumer or dealer" in the third line and substituting "collector, importer, exporter, wholesaler, retail dealer, consumer, interjurisdictional transporter, holder of a permit to mark or stamp cigarettes or holder of a transit permit".

(3) Subsections 10 (3) and (4) of the Act are amended by inserting after "(1)" in the second line in each instance "(1a)".

(4) Section 10 is further amended by adding the following subsection:

(9) No penalty under subsection (1a) shall be made with respect to tax that should have been collected more than four years before the date of the assessment under subsection (1a), except that, where the Minister establishes that the person has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in making a return or in supplying any information under this Act or the regulations or in omitting to disclose any information, the Minister may, where the Minister considers it expedient, impose the penalty provided under subsection (1a) for tax
10.—(1) Subsection 12 (1) of the Act, as re-enacted by the Statutes of Ontario, 1985, chapter 22, section 4, is amended by striking out "interest or penalty" in the first and second lines and substituting "or interest, or the assessment or payment of a penalty".

(2) Subsection 12 (3) of the Act, as re-enacted by the Statutes of Ontario, 1985, chapter 22, section 4, is amended by inserting after "disallowance" in the second and third lines and in the fourth line in each instance "or penalty".

11.—(1) Subsection 13 (1) of the Act, as amended by the Statutes of Ontario, 1985, chapter 22, section 5, is further amended by striking out "or statement of disallowance" in the amendment of 1985 and substituting "statement of disallowance or penalty".

(2) Subsection 13 (8) of the Act is amended by inserting after "tax" in the second line "or penalty".

12.—(1) Section 14 of the Act, as amended by the Statutes of Ontario, 1981, chapter 4, section 3 and 1985, chapter 22, section 6, is further amended by adding the following subsection:

1d. Every holder of a permit to mark or stamp cigarettes shall permit any person authorized for the purpose by the Minister to enter any mark-point or designated warehouse operated by the holder during normal business hours and the authorized person may,

(a) audit or examine any books and records and any account, voucher, letter, telegram or other document that is kept at the mark-point;

(b) examine the property described in an inventory or any other property, process or matter, the examination of which may, in the person's opinion, assist in determining the accuracy of an inventory or in ascertaining information that is or should be in the books or records or in a return, or the amount of any tax imposed by this Act; and

(c) examine any inventory of,

(i) marked or unmarked cigarettes,
(ii) used or unused indicia, and

(iii) used or unused containers or materials designed to pack cigarettes.

(2) Subsection 14 (2) of the Act is amended by inserting after “information” in the fourth line “additional information, a return, a more complete or sufficient return”.

(3) Section 14 is further amended by adding the following subsection:

(3) Any person who fails or refuses to keep adequate books of account and other records for the purpose of ascertaining the amount of tax payable or payable and collectable by the person may be required, upon notice by the Minister by registered letter, to keep such books of account and records as the Minister specifies in the notice for such length of time as the Minister requires.

13. Section 15 of the Act is repealed and the following substituted:

15.—(1) For any purpose relating to the administration and enforcement of this Act and the regulations, any person authorized for the purpose by the Minister,

(a) may, without warrant, stop and detain any vehicle, including any trailer attached to the vehicle, any vessel, railway equipment on rails or aircraft;

(b) may examine the contents thereof including any cargo, manifests, records, accounts, vouchers, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations; and

(c) subject to subsection (2), may seize and take away any of such manifests, records, accounts or vouchers and retain them until they are produced in any court proceedings.

(2) Where documents are seized under subsection (1), the Minister shall, within fourteen days, make application to a justice, as defined in the Provincial Offences Act, for an order to permit the retention of the documents until they are produced in any court proceeding, and the application may be heard and the order may be made, both without notice, upon receipt of information under oath from a person who believes on reasonable and probable grounds that the documents

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afford evidence of the commission of an offence under this Act.

(3) Where, following a detention under subsection (1), tobacco in bulk is found in the control of a person who has not been designated a collector, does not hold a registration certificate issued under subsection 3b (1) or 3d (1), does not hold a permit issued under subsection 3 (3), 3e (2) or 3f (1), or is being transported or stored in Ontario by or for such a person, any person authorized for the purpose by the Minister may, subject to subsections (4), (5) and (6), seize, impound, hold and dispose of the tobacco.

(4) Despite subsection (3), no seizure, impounding, holding or disposal shall be made if the person in control of the tobacco in bulk detained under subsection (1),

(a) is an interjurisdictional transporter;

(b) holds a wholesaler’s permit under subsection 3 (1) and can provide proof satisfactory to the person authorized by the Minister for the purposes of subsection (3) that the tobacco in bulk was purchased from a collector;

(c) holds a vendor’s permit issued under the Retail Sales Tax Act and can provide proof satisfactory to the person authorized by the Minister that the tobacco in bulk was purchased from a registered wholesaler; or

(d) has in the person’s possession a transit permit issued to the owner of the tobacco in bulk under subsection 3g (1).

(5) Tobacco in bulk seized under subsection (3) is forfeited to Her Majesty to be disposed of as the Minister directs unless, within thirty days following the seizure, the person from whom the tobacco in bulk was seized, or the owner of the tobacco in bulk, applies to the Supreme Court to establish the right to possess the tobacco in bulk.

(6) For the purposes of an application under subsection (5), the applicant has the right to possession of the tobacco in bulk if the owner, or the person for whom the tobacco in bulk was being transported, was, at the time the seizure was made, a person specified in subsection (3) or (4) as someone from whom tobacco in bulk was not to be seized.
(7) Where, on an application under subsection (5), the court is satisfied that the applicant has the right to possession of the tobacco in bulk, the court may order that the tobacco in bulk be returned to the applicant or that the proceeds of sale of the tobacco in bulk be paid to the applicant.

(8) Where a final order has not been made under subsection (7) within sixty days after the filing of the application under subsection (5), the Minister may dispose of the tobacco in bulk and retain the proceeds pending the determination of the application.

(9) Upon dismissal of an application under subsection (5) and the expiry of the appeal period provided therefor, the tobacco in bulk is forfeited to Her Majesty to be disposed of as the Minister directs.

(10) Where a sale of tobacco in bulk is directed under subsection (5) or (9), or where the proceeds of a sale are retained under subsection (8) and the application is dismissed, the proceeds of the sale remaining after payment of the costs incurred by the Minister in seizing, storing and disposing of the tobacco in bulk shall be paid into the Consolidated Revenue Fund.

(11) For the purposes of this section, "vehicle" means a motor vehicle that has more than two axles or more than four wheels, or that is designed by the manufacturer thereof to carry in its enclosed non-passenger space more than 2.548 cubic metres of cargo, and includes any vehicle that is attached to a trailer that is not a house trailer, boat trailer or camper trailer that is being used for the purpose for which it was designed.

(12) Every person from whom tobacco in bulk is seized under subsection (3) shall pay a penalty, when assessed therefor, equal to three times the tax that would be payable under subsection 2 (1) were the tobacco sold to a consumer in Ontario, or where tobacco in bulk includes unmarked cigarettes, three times the tax that would be payable were the cigarettes marked cigarettes sold to a consumer in Ontario.

(13) No penalty shall be assessed under subsection (12) in respect of any person where an order has been made under subsection (7).

14. The Act is further amended by adding the following section:
17a. The use of a remedy does not bar or affect any other remedy, and the remedies provided by this Act for the recovery and enforcement of payment or collection, or both, of any tax or penalty, or both, imposed by this Act are in addition to other remedies existing at law, and no action or other proceeding in any way prejudices, limits or affects any lien charge or priority under this Act or otherwise.

15. Clauses 18 (3) (b) and (c) of the Act are amended by striking out "dealer or consumer" wherever they occur and substituting in each instance "collector, importer, exporter, interjurisdictional transporter, consumer, wholesaler, retail dealer or holder of a permit to mark or stamp cigarettes".

16. Section 19 of the Act is repealed and the following substituted:

19.—(1) No person shall, unless permitted under this Act or the regulations to do so, have in the person's possession any unmarked cigarettes for the purposes of sale.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than thirty cents for each unmarked cigarette in that person's possession, and all unmarked cigarettes found in the person's possession shall be ordered forfeited to Her Majesty.

(3) Every person who, except as permitted under this Act or the regulations, sells or offers for sale or keeps for sale in Ontario unmarked cigarettes shall pay a penalty, when assessed therefor, on all unmarked cigarettes so sold, offered for sale or kept for sale, equal to three times the amount of tax payable under section 2 were the cigarettes marked cigarettes sold to consumers in Ontario.

(4) Every person who, except as permitted under this Act or the regulations, purchases or receives for sale any unmarked cigarettes shall pay a penalty, when assessed therefor, on all unmarked cigarettes so purchased or received for sale, equal to three times the amount of tax payable under section 2 were the cigarettes marked cigarettes sold to consumers in Ontario.

17. Section 22 of the Act, as amended by the Statutes of Ontario, 1981, chapter 4, section 5, is repealed and the following substituted:

22.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall,
(a) knowingly communicate or allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act;

(b) knowingly allow any person to inspect or have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(2) Despite any other Act, but subject to subsection (3), no person employed by the Government of Ontario shall be required, in connection with any legal proceeding,

(a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or the collection of tax under this Act.

(4) A person employed by the Government of Ontario may, in the course of the person's duties in connection with the administration and enforcement of this Act,

(a) communicate or allow to be communicated to any other person employed by the Government of Ontario in the administration and enforcement of any laws related to the raising of revenue or the registration of any person for provincial purposes any information obtained by or on behalf of the Minister under this Act; and

(b) allow any person employed in the administration and enforcement of any laws relating to the raising of revenues or the registration of any person for provincial purposes or any law enforcement official of the Government of Ontario, of Canada or of any other province or territory of Canada to inspect or
have access to any record or thing obtained by or on behalf of the Minister under this Act,

if the information, record or thing obtained by the person that affects the administration and enforcement of this Act is communicated or furnished on a reciprocal basis to the Minister, and the information, record or thing will only be used for the administration or enforcement of this Act or an Act that is administered or enforced by the official or the person receiving the information, record or thing.

(5) Despite anything in this Act, the Minister may permit a copy of any record or thing obtained under this Act to be given to,

(a) the person from whom the record or thing was obtained; or

(b) any person,

(i) for the purpose of an objection or appeal taken by the person under this Act in connection with which the record was obtained, or

(ii) by whom any amount payable under this Act is payable or has been paid; or

(c) the legal representative of any person referred to in clause (a) or (b) or the agent of the legal representative authorized in writing.

(6) The Minister may communicate or allow to be communicated any information, record or thing obtained under this Act or allow inspection of or access to any written statement furnished under this Act to any person employed by any government, provided that the information, record or thing and the written statements obtained by such government for the purposes of any Act that imposes a tax are communicated or furnished on a reciprocal basis to the Minister, and if the information, record or thing and the written statements will not be used for any purpose other than the administration or enforcement of a tax law.

(7) Notwithstanding anything in this Act, the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics information obtained under this Act solely for the purpose of evaluating and formulating tax policy.
(8) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

18. The Act is further amended by adding the following sections:

22a.—(1) No person shall affix an Ontario tax indicium to a package of cigarettes or to the tear-tape of a package of cigarettes or to a carton, case or container of any description for tobacco for sale to a consumer outside Ontario.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than $1,000 and not more than $500,000.

22b.—(1) Every person who affixes to a package of cigarettes or the tear-tape of a package of cigarettes a false, forged, fraudulent, spurious or counterfeit indicium or an indicium that has been used before, or who prints on a package, carton, case or container of any description for packaging cigarettes a false, forged, fraudulent, spurious or counterfeit indicium is guilty of an offence and on conviction is liable to a fine of not less than $500 and not more than $100,000 or to imprisonment for a term of not more than two years, or to both.

(2) Every holder of a permit to mark or stamp cigarettes or dealer who possesses cigarettes contained in a package, carton or case that has previously been used as a marked package, carton or case under this Act or the regulations or contained in packages, cartons or cases that have been fraudulently marked shall pay a penalty, when assessed therefor on a first such assessment, of $10 for each package, $80 for each carton and $500 for each case, and a penalty on each subsequent assessment of $50 for each package, $400 for each carton and $2,500 for each case.

19. Subsection 23 (2) of the Act, as re-enacted by the Statutes of Ontario, 1989, chapter 72, section 85, is amended by striking out “according to the regulations” in the second and third lines and substituting “or who is not an importer holding a registration certificate under section 3b or a wholesaler holding a permit under section 3”.

20. Section 24 of the Act is amended by striking out “three” in the second line and substituting “six”.

21. Section 25 of the Act is repealed and the following substituted:
25. For the purposes of simplifying compliance with this Act and the administration and collection of the tax imposed by this Act and in order to provide reciprocal arrangements to settle claims for tax on the acquisition and use of tobacco by persons carrying on business in more than one province or territory of Canada, the Lieutenant Governor in Council may, on the recommendation of the Minister and on such terms and conditions as are considered necessary and expedient, enter into an agreement with any province or territory of Canada that tax paid to one jurisdiction on the acquisition there of tobacco that is transferred to the other jurisdiction may be paid by one jurisdiction to the other in reduction of the liability to the tax arising in the jurisdiction receiving the payment and in lieu of refunding the tax to the person who paid it and who became liable for similar tax in the other jurisdiction.

22. The Act is further amended by adding the following section:

26a.—(1) Where a person exports tobacco from Ontario, the Minister may refund to the person any amount paid on account of tax in respect of the tobacco if,

(a) the person holds a registration certificate issued under subsection 3b (1) as an exporter;

(b) the tobacco was exported for the purpose of sale; and

(c) the application for the refund is supported by,

(i) invoices verifying the purchase of the tobacco and the payment of the amounts on account of the tax,

(ii) documentary evidence acceptable to the Minister that the tobacco exported from Ontario was delivered to a purchaser in another jurisdiction, and

(iii) a certification by the jurisdiction into which the tobacco was delivered for consumption that tax was paid to that jurisdiction on the tobacco exported from Ontario or that the consumers of the tobacco were not liable to pay tax on the tobacco purchased by them.

(2) A refund under this section shall not be made unless an application therefor is received by the Minister within three years of the date when the amount on account of the tax, a
refund of which is sought, was paid and it is established to the satisfaction of the Minister that the applicant is entitled to the refund claimed.

(3) Where an applicant for a refund under this Act has misrepresented a material fact on or in connection with an application for a refund, a return where an amount was retained by the applicant under subsection 9a (3) or in an invoice supporting the application or return, the Minister may,

(a) deny all or any part of the refund; and

(b) impose a penalty, upon assessment therefor, of an amount equal to or less than the amount of the refund denied.

23.—(1) Clause 28 (1) (g) of the Act is repealed and the following substituted:

(g) governing the activities of those who are required or permitted to hold permits or registration certificates under this Act.

(2) Clause 28 (1) (o) of the Act is repealed and the following substituted:

(o) prescribing any matter required by this Act to be prescribed or referred to in this Act as prescribed.

(3) Subsection 28 (1) of the Act, as amended by the Statutes of Ontario, 1981, chapter 4, section 6, 1983, chapter 25, section 2 and 1988, chapter 65, sections 3 and 4, is further amended by adding the following clauses:

(p) providing a system for the sale of unmarked cigarettes to classes of persons who are exempt from the payment of the tax imposed by this Act, including the limitation on the quantity of unmarked cigarettes to be sold to retail dealers for resale to such consumers;

(q) providing for the furnishing to the Minister of information related to the sale or delivery of tobacco products that are exempt from the tax imposed by this Act or that are delivered to classes of persons who are exempt from the payment of the tax imposed by this Act;
(r) authorizing any person to collect tax or security for the tax imposed by this Act and regulating the time and manner of such collection.

(4) Clauses 28 (2) (b) and (c) of the Act, as enacted by the Statutes of Ontario, 1981, chapter 4, section 6, are repealed and the following substituted:

(b) prescribing, defining, designating or determining anything that the Minister is permitted or required by this Act to prescribe, define, designate or determine;

(c) prescribing the responsibilities of holders of permits to mark or stamp cigarettes for the receipt, use of and the accounting for indicia.

24.—(1) Except as provided in subsections (2) and (3), this Act comes into force on the 1st day of May, 1990.

(2) Sections 5 and 6 and subsection 12 (1) shall be deemed to have come into force on the 1st day of March, 1990.

(3) Subsection 2 (1) comes into force on the 25th day of April, 1990.