

RSA 2000 TOBACCO TAX ACT**Chapter T-4***Table of Contents*

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

Definitions

1 In this Act,

- (a) “arm’s length” means arm’s length as defined in section 251 of the *Income Tax Act* (Canada);
- (b) “assess” includes reassess;
- (c) “black stock” means tobacco products stamped in accordance with any statute or regulation of Canada to indicate that duty has been paid but not stamped or marked in accordance with any statute or regulation of a province to indicate that they are intended for retail sale in a particular province or in particular provinces;
- (d) “consumer” means a person who
 - (i) purchases or receives delivery of tobacco in Alberta, or
 - (ii) in the case of a person ordinarily resident in Alberta or carrying on business in Alberta, brings into Alberta tobacco acquired outside Alberta for the person’s own use or consumption or for the use or consumption by others at the person’s expense, or on behalf of, or as the agent for, a principal who desires to acquire the tobacco for use or consumption by the principal or other persons at the principal’s expense;
- (e) “Court” means the Court of Queen’s Bench;
- (f) “importer” means a person who imports or brings tobacco into Alberta for sale to a consumer;
- (g) “manufacturer” means a person who manufactures tobacco;
- (h) “marked for tax-paid sale in Alberta”, with respect to the packaging of tobacco products on which tax is payable,

- means that the package is marked in accordance with, and by a person authorized pursuant to, the regulations;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
 - (j) “not marked for tax-paid sale in Alberta”, with respect to tobacco products, includes
 - (i) black stock,
 - (ii) stamped or marked in accordance with any statute of a province or territory, other than Alberta, to indicate that the tobacco products are intended for retail sale in a particular province or territory or in particular provinces or territories,
 - (iii) stamped or marked in accordance with the law of a country other than Canada, to indicate that the tobacco products are intended for retail sale in that country, or
 - (iv) not marked or stamped;
 - (k) “officer” means
 - (i) a member of the Royal Canadian Mounted Police;
 - (ii) a police officer;
 - (iii) a special constable appointed under the *Police Act*;
 - (iv) any person appointed by the Minister as an officer for the purposes of this Act;
 - (l) “purchase” means, with reference to tobacco, to purchase or otherwise obtain tobacco;
 - (m) “registration” means a registration of an exempt sale retailer under regulations made under section 48(i);
 - (n) “retailer” means a person who sells or offers for sale tobacco to a consumer;
 - (o) “sell” means to sell or otherwise supply tobacco;
 - (p) “tax collector” means a tax collector appointed pursuant to section 5;
 - (q) “tobacco” means tobacco in any form in which it is used or consumed, and includes snuff;
 - (r) “tobacco products” means cigarettes and fine cut tobacco;
 - (s) “vehicle” means a device in or by which a person or thing may be transported, and includes a watercraft and an aircraft;
 - (t) “wholesaler” means a person who sells or offers for sale tobacco to a retailer or to another wholesaler, and includes a manufacturer who sells or offers for sale tobacco to a retailer.

RSA 2000 cT-4 s1;2003 c33 s2

Crown bound**2** This Act binds the Crown.

1983 cT-5.1 s2

Computation of tax payable

3(1) Every consumer who purchases tobacco in Alberta shall at the time of purchase of the tobacco pay to Her Majesty in right of Alberta a tax computed at the following rates:

- (a) on every cigarette purchased by that consumer, \$0.16;
- (b) on every cigar purchased by that consumer, 183% of the taxable price of the cigar, with the tax payable on each cigar being not less than \$0.35 per cigar nor more than \$8.00 per cigar;
- (c) on every gram or part of a gram of any tobacco, other than cigarettes or cigars, purchased by that consumer, \$0.16.

(1.1) For the purposes of subsection (1), the taxable price of a cigar is the following amount multiplied by 1.3:

- (a) if the cigar was manufactured in Canada, the manufacturer's selling price, including any charges for delivery or transportation and any duty and excise tax imposed under the laws of Canada, except for the tax imposed by Part IX of the *Excise Tax Act* (Canada);
- (b) if the cigar was manufactured outside Canada, the importer's selling price, including any charges for delivery or transportation and any duty and excise tax imposed under the laws of Canada, except for the tax imposed by Part IX of the *Excise Tax Act* (Canada).

(1.2) Notwithstanding subsection (1.1), if the manufacturer or importer of a cigar is also the retailer of the cigar, the taxable price of the cigar is the price the consumer paid for it, including any charges for delivery or transportation but not including the tax payable under this Act or the tax imposed by Part IX of the *Excise Tax Act* (Canada).

(2) Where the amount of tax payable computed at the rate under subsection (1) is a fraction of a cent, the amount shall be rounded to the next higher cent.

(3) Every person who sells tobacco to a consumer in Alberta shall collect the tax in respect of that tobacco from that consumer as agent of the Minister.

RSA 2000 cT-4 s3;2002 c25 s2

Tobacco not marked for tax-paid sale

4(1) No wholesaler or importer shall, in Alberta, purchase, possess, store, sell or offer for sale tobacco products that are not marked for tax-paid sale in Alberta unless the wholesaler or importer has written permission from the Minister to do so and the Minister is satisfied

- (a) in the case of tobacco products that are black stock, that the wholesaler or importer will be selling the tobacco products to an exempt sale retailer, or
 - (b) that the tobacco products will be transported out of Alberta for resale.
- (2)** No retailer shall, in Alberta, purchase, possess, store, sell or offer for sale tobacco products that are not marked for tax-paid sale in Alberta unless
- (a) the retailer has written permission from the Minister to do so, or
 - (b) in the case of tobacco products that are black stock, the retailer is an exempt sale retailer.
- (3)** No person shall, in Alberta, purchase or possess tobacco products that are black stock unless the person is
- (a) permitted to do so under subsection (1) or (2), or
 - (b) exempted under regulations made under section 48(e).
- (4)** Subject to subsection (3), no person shall possess more than 1000 grams of tobacco products that are not marked for tax-paid sale in Alberta, except a wholesaler or importer who possesses the tobacco products in accordance with subsection (1).
- (5)** No exempt sale retailer shall, in Alberta, sell black stock, or offer black stock for sale, to a person unless the person is exempted under regulations made under section 48(e).

RSA 2000 cT-4 s4;2002 c25 s3

Tax collectors

- 5(1)** The Minister may appoint any tax collectors required for the purposes of this Act.
- (2)** A person who collects tax under this Act shall remit the tax
- (a) to a tax collector where
 - (i) the person acquires from another person who is a tax collector the tobacco that is being taxed, and
 - (ii) the Minister has not directed otherwise,
 - or
 - (b) in a case other than that provided for under clause (a), to the Minister.

1983 cT-5.1 s4;1987 c37 s4;1990 c16 s4;1994 c17 s10

Funds held in trust

- 6** Where a person has possession of or control over funds that are collected as taxes under this Act, that person holds those funds in trust for the Minister.

1990 c16 s4

Prohibitions

- 7(1)** No person shall

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

1983 cT-5.1 s5;1987 c37 s5;1994 c17 s11;1997 c27 s4

Refusal, cancellation or suspension of licence

8(1) The Minister may refuse to issue a licence to a person or may suspend or cancel the licence of a person who, in the opinion of the Minister,

- (a) refuses or neglects to account for and pay as required under the regulations money received by the person as proceeds of the tax,
 - (b) refuses or neglects to furnish a surety bond or bank guarantee or make other financial arrangements when so required,
 - (c) contravenes this Act or the regulations or a statute or regulation of another jurisdiction that governs the sale of tobacco in that other jurisdiction,
 - (d) has any director, officer or employee who has contravened this Act or the regulations or a statute or regulation of another jurisdiction that governs the sale of tobacco in that other jurisdiction, or
 - (e) breaches the terms of a tax collection agreement to which that person is a party.
- (2)** The Minister may refuse to issue a licence to a person who is not dealing at arm's length with a person whose application for a licence has been refused or whose licence has been suspended or cancelled.

1983 cT-5.1 s6;1987 c37 s6;1990 c16 s4;1994 c17 s12;
1997 c27 s5

Licence subject to conditions

9(1) Where the Minister issues a licence under this Act, the Minister may make that licence subject to any conditions that the Minister considers appropriate in the circumstances.

(2) The Minister may

- (a) refuse to renew a licence to a person, or
- (b) suspend or cancel a licence issued to a person,

where the person has not, in the opinion of the Minister, complied with the conditions to which that person's licence is subject.

1990 c16 s4

Notification by Minister

10 Where the Minister

- (a) refuses to issue a licence or to renew a licence to a person,
- (b) suspends or cancels a licence of a person,
- (c) refuses to register a person,
- (d) suspends or cancels the registration of a person,
- (e) makes an assessment of tax, interest or penalty payable by a person, or

(f) refuses to issue a refund to a person,
the Minister shall notify that person in writing of the action or decision taken by the Minister.

1990 c16 s4;1994 c17 s13;1997 c27 s6

Notice of objection

11(1) A person who objects

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

(g) to not being issued a refund,
may, within 90 days after the day of mailing of the notice, serve on the Minister a notice of objection in the form provided by the Minister setting out the reasons for the objection and the relevant facts.

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

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

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

1990 c16 s4;1994 c17 s14;1997 c27 s7

Notice of appeal

12(1) A person who has served a notice of objection under section 11(1) may appeal to the Court to have the action or decision taken by the Minister vacated or varied

(a) where the Minister has, under section 11(4), confirmed or varied the action or decision taken by the Minister, or

(b) after 90 days has elapsed after service of the notice of objection and the Minister has not acted under section 11(4),

but no appeal under this section may be instituted after the expiration of 90 days from the day a notification under section 11(4) was mailed to or personally served on the objector.

(2) An appeal to the Court shall be instituted by serving on the Minister a notice of appeal and by filing a copy of the notice of appeal with the clerk of the Court.

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

(4) The notice of appeal shall be attached to the notice of objection and, for the purposes of section 15, is deemed to be a statement of claim.

1990 c16 s4

Reply to notice of appeal

13(1) The Minister shall, within 60 days from the day that the notice of appeal is received or within any further time that the Court may either before or after the expiration of that time allow, serve on the appellant and file in the Court a reply to the notice of appeal

(a) admitting or denying the facts alleged, and

(b) containing a statement
(i) of any further allegations of fact, and

- (ii) of any applicable statutory provisions and any reasons the Minister intends to rely on.
- (2) The Court may strike out a notice of appeal or any part of the notice for failure to comply with section 12 and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.
- (3) The Court may
- (a) strike out any part of a reply for failure to comply with this section, or permit the amendment of a reply, or
 - (b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time that it considers appropriate.
- (4) If a notice of appeal is struck out for failure to comply with section 12 and a new notice of appeal is not filed as and when permitted by the Court, the Court may dismiss the appeal.
- (5) If a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the Court within the time ordered, the Court may dispose of the appeal ex parte or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true.

1990 c16 s4

Powers of Court

- 14(1)** On the filing of the material referred to in sections 12 and 13(1), (2) and (3), the matter is deemed to be an action in the Court.
- (2) A fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in any manner and on any terms that the Court may direct.
- (3) The Court may, in hearing an appeal,
- (a) dismiss the appeal, or
 - (b) allow the appeal and
 - (i) in the case of the refusal, suspension or cancellation affecting a licence, direct, as the case may be, that
 - (A) the licence be issued,
 - (B) the licence be renewed,
 - (C) the suspension be removed, or
 - (D) the licence be reinstated,
 subject to any terms or conditions as the Court considers appropriate,
 - (ii) in the case of the refusal, suspension or cancellation affecting a registration, direct, as the case may be, that, subject to any terms or conditions as the Court considers appropriate,
 - (A) the registration be issued,
 - (B) the suspension be removed, or
 - (C) the registration be reinstated,

- (iii) in the case of an assessment, quash or vary the assessment, or
- (iv) in the case of a refusal to issue a refund, direct that a refund be issued in an amount as the Court may direct.

1990 c16 s4;1997 c27 s8

Practice and procedure

15 Except as provided in the regulations, the practice and procedure of the Court, including the right of appeal and the practice and procedure relating to appeals to the Court of Appeal or the Supreme Court of Canada, apply to every matter deemed to be an action under section 14, and every judgment and order given or made in each such action may be enforced in the same manner and by like process as a judgment or order given or made in an action commenced in the Court.

1990 c16 s4

Irregularities

16 A refusal, suspension or cancellation under section 8 or 9 must not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of a person in the observance of a directory provision of this Act.

1990 c16 s4

Financial arrangements to ensure payment of taxes

17 In the event of a notice of appeal being filed from a decision to suspend or cancel a licence, the Minister may require accelerated payments of tax collected, a surety bond in an amount to be fixed by the Minister, bank guarantees and other financial arrangements to ensure full payment of taxes owing by the wholesaler or importer.

1983 cT-5.1 s8;1987 c37 s8

Certificate of amount not paid

18(1) Where

- (a) an amount that is payable under this Act has not been paid, or
- (b) part of an amount that is payable under this Act has not been paid,

the Minister may issue a certificate stating the amount or the part of the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court.

(3) When a certificate issued under subsection (1) is filed in the Court,

- (a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate together with interest to the day of payment, and
 - (b) proceedings may be taken to enforce payment of the amount owing in respect of the certificate in the same manner as if the certificate were a judgment of the Court.
- (4)** All reasonable costs and charges payable in respect of the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.

1990 c16 s4

Payment by third party

19(1) If the Minister has knowledge or suspects that a person is or will be, within one year, liable to make any payment to a person who owes an amount under this Act referred to in this section as the “debtor”, the Minister may, by written notice, require the person to pay the money otherwise payable to the debtor in whole or in part to the Minister on account of the amount owing by the debtor under this Act.

(2) Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

- (a) a bank, credit union, trust corporation, loan corporation or other similar person referred to in this section as the “institution”, will lend or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or
- (b) a person other than an institution will lend or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects
 - (i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or
 - (ii) if that person is a corporation, is not dealing at arm’s length with that person,

the Minister may by written notice require the institution or person, as the case may be, to pay in whole or in part to the Minister on account of the amount owing by the debtor under this Act the money that would otherwise be so lent, advanced or paid, and any money so paid to the Minister is deemed to have been lent, advanced or paid, as the case may be, to the debtor.

(3) The receipt of the Minister for money paid under this section is a good and sufficient discharge of the amount owing by the debtor to the extent of that payment.

(4) A person who, after receiving a notice under subsection (1), discharges any liability to the debtor without complying with a

requirement under this section is liable to pay to Her Majesty in right of Alberta the lesser of

- (a) an amount equal to the liability discharged, and
- (b) the amount that the person was required under this section to pay to the Minister.

(5) An institution or other person that, after receiving a notice under subsection (2), fails to comply with a requirement under this section with respect to money to be lent, advanced or paid is liable to pay to Her Majesty in right of Alberta an amount equal to the lesser of

- (a) the total of money so lent, advanced or paid, and
- (b) the amount that the institution or person was required under that subsection to pay to the Minister.

(6) If the person who is or is about to become liable carries on business under a name or style other than the person's own name, the notice under subsection (1) or (2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(7) If the persons who are or are about to become liable carry on business in partnership, the notice under subsection (1) or (2) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

1990 c16 s4;1997 c27 s9

Liability of directors for failure to remit

20(1) Where a corporation has failed to remit tax collected by that corporation, the directors of the corporation at the time the corporation was required to remit the tax collected are jointly and severally liable, together with the corporation, to pay that tax collected and any interest or penalties relating to it.

- (2) A director is not liable under subsection (1) unless
- (a) a certificate for the amount of the corporation's liability referred to in subsection (1) has been filed in the Court under section 18(2) and execution for that amount has been returned unsatisfied in whole or in part,
 - (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within 6 months after the earlier of the date of commencement of the proceedings and the date of dissolution, or
 - (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the amount of the

corporation's liability referred to in subsection (1) has been proved within 6 months after the date of the assignment or receiving order.

(3) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) may be commenced more than 2 years after the director last ceased to be a director of that corporation.

(4) Where execution referred to in subsection (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(5) Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of Alberta would have been entitled to had that amount not been so paid, and where a certificate that relates to that amount has been filed, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(6) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

1997 c27 s10

Demand for information

21(1) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, by a demand served personally or by registered letter or certified mail

- (a) require from a wholesaler, importer or retailer, or
- (b) when a wholesaler, importer or retailer is a partnership or corporation, require from a partner or the president, manager, secretary or any director, officer, agent or representative of the partnership or corporation,

any information or additional information or production of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents within a reasonable time that is stipulated in the demand.

(2) The Minister may, for any purpose related to the administration or enforcement of this Act or the regulations, by a demand served personally or by registered letter or certified mail, require

- (a) from any person holding an amount for or paying or liable to pay any amount to a wholesaler, importer or retailer, or
- (b) from any partner, director, officer or agent of any person holding an amount for or paying or liable to pay any amount to a wholesaler, importer or retailer

the production of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents within a reasonable time that is stipulated in the demand.

(3) The Minister may, by a demand served personally or by registered letter or certified mail, require the production by any person, or by the person's agent, of any books, letters, accounts, invoices or statements, financial or otherwise, or other documents in the possession or in the control of that person or that person's agent, for the purpose of determining what tax, if any, is collectible or payable under this Act by any person, or whether a licence or report is required under this Act, and production of any required document shall be made within a reasonable time that is stipulated in the demand.

(4) If a person is served with a demand under this section and the person does not comply with the demand, an officer may apply to the Court for an order directing the person to comply with the demand.

(5) An application under this section shall be by way of an originating notice.

(6) On the filing of an originating notice with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting any relief that the Court considers appropriate pending the determination of the application.

(7) An interim order under subsection (6) may be made ex parte if the Court considers it appropriate in the circumstances.

(8) On hearing an application, the Court may do one or more of the following:

- (a) direct the person to provide or produce the information, additional information or document where the Court is satisfied that
 - (i) the information or document demanded is in the possession of or under the control of the person, and
 - (ii) the information or document demanded is relevant to the administration or enforcement of this Act or the regulations;
- (b) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (c) award costs in respect of the matter.

1983 cT-5.1 s12;1987 c37 s9;1990 c16 s4

Powers of Minister

22 The Minister may

- (a) require a wholesaler, importer or retailer, in a particular case,
 - (i) to keep any record,
 - (ii) to make any return,
 - (iii) to comply with a specified method of accounting, or

- (iv) to make an inventory of tobacco as of a specified time,
for a purpose related to this Act or the regulations;
- (b) extend the time for making a return or statement under this Act;
- (c) prescribe the form of any agreement or other document used in the administration of this Act.

1987 c37 s9

Waiver or cancellation of penalties or interest

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

2002 c25 s5

Inspection and audit

23(1) In this section and section 24,

- (a) “documents” includes money, securities and any of the following, whether computerized or not: books, records, letters, telegrams, vouchers, invoices, accounts and statements, financial or otherwise;
 - (b) “dwelling house” means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes
 - (i) a building within the curtilage of a dwelling house that is connected to it by a doorway or by a covered and enclosed passageway, and
 - (ii) a unit that is designed to be mobile and to be used as a permanent or temporary residence that is being used as a permanent or temporary residence.
- (2)** For the purposes of ensuring that this Act and the regulations are being complied with, an officer may, at any reasonable time,
- (a) inspect, audit or examine
 - (i) the records of a person who is required to keep records under this Act or the regulations, and
 - (ii) any document of that person or of any other person that relates or may relate
 - (A) to the information that is or should be in the records of the person who is required to keep records under this Act or the regulations, or
 - (B) to any amount payable under this Act by or to the person referred to in subclause (i),
 - (b) inspect and examine any property that in the opinion of the officer may assist the officer in determining or ascertaining
 - (i) the accuracy of an inventory,

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- (ii) any information that is or should be in the books and records,
 - (iii) the amount of any tax imposed by this Act, or
 - (iv) whether a licence or report is required under this Act,
- and
- (c) require the production for inspection, audit or examination of all records or documents that are or may be relevant to the inspection, audit or examination.
- (3)** Where an officer on reasonable grounds believes that the records, property or documents referred to in subsection (2) are located in any premises or place, the officer may, at any reasonable time,
- (a) subject to subsection (4), enter the premises or place, and
 - (b) require the owner or manager of the premises or place and any other person on the premises or at the place to give the officer all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the officer.
- (4)** When the premises or place referred to in subsection (3) is a dwelling house, the officer shall not enter the dwelling house without the consent of the occupant of the dwelling house.
- (5)** If an officer
- (a) is refused entry into premises or a place referred to in subsection (3),
 - (b) is not given consent to enter a dwelling house,
 - (c) has reasonable grounds to believe that
 - (i) the officer will be refused entry into premises or a place referred to in subsection (2), or
 - (ii) the officer will not be given consent to enter a dwelling house,
- or
- (d) is impeded or has reasonable grounds to believe that the officer will be impeded in the carrying out of an inspection, audit or examination of any record, document, item or thing,
- the officer may apply to a judge of The Provincial Court of Alberta for an order authorizing the officer to enter the premises, place or dwelling house and carry out the officer's inspection, audit or examination.
- (6)** On hearing an application, the judge may do one or more of the following:
- (a) authorize the officer to enter the premises, place or dwelling house and carry out the officer's duties;
 - (b) direct any occupant to assist the officer in any manner as the judge prescribes;

- (c) restrain any person from impeding the officer from entering the premises, place or dwelling house or from carrying out the officer's duties;
- (d) make the order subject to any terms or conditions that the judge considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

1987 c37 s9;1990 c16 s4;1994 c17 s16;1997 c27 s11

Without warrant

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

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

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

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

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

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

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

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

- (a) furnish a judge of the Provincial Court with an affidavit stating that the officer has reasonable and probable grounds to believe that the person named in the affidavit has committed an offence under this Act or the regulations, or
- (b) return the vehicle and any things seized to the person from whom they were seized.

(5) The judge on receipt of an affidavit under subsection (4) may order that the affidavit be served on the person referred to in the

affidavit and set down a date to hear the matter and may order that the vehicle and any other thing seized be

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

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

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

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

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

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

1990 c16 s4;1994 c17 s17;1997 c27 s12

Disposition on conviction

25(1) On the conviction of any person for an offence under this Act or the regulations, any thing seized in respect of which the offence was committed shall, as part of the penalty for the conviction, be forfeited to the Crown in right of Alberta.

(2) Notwithstanding subsection (1) and subject to subsection (3), the judge making the conviction may declare that the things seized or any part of them be returned to the convicted person.

(3) If the judge makes a declaration under subsection (2) and the time for appeal has expired, the things seized must be returned to the convicted person on the person's application to the clerk of the court where the conviction was made.

(4) If the person described in subsection (3) does not make an application within 30 days after the expiration of the time for appeal or, if an appeal is entered, within 30 days after the final disposition of the appeal, the things seized are forfeited to the Crown in right of Alberta.

(5) On the conviction of the occupant or person in charge of a vehicle for an offence under this Act or the regulations, the judge making the conviction may declare, as part of the penalty for the conviction, that the things seized are forfeited to the Crown in right of Alberta and that the occupant or person must pay all costs incurred by the Crown for storage of the things seized while they are retained by the Crown.

1994 c17 s17

Application by claimant for return of seized property

26(1) If a thing is forfeited to the Crown, any person, other than a person charged with or convicted of the offence that resulted in the forfeiture, who claims an interest in it as owner, mortgagee, lienholder or holder of any similar interest in the forfeited property may, within 30 days after the forfeiture or any longer time that the judge may allow, apply by originating notice to a judge of the Court of Queen's Bench for an order under subsection (4).

(2) The judge to whom an application is made under subsection (1) shall fix a day for the hearing that is not less than 30 days after the date of filing of the application.

(3) The applicant shall serve a notice of the application and of the hearing on the Minister of Justice and Attorney General at least 15 days before the day fixed for the hearing.

(4) If, on the hearing of an application, it is made to appear to the satisfaction of the judge

- (a) that the applicant is innocent of any complicity in the offence or alleged offence that resulted in the forfeiture and of any collusion in relation to that offence or alleged offence with any person who may have committed the offence or alleged offence, and
- (b) that the applicant exercised all reasonable care in respect of the person permitted to obtain the property to satisfy the applicant that it was not likely to be used in contravention of this Act or the regulations or, in the case of a mortgagee or lienholder, that the applicant exercised such care with respect to the mortgagor or the person giving the lien,

the applicant is entitled to an order declaring that the applicant's interest is not affected by the forfeiture and declaring the nature and extent of the applicant's interest.

1994 c17 s17

Return of seized things

27(1) If a person charged with an offence under this Act or the regulations is found not guilty and the judge has not made an order with respect to the things seized relating to that charge, that person is entitled to the things seized

- (a) after the time for the filing of an appeal has expired, or
- (b) if an appeal has been filed, after the final disposition of the appeal.

(2) If a person is charged with an offence under this Act or the regulations and the charge is withdrawn, the person is entitled to the things seized relating to that charge after the expiry of the time

for re-laying a charge for which the things seized are required as evidence.

(3) If within 30 days after the date described in subsection (1) or (2), as the case may be, a person described in subsection (1) or (2), as the case may be, does not collect them, the things seized are forfeited to the Crown in right of Alberta.

1994 c17 s17

Disposition of things forfeited

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

1994 c17 s17

Copies of documents

29(1) If any book, record, paper or other document has been seized, examined or produced under section 21 or 23 or pursuant to a search warrant, the person by whom it is seized or examined or to whom it is produced or any officer of the Department administered by the Minister may make, or cause to be made, one or more copies.

(2) A document purporting to be certified by the Minister or a person authorized by the Minister to be a copy made pursuant to this section shall be admitted in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

1987 c37 s9;1990 c16 s4

Hindering an offence

30 No person shall hinder, molest or interfere with any person doing anything that the person is authorized by or pursuant to sections 21 to 29 to do or prevent or attempt to prevent any person doing that thing and, notwithstanding any other law to the contrary, a person shall, unless the person is unable to do so, do everything the person is required by or pursuant to sections 21 to 29 to do.

1987 c37 s9

Records and books of account

31(1) Every wholesaler, importer and retailer shall keep records and books of account, including an annual inventory, in the manner prescribed by the Minister.

(2) Records and books of accounts required to be kept under subsection (1) shall be kept

- (a) at the wholesaler's, importer's or retailer's place of business or residence in Alberta, or
- (b) if the wholesaler, importer or retailer has no place of business or residence in Alberta, at a place in Alberta or

elsewhere approved in writing by the Minister under any terms and conditions the Minister may impose.

(3) Notwithstanding subsection (2)(a) a wholesaler, importer or retailer may keep the records or books of account at a place in Alberta or elsewhere approved in writing by the Minister under any terms and conditions that the Minister may impose.

(4) If a wholesaler, importer or retailer has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the wholesaler, importer or retailer to keep those records and books of account that the Minister may specify and the wholesaler, importer or retailer shall keep the records and books of account so specified.

(5) Any person required by this section to keep records and books of account shall retain

- (a) the records and books of account in respect of which a period is prescribed pursuant to section 48(m), together with every account and voucher necessary to verify the information contained in any record or book of account, for the prescribed period, and
- (b) all records and books of account other than those referred to in clause (a), together with every account and voucher necessary to verify the information contained in any record or book of account, until the expiration of 4 years from the end of the last fiscal year to which the records and books of account relate.

(6) Where a person required by this section to keep records and books of account is a party to an appeal under section 12, that person shall retain every record, book of account, account and voucher necessary for dealing with the appeal until the appeal is disposed of and until any further appeal is disposed of or the time for filing any further appeal has expired.

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

(8) A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained in the records and books of account, before the expiration of the period for which those records and books of account are required to be kept if written permission for their disposal is given by the Minister.

1983 cT-5.1 s13;1994 c17 s18

Communication of information restricted

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

(2) Subject to subsection (3), Minister may

- (a) communicate or allow to be communicated information obtained under this Act to, and
- (b) allow inspection of or access to any written statement furnished under this Act by

any person authorized by the Minister or any person employed by the Government of Canada or the government of any province or territory.

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

- (a) the information and written statements will not be used for any purpose other than the administration or enforcement of a federal, provincial or territorial law, and
- (b) in the case of information and statements communicated to a government, that government furnishes information or permits inspection of or access to statements on a reciprocal basis to the Minister.

1983 cT-5.1 s14;1997 c27 s13

Black stock

33(1) If a person purchases or otherwise possesses tobacco products that are black stock in contravention of section 4, the Minister may assess the person a penalty in the amount equal to the tax that would have been payable if the tobacco products were not black stock and were sold to a consumer in Alberta.

(2) A person exempted under regulations made under section 48(e) who purchases more than 400 grams of tobacco products that are black stock in a calendar week must

- (a) at the time of purchase,
 - (i) advise the seller that the person's weekly purchases of tobacco products have exceeded 400 grams, and
 - (ii) advise the seller of the intended disposition or use of the tobacco products,

and

- (b) maintain records of the disposition or use of the tobacco products,

and the seller must record the intended disposition or use on a voucher completed in accordance with the regulations.

(3) If a person purchases more than 400 grams of tobacco products in contravention of subsection (2), the Minister may assess a penalty equal to the tax on the amount of tobacco products

purchased in that week that would have been payable if the tobacco products were not black stock.

(4) The Minister may, at the Minister's discretion, require a seller to obtain approval from the Minister in advance of a sale of tobacco products that is in excess of the amount specified in subsection (2).

RSA 2000 cT-4 s33;2003 c33 s7

Assessment of tax

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

- (a) any tax that any person, as agent of the Minister, has collected and has failed to remit, and
- (b) interest on that tax calculated in the manner prescribed in the regulations.

(2) 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.

(3) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding a return or information so delivered, or if no return or information has been delivered, assess the tax payable under this Act.

1990 c16 s4;1994 c17 s19

Assessment of penalty

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

(2) If the Minister establishes that the failure of a person to collect tax in accordance with this Act is attributable to neglect, carelessness or wilful default, or to any fraud that the person committed in making a return or in supplying any information under this Act or in omitting to disclose any information that is to be disclosed under this Act, the Minister may at any time assess a penalty equal to the tax that the person failed to collect.

(3) For the purposes of section 34(1) and subsection (1) of this section, if the tax remitted by a person is less than the tax that should have been collected by that person, in the absence of evidence to the contrary, the person is deemed to have collected but not remitted the deficiency.

1990 c16 s4;1994 c17 s20

Assessment of refund overpayment

36(1) The Minister may, within 4 years from the end of the calendar year in which a refund has been made, assess

- (a) any overpayment of a refund made to a retailer exempted under a regulation made under section 48(h), and
- (b) interest on that amount calculated in the manner prescribed in the regulations.

(2) Liability for the amount of an overpayment is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(3) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding a return or information so delivered, or if no return or information has been delivered, assess the amount of the overpayment.

(4) If the Minister establishes that the overpayment is attributable to neglect, carelessness or wilful default, or to any fraud that the person committed in making a return or in supplying any information under this Act or in omitting to disclose any information that is to be disclosed under this Act, the Minister may at any time assess a penalty equal to the amount of the overpayment including any interest.

1997 c27 s14

Effect of assessment

37(1) Unless it is varied or vacated on an objection or appeal,

- (a) an assessment made under this Act is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it, and
- (b) the amount assessed in an assessment made under this Act is, for the purposes of collection and recovery, deemed to be a tax owing under this Act and to be conclusively established as a debt due to Her Majesty in right of Alberta.

(2) Every person assessed under this Act shall, within 30 days after the service of the notice of assessment, pay the amount assessed against the person, whether or not an objection to or appeal from the assessment is outstanding.

1990 c16 s4; 1997 c27 s15

Additional penalty

38(1) Where

- (a) a person owes an amount to the Crown under this Act, and

- (b) the Minister is of the opinion that the reason that the amount is owing to the Crown by that person is attributable to
- (i) neglect, carelessness or wilful default by or on behalf of that person, or
 - (ii) fraud or evasion committed by or on behalf of that person,

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

(2) On assessing a penalty under subsection (1), the Minister may demand payment of the amount owing and the amount of the penalty assessed under this section from the person to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is proof, in the absence of evidence to the contrary, that the unpaid amount and the penalty assessed under this section are owing to the Crown from the person to whom the demand is directed in the amounts stated in the demand.

(4) When a demand is made under this section, the amount owing and the amount of the penalty that remain unpaid bear interest at the rate prescribed by regulation from the date that the demand is made.

(5) Any amount owing, penalty and interest that remain unpaid are recoverable by the Crown by an action in debt.

1990 c16 s4

Service, etc.

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

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

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

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

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

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

RSA 2000 cT-4 s39;2001 cC-28.1 s471

Offence and penalty

40 Any person who

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

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

1983 cT-5.1 s15;1990 c16 s4;1994 c17 s21

Offences

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

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

(2) A person who contravenes section 3(3), 4(1) or (2), 5(2) or 7 is guilty of an offence and liable

- (a) for a first offence, to a fine of not more than \$10 000 or to a term of imprisonment of not more than 6 months or to both fine and imprisonment,
- (b) for a 2nd offence, to a fine of not more than \$25 000 or to a term of imprisonment of not more than one year or to both fine and imprisonment, and
- (c) in addition to the penalties in clauses (a) and (b), to a penalty of not more than 3 times the amount of tax that,
 - (i) in the case of an offence under section 3(3) or 5(2), should have been collected and remitted by the person,
 - (ii) in the case of an offence under section 4(1) or (2), would have been payable under section 3 if the tobacco products were marked for tax-paid sale in Alberta and sold to a consumer in Alberta, and
 - (iii) in the case of an offence under section 7, would have been payable under section 3 were the tobacco sold to a consumer.

(3) Every person who

- (a) marks tobacco without holding a permit issued under the regulations, or
- (b) being the holder of a permit to mark tobacco, refuses or neglects to mark packages of tobacco in accordance with the regulations

is guilty of an offence and liable to a fine of not more than \$1 000 000 or to imprisonment for a term not exceeding 3 years, or to both fine and imprisonment.

(4) Every person who, being the holder of a permit to mark tobacco, contravenes any condition or restriction contained in the permit or any other requirement specified in the regulations is guilty of an offence and liable to a fine of not more than \$10 000.

(5) Every person who has received permission from the Minister to purchase and sell tobacco that is not marked for sale in Alberta and who contravenes this Act or the regulations or any condition or restriction contained in the authorization is guilty of an offence and liable to a fine of not more than \$10 000.

Failure to maintain records

42(1) Any person who fails to maintain records and books of account when required to do so under section 31(7) is guilty of an offence and liable to a fine of \$50 for each day from the day the demand under section 31(7) was received by the person until the person complies with the demand.

(2) Any person who fails to file a return or to provide or produce information as required by this Act or the regulations is guilty of an offence and liable to a fine of \$50 for each day of default.

1994 c17 s23

Offences and penalties re corporate officers, etc.

43 If a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

1990 c16 s4

General penalty

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

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

RSA 2000 cT-4 s44;2002 c25 s7

Application of fines

45(1) Subject to subsection (2), any fine imposed in respect of a conviction for an offence under section 41(1) and (2) belongs to the Crown in right of Alberta.

(2) Subject to any administration fee determined by the Minister, any fine imposed in respect of a conviction for an offence under section 41(1) and (2), where the offence occurred in

- (a) a city, town or village, other than on a primary highway, enures to the benefit of the city, town or village,
- (b) a municipal district, improvement district or special area, other than on a primary highway, enures to the benefit of the municipal district, improvement district or special area,

- (c) a Metis settlement, other than on a primary highway, enures to the benefit of the Metis settlement, and
- (d) an Indian reserve, other than on a primary highway or on a road designated as a secondary road under the *Public Highways Development Act*, enures to the benefit of the band.

1994 c17 s25;1995 c24 s99(37)

Time for laying information or complaint

46 An information or complaint in respect of a contravention of this Act or the regulations may only be laid or made within 6 years from the day the matter of the information or complaint arose.

1983 cT-5.1 s18;1994 c17 s26

Limitations Act

46.1 The *Limitations Act* does not apply to the Crown with respect to any matter arising under this Act.

2001 c13 s6

Powers of Minister

47 The Minister may

- (a) appoint persons as officers for the purposes of this Act,
- (b) assess tax and penalties owing under this Act and any interest on them,
- (c) prescribe forms and provide for their use,
- (d) require accelerated payments of tax collected by a tax collector or any other person who collects tax,
- (e) exempt any wholesaler from the operation of section 7(2) subject to any terms and conditions that the Minister may impose, and
- (f) authorize those persons to whom information may be communicated or who may inspect or have access to statements furnished under this Act for the purposes of section 32(2).

1983 cT-5.1 s19;1987 c37 s10;1990 c16 s4;
1994 c17 s27;1999 c16 s6

Regulations

48 The Lieutenant Governor in Council may make regulations

- (a) defining any word used in this Act but not defined in this Act;
- (b) prescribing the remuneration to be paid to tax collectors;

- (c) establishing a system of licences for wholesalers and importers;
- (d) excluding any class or form of tobacco from this Act;
- (e) exempting any person or class of persons from the payment of the tax imposed by this Act subject to any terms set out in the regulation;
- (f) 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 on any application for a refund;
- (g) prescribing the rates of interest payable and the time over which interest is payable on any tax or penalty or either of them owing;
- (h) exempting any retailer from collecting the tax imposed by this Act, subject to any terms or conditions prescribed in the regulations;
- (i) respecting the registration of retailers who sell tobacco to persons who are not required to pay tax under this Act and the cancellation and suspension of those registrations;
- (j) governing funds that are held in trust;
- (k) prescribing terms and conditions in respect of the appointment of tax collectors for the purposes of section 5 and respecting any agreements that may be entered into with those tax collectors;
- (l) requiring packages containing tobacco to be marked and governing the marking of those packages;
 - (l.1) requiring cigars not sold in packages to be marked, and governing the marking of those cigars;
 - (l.2) respecting the packaging of tobacco products;
- (m) respecting the records and books of account required to be kept by wholesalers, importers and retailers, and the period of time those records and books of account must be kept;
- (n) requiring surety bonds, bank guarantees or other financial arrangements to be furnished or made by any person who collects or remits tax pursuant to this Act and prescribing the form and amount of the bonds, guarantees or other financial arrangements;

- (o) respecting returns to be made to the Minister, including the person required to make them;
- (p) respecting records to be kept under this Act;
- (q) respecting the collection and remittance of tax under this Act.

RSA 2000 cT-4 s48;2002 c25 s8