

**2010**

**CHAPTER 35**

An Act to amend *The Tobacco Tax Act, 1998* and to make a consequential amendment to *The Revenue and Financial Services Act*

(Assented to May 20, 2010)

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

**Short title**

**1** This Act may be cited as *The Tobacco Tax Amendment Act, 2010*.

**S.S. 1998, c.T-15.001 amended**

**2** *The Tobacco Tax Act, 1998* is amended in the manner set forth in this Act.

**Section 2 amended**

**3 Section 2 is amended:**

**(a) by adding the following clauses after clause (a):**

“(a.1) **‘black stock’** means tobacco products that are stamped or marked in accordance with any statute or regulation of Canada to indicate that duty has been paid but that are 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;

“(a.2) **‘collection agent’** means:

- (i) a customs officer;
- (ii) the Canada Post Corporation established pursuant to the *Canada Post Corporation Act* and its officers, employees and agents if the Canada Post Corporation has been authorized to collect and agrees to collect, as agent of the Government of Canada, duties as defined in the *Customs Act* (Canada) respecting mail delivered into Saskatchewan; or
- (iii) any other prescribed person or member of a prescribed class of persons”;

**(b) by adding the following clause after clause (d):**

“(d.1) **‘duty free shop’** means a duty free shop as defined in the *Excise Tax Act* (Canada)”;

**(c) by adding the following clauses after clause (e):**

“(e.1) ‘**exempt consumer**’ means a person who is exempt from paying tax:

- (i) pursuant to the *Indian Act* (Canada); or
- (ii) pursuant to the regulations;

“(e.2) ‘**exempt sale retailer**’ means a retailer of tobacco who is registered in accordance with the regulations to sell tobacco to exempt consumers”;

**(d) by adding the following clauses after clause (f):**

“(f.1) ‘**Indian**’ means an Indian as defined in subsection 2(1) of the *Indian Act* (Canada);

“(f.2) ‘**Indian band**’ means a band as defined in the *Indian Act* (Canada) and includes the council of a band”;

**(e) by adding the following clause after clause (h):**

“(h.1) ‘**licensed manufacturer**’ means a person who is licensed in accordance with this Act and the regulations to manufacture tobacco products in Saskatchewan”;

**(f) in clause (i) by adding “but does not include tobacco that is black stock” after “includes prescribed tobacco”; and****(g) by repealing subclause (m)(iv) and substituting the following:**

“(iv) a person who grows tobacco in Saskatchewan for commercial purposes or who manufactures a tobacco product in Saskatchewan for commercial purposes”.

**Section 3 amended****4(1) Clause 3(1)(b) is repealed and the following substituted:**

“(b) in the case of a person growing the tobacco in Saskatchewan for commercial purposes or manufacturing a tobacco product in Saskatchewan for commercial purposes, at the prescribed time and in the prescribed manner”.

**(2) Subsection 3(2) is repealed and the following substituted:**

“(2) The tax required to be paid pursuant to subsection (1) is to be paid at the following rates:

- (a) on every cigarette or tobacco stick, 21¢;
- (b) on every cigar, the greater of:
  - (i) 35¢ per cigar; and
  - (ii) 100% of the taxable price of the cigar to a maximum of \$5 per cigar;
- (c) on every gram of tobacco, other than cigarettes, tobacco sticks or cigars, 21¢”.

**(3) Subsection 3(3) is repealed and the following substituted:**

“(3) The taxable price of a cigar for the purposes of subclause (2)(b)(ii) is the following amount multiplied by 1.3:

- (a) if the cigar was manufactured in Canada, the manufacturer’s selling price before any volume discount, including any charges for delivery or transportation and any duty and excise tax imposed pursuant to 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 before any volume discount.

“(3.01) For the purposes of clause (3)(b), the importer’s selling price of a cigar is the greater of:

- (a) the price charged by the importer; and
- (b) if the importer sells the cigar to a party who is not dealing at arm’s length with the importer and who subsequently sells the cigar to a third party, the price charged to the third party;

including any charges for delivery or transportation and any duty and excise tax imposed pursuant to the laws of Canada, except for the tax imposed by Part IX of the *Excise Tax Act* (Canada)”.

**Section 4 amended****5 Subsection 4(1) is repealed and the following substituted:**

“(1) Every recipient who manufactures a tobacco product in Saskatchewan for commercial purposes, who imports tobacco into Saskatchewan or who grows tobacco in Saskatchewan for commercial purposes shall remit the tax to the minister:

- (a) at the prescribed times and in the prescribed manner; or
- (b) at the times and in the manner prescribed in Part III of *The Revenue and Financial Services Act* and the regulations made pursuant to that Part”.

**Section 6 amended****6(1) Clause 6(1)(a) is amended:**

- (a) in subclause (i) by striking out “customs officer” and substituting “collection agent”; and
- (b) in subclause (ii) by striking out “customs officer” wherever it appears and in each case substituting “collection agent”.

**(2) Subsection 6(2) is amended by striking out “customs officer” and substituting “collection agent”.**

**(3) Subsection 6(4) is amended by striking out “customs officer” and substituting “collection agent”.**

**(4) The following subsection is added after subsection 6(5):**

“(6) An importing consumer may apply to the Minister of National Revenue, or the Minister responsible for the Canada Border Services Agency, in that Minister’s capacity as agent for the Crown, for a refund of tax paid to a collection agent if it is subsequently determined in accordance with this Act that no tax was payable by the importing consumer”.

**Section 8 amended**

**7(1) Subsection 8(1) is amended in the portion preceding clause (a) by adding “, licensed manufacturer” after “an importing consumer”.**

**(2) Clause 8(2)(b) is repealed and the following substituted:**

“(b) a person who possesses unmarked tobacco at or below the quantities prescribed for the purposes of subclause 11(4)(b)(i)”.

**New section 8.1**

**8 The following section is added after section 8:**

**“Licence required to manufacture tobacco**

**8.1 No person shall manufacture tobacco products in Saskatchewan without holding a valid licence to do so”.**

**Section 9 amended**

**9 Section 9 is amended by adding “manufacture tobacco products or” after “to obtain a licence to”.**

**Section 11 amended**

**10(1) Subsections 11(1) and (2) are repealed and the following substituted:**

“(1) No licensed manufacturer or licensed importer shall purchase, possess, store, transport or sell tobacco in Saskatchewan, or import tobacco into Saskatchewan, unless:

(a) the packages containing the tobacco are marked in the prescribed manner;

(b) in the case of unmarked tobacco other than tobacco that is black stock, all of the following circumstances are met:

(i) the licensed manufacturer or licensed importer is storing the tobacco for sale or transportation outside Saskatchewan;

(ii) the licensed manufacturer or licensed importer has received the written approval of the minister to possess, store or transport the tobacco;

(iii) the tobacco is ultimately removed from Saskatchewan;

(iv) the licensed manufacturer or licensed importer retains for the prescribed period evidence of the removal of the tobacco from Saskatchewan;

- (c) in the case of a licensed manufacturer who is importing unmarked tobacco into Saskatchewan for the purpose of manufacturing tobacco products, the licensed manufacturer, in accordance with the regulations, maintains and submits to the minister the prescribed records related to the importation of the tobacco;
- (d) in the case of tobacco that is black stock:
  - (i) the licensed manufacturer or licensed importer:
    - (A) will be selling the tobacco to an exempt sale retailer or a duty free shop; and
    - (B) in accordance with the regulations, maintains and submits to the minister the prescribed records related to the manufacture, importation, storage or sale of the tobacco and a monthly report containing the prescribed information; or
  - (ii) the tobacco will be transported out of Saskatchewan for resale and the licensed manufacturer or licensed importer retains for the prescribed period evidence of the removal of the tobacco from Saskatchewan.

“(2) No person engaged in the business of selling tobacco, other than a licensed manufacturer or licensed importer, shall purchase, possess, store, transport or sell tobacco in Saskatchewan unless:

- (a) the packages containing the tobacco are marked in the prescribed manner; or
- (b) in the case of tobacco that is black stock, the person is a retailer who is:
  - (i) an exempt sale retailer who is in compliance with subsection (2.1); or
  - (ii) operating as a duty free shop that is registered in accordance with the regulations and is in compliance with subsection (2.1).

“(2.1) For the purposes of clause (2)(b), the retailer shall purchase tobacco that is black stock only from a licensed manufacturer or licensed importer.

“(2.2) No person shall, in Saskatchewan, purchase, attempt to purchase or possess tobacco that is black stock unless the person:

- (a) is an exempt consumer; or
- (b) is permitted to do so pursuant to subsection (1) or (2).

“(2.3) No exempt consumer shall purchase or possess more tobacco that is black stock than the prescribed amount without being authorized to do so pursuant to the regulations.

“(2.4) No exempt sale retailer shall sell in Saskatchewan tobacco that is black stock, or offer tobacco that is black stock for sale, to a person unless that person is an exempt consumer.

“(2.5) No exempt sale retailer shall sell in Saskatchewan tobacco that is black stock to an exempt consumer in an amount greater than the prescribed amount.

“(2.6) An exempt sale retailer may apply, in the prescribed manner and at the prescribed times, to obtain a refund of amounts paid to a licensed manufacturer or a licensed importer respecting tobacco that is black stock that the exempt sale retailer has purchased from the licensed manufacturer or licensed importer and has sold to an exempt consumer”.

**(2) Subsections 11(4) and (5) are repealed and the following substituted:**

“(4) Notwithstanding subsection (2.2), an importing consumer may possess unmarked tobacco if:

(a) the unmarked tobacco has been stamped or marked in accordance with a statute or regulation of Canada to indicate that duty has been paid; and

(b) either:

(i) the unmarked tobacco is in prescribed quantities; or

(ii) the importing consumer has paid tax on the unmarked tobacco”.

**(3) Subsection 11(6) is repealed.**

**(4) Subsection 11(7) is repealed and the following substituted:**

“(7) The minister may authorize a person to possess unmarked tobacco in excess of the prescribed quantities mentioned in subclause (4)(b)(i) if the person is transporting the tobacco through Saskatchewan”.

**Section 13 amended**

**11 The following subsection is added after subsection 13(2):**

“(3) A person who holds an authorization shall not mark packages, cartons or cases of tobacco at any location other than a location or mark-point approved by the minister”.

**Section 15 amended**

**12 Subsection 15(1) is amended by adding “and to acquire or possess equipment to mark packages” after “to mark packages”.**

**New sections 18.1 to 18.6**

**13 The following sections are added after section 18:**

**“Penalty – purchase or possession of unmarked tobacco**

**18.1** If a person purchases or otherwise possesses unmarked tobacco, including tobacco that is black stock, in contravention of this Act, the minister may assess against that person a penalty in an amount equal to three times the tax that would have been payable if the tobacco were marked tobacco and were sold to a consumer in Saskatchewan.

**“Penalty – overpayments to exempt sale retailers received in certain circumstances**

**18.2(1)** The minister may assess a penalty against an exempt sale retailer in the amount set out in subsection (2) if:

- (a) the exempt sale retailer has applied for a refund and received a refund pursuant to subsection 11(2.6); and
- (b) the minister determines that the exempt sale retailer has made a false or misleading statement with respect to a material fact in any report or in any application for the refund or the exempt sale retailer has failed to comply with this Act.

(2) In the circumstances mentioned in subsection (1), any refund paid is deemed to be an overpayment and the minister may assess a penalty in an amount equal to three times the amount of the overpayment.

**“Notice re penalty pursuant to section 18.1 or 18.2**

**18.3(1)** Before assessing a penalty pursuant to section 18.1 or 18.2, the minister shall provide notice to the person:

- (a) setting out the facts and circumstances that, in the minister’s opinion, render the person liable to a penalty;
- (b) specifying the amount of the penalty; and
- (c) informing the person of the person’s right to make representations to the minister.

(2) A person to whom notice is sent pursuant to subsection (1) may make representations to the minister respecting whether or not a penalty should be assessed and whether or not the minister’s calculation of the penalty is correct.

(3) Representations pursuant to subsection (2) must be made within 30 days after service of the notice pursuant to subsection (1).

(4) After considering any representations, the minister may:

- (a) assess a penalty and set a date by which the penalty is to be paid in full; or
- (b) determine that no penalty should be assessed.

(5) The minister shall serve a copy of his or her decision pursuant to subsection (4) on the person who made the representations.

**“Penalty – failure to submit returns**

**18.4** If a person fails to submit a return as and when required by this Act, the minister may assess against the person a penalty in the amount of \$25 for each day of default to a maximum of \$1,000.

**“Penalties are in addition to taxes**

**18.5(1)** A penalty assessed pursuant to section 18.1, 18.2 or 18.4 is in addition to any taxes or refund overpayments that are payable pursuant to this Act and the assessment of a penalty against a person does not relieve that person from paying that tax or repaying the overpayment.

(2) Subject to subsection (3), a penalty or refund overpayment mentioned in subsection (1) is a debt due to the Crown in right of Saskatchewan and may be recovered:

(a) as if it were a tax pursuant to Part III of *The Revenue and Financial Services Act*; or

(b) in any other manner authorized by law.

(3) Sections 60 to 62.1 and subsection 63(1) of *The Revenue and Financial Services Act* do not apply to:

(a) a penalty assessed pursuant to section 18.1, 18.2 or 18.4;

(b) any tax associated with a penalty mentioned in clause (a); or

(c) any refund overpayments payable pursuant to this Act.

(4) If a penalty, tax or refund overpayment mentioned in subsection (3) remains unpaid after the date specified by the minister in a notice served on the person liable, the minister may:

(a) certify the amount of the penalty, tax or refund overpayment owing to the date of the certificate; and

(b) file the certificate mentioned in clause (a) pursuant to subsections 63(2) and (3) of *The Revenue and Financial Services Act*.

**“Actions of employee, etc. do not prevent assessment of penalty**

**18.6** The minister may assess a penalty against a person pursuant to section 18.1, 18.2 or 18.4 notwithstanding that the facts and circumstances giving rise to the penalty arose due to the actions of an employee, helper, contractor or agent of that person”.

**Section 20 amended**

**14 The following subsections are added after subsection 20(5):**

“(6) If an enforcement officer has reasonable and probable grounds to believe that a person is in possession of tobacco in contravention of this Act, the enforcement officer may require the person to provide the enforcement officer with identification information for the purposes of enforcing this Act.

“(7) Every person who is required to provide identification pursuant to subsection (6) shall identify himself or herself by:

(a) giving the enforcement officer the person’s correct name and address; and

(b) providing the enforcement officer with supporting documents sufficient for identification purposes”.

## Section 25 amended

**15 Subsection 25(1) is repealed and the following substituted:**

“(1) Subject to subsection 11(4), the minister or an enforcement officer may seize unmarked tobacco, other than tobacco that is black stock, from:

- (a) a licensed manufacturer or licensed importer who fails to comply with clause 11(1)(b);
- (b) a person engaged in the business of selling tobacco who fails to comply with clause 11(2)(a); or
- (c) any person who is in possession of unmarked tobacco in contravention of this Act.

“(1.1) Subject to subsection 11(4), the minister or an enforcement officer may seize unmarked tobacco that is black stock from:

- (a) a licensed manufacturer or licensed importer who fails to comply with clause 11(1)(d);
- (b) a person engaged in the business of selling tobacco who fails to comply with clause 11(2)(b) or subsection 11(2.1), (2.4) or (2.5);
- (c) a person who is selling or intends to sell the tobacco that is black stock and who is not a licensed manufacturer, a licensed importer, an exempt sale retailer or a duty free shop;
- (d) an exempt consumer who, without being authorized by this Act and the regulations, possesses unmarked tobacco in excess of the maximum amount set out in subsection 11(2.3); or
- (e) any other person who is in possession of tobacco that is black stock in contravention of this Act”.

## Section 27 amended

**16(1) Subsection 27(1) is amended:**

- (a) by striking out “or” after clause (d); and
- (b) by adding the following after clause (e):

“(f) hinder, molest or interfere with any authorized person who is doing anything that the authorized person is authorized by this Act or the regulations to do or prevent or attempt to prevent that authorized person from doing that thing; or

“(g) deliver or cause to be delivered unmarked tobacco to another person in Saskatchewan who is not authorized pursuant to this Act to purchase, possess, store or sell unmarked tobacco”.

**(2) The following subsection is added after subsection 27(5):**

“(6) In this section, ‘**authorized person**’ includes an enforcement officer or any other person who is authorized by this Act or the regulations to undertake any duties, exercise any powers or do any other thing”.

## New section 31

**17 Section 31 is repealed and the following substituted:****“Agreements re administering and enforcing the Act**

**31(1)** On behalf of the Government of Saskatchewan, the minister may enter into an agreement with the Government of Canada respecting the administration and enforcement of this Act, including respecting the collection of tax on tobacco sent or delivered to a recipient in Saskatchewan from outside Canada.

(2) An agreement mentioned in subsection (1) may authorize payment to the Government of Canada respecting services provided pursuant to the agreement.

(3) Payments respecting the ongoing costs of services provided under the agreement may be paid out of the amounts collected on behalf of the Government of Saskatchewan and may be accounted for as a reduction of revenues received.

(4) A collection agent acting pursuant to an agreement mentioned in subsection (1) is an agent of the Crown for the purposes of this Act.

(5) The Government of Canada may, as agent of the Crown, act in accordance with the agreement to:

(a) collect tax owing respecting tobacco that is released by a collection agent without payment of all or part of the tax imposed by this Act; and

(b) refund an amount charged or collected by a collection agent that is in excess of the amount of tax payable respecting the tobacco.

(6) No action or other proceeding lies or shall be instituted against a collection agent acting pursuant to an agreement mentioned in subclause 2(a.2)(ii) or subsection (1) for any loss or damage suffered by any person by reason of anything done, attempted, caused or permitted to be done or omitted to be done in good faith by the collection agent:

(a) pursuant to or in the performance or supposed performance of any duty pursuant to this Act, the regulations or the agreement; or

(b) pursuant to or in the exercise or supposed exercise of any power given by this Act, the regulations or the agreement.

(7) Subsection (6) does not absolve the Crown from vicarious liability because of an act or omission for which the Crown would have been liable had that subsection not been in force”.

## New sections 33.1 and 33.2

**18 The following sections are added after section 33:****“Refunds not assignable or transferrable**

**33.1(1)** In this section, ‘**refund**’ means a refund or right to a refund pursuant to this Act or pursuant to any agreement entered into by the minister for the purposes of this Act.

(2) Notwithstanding any other Act or law but subject to subsections (3) to (5), no refund:

(a) may be assigned or transferred; or

(b) is subject to seizure, garnishment or claim by any person, including a creditor of the person entitled to the refund.

(3) Any assignment or transfer of a refund is void as against the minister.

(4) Nothing in this section affects the Crown’s right of set-off against refunds owed to a person to a maximum of the amounts that are owed by that person to the Crown pursuant to any revenue Act as defined in Part III of *The Revenue and Financial Services Act*.

(5) Clause (2)(a) does not apply to an assignment or transfer that has been expressly approved by the minister before the coming into force of this section.

**“Act and regulations prevail over agreements**

**33.2** Notwithstanding any other Act or law and notwithstanding any term or provision of an agreement, if there is a conflict between a provision of this Act and any provision of any agreement entered into by the minister before, on or after the coming into force of this section, the provision of this Act prevails”.

## Section 34 amended

**19 Section 34 is amended:****(a) by adding the following clause after clause (a):**

“(a.1) prescribing persons or classes of persons as collection agents”;

**(b) by repealing clauses (d) and (e) and substituting the following:**

“(d) prescribing the time at which and the manner in which recipients who grow tobacco, or who manufacture tobacco products, in Saskatchewan for commercial purposes are liable to pay tax for the purposes of clause 3(1)(b);

“(e) prescribing procedures that recipients who import tobacco into Saskatchewan, who grow tobacco for commercial purposes in Saskatchewan or who manufacture tobacco products in Saskatchewan for commercial purposes must follow and the manner and time of payment of tax by them for the purposes of clause 4(1)(a)”;

**(c) by repealing clause (j) and substituting the following:**

“(j) prescribing the period for which evidence of removing tobacco from Saskatchewan must be retained for the purposes of subclause 11(1)(b)(iv) or (d)(ii);

“(j.1) for the purposes of clause 11(1)(c):

(i) prescribing records related to the importation of unmarked tobacco that must be kept by a licensed manufacturer; and

(ii) prescribing the manner in which and times at which a licensed manufacturer shall submit the records mentioned in subclause (i), or a report related to those records, to the minister;

“(j.2) for the purposes of paragraph 11(1)(d)(i)(B):

(i) prescribing records related to the manufacture, importation, storage or sale of the tobacco that must be kept by a licensed manufacturer or licensed importer;

(ii) prescribing the manner in which and times at which a licensed manufacturer or licensed importer shall submit the records mentioned in subclause (i), or a report related to those records, to the minister;

(iii) prescribing information that must be provided in a monthly report by a licensed manufacturer or licensed importer; and

(iv) prescribing the manner in which and the time by which a licensed manufacturer or licensed importer shall submit the monthly report mentioned in subclause (iii);

“(j.3) for the purposes of subclause 11(4)(b)(i), prescribing quantities of unmarked tobacco that may be possessed”; **and**

**(d) by adding the following clauses after clause (m):**

“(m.1) excluding any class or form of tobacco from all or any provision of this Act or the regulations;

“(m.2) exempting any recipient or class of recipients or other persons from all or any provision of this Act or the regulations;

“(m.21) requiring licensed manufacturers or licensed importers to report to the minister respecting their sales of tobacco that is black stock to exempt sale retailers, including authorizing the minister to determine the manner and form of reporting;

“(m.3) respecting any class of persons as persons authorized to sell tobacco at retail, including:

(i) establishing limits or conditions on any authorization;

(ii) requiring those persons to be registered or licensed; and

(iii) prescribing the terms and conditions of any registration or licence mentioned in subclause (ii) and authorizing the minister to set any additional terms and conditions;

“(m.4) respecting persons or classes of persons who are exempt sale retailers, including:

- (i) requiring those persons or classes of persons to be registered;
- (ii) prescribing the terms and conditions of registration, including authorizing the minister to impose terms and conditions;
- (iii) authorizing the minister to pay refunds to exempt sale retailers respecting any tax they may have paid on a tax-exempt sale of tobacco; and
- (iv) respecting the cancellation and suspension of registrations, including authorizing the minister to cancel or suspend registrations;

“(m.5) prescribing limits on the quantity of tobacco that may be sold to or purchased by a person at a single retail sale or at retail sales during a specified period, including the power to establish different limits for different circumstances, different types of tobacco or different retailers, consumers or classes of retailers and consumers;

“(m.6) respecting a marking system for identifying tobacco that is to be sold to persons who are required to pay tax and, for that purpose:

- (i) identifying tobacco that is to be sold to exempt consumers; and
- (ii) establishing circumstances, in relation to the marking system, under which a person may possess, purchase, sell, transport or store tobacco;

“(m.7) prescribing the terms, conditions and requirements for a tear tape manufacturer to manufacture tear tape for use in marking tobacco products in Saskatchewan;

“(m.71) prescribing terms and conditions for stamping tobacco products for sale and distribution in Saskatchewan;

“(m.8) establishing the means and conditions for identifying a person or persons for the purpose of determining whether or not the person is an exempt consumer or the persons are exempt consumers;

“(m.9) exempting any retailer from collecting the tax, subject to any terms or conditions prescribed in the regulations;

“(m.91) respecting the registration of duty free shops and authorizing the minister to impose terms and conditions on that registration;

“(m.92) respecting the amount of tobacco that is black stock that an exempt consumer or an importing consumer may purchase or possess at any time without a permit or approval to do so;

“(m.93) authorizing the minister to issue permits or approvals to persons who are exempt consumers and respecting the issue of those permits or approvals, including:

- (i) prescribing the circumstances in which, and purposes for which, an application for a permit or approval may be made;
- (ii) respecting the manner of applying for and issuing permits or approvals; and
- (iii) respecting the terms and conditions of permits or approvals, including authorizing the minister to impose terms and conditions”.

S.S. 1983, c.R-22.01, section 47 amended

**20 Subclause 47(1)(a)(iv) of *The Revenue and Financial Services Act* is repealed and the following substituted:**

“(iv) a licensed manufacturer or a licensed importer as defined in *The Tobacco Tax Act, 1998*”.

**Coming into force**

**21(1)** Subject to subsection (2), this Act comes into force on proclamation.

(2) Subsections 4(2) and (3) come into force on assent but are retroactive and are deemed to have been in force on and from March 25, 2010.