

MEMORANDUM D4-1-6

Ottawa, January 1, 1991

SUBJECT

DISPOSAL OF ABANDONED AND FORFEITED GOODS

This Memorandum outlines and explains the procedures to be followed by Customs in the disposal of abandoned and forfeited goods.

Regulations

REGULATIONS RESPECTING THE SALE OF ABANDONED, FORFEITED AND DETAINED GOODS

Short Title

1. These Regulations may be cited as the Sale of Goods Regulations.

Interpretation

2. In these Regulations,

"Act" means the Customs Act;

"chief officer of customs" with respect to goods, means the manager of the customs office at which the goods are held or detained or of the customs office that serves the place where the goods are held or detained.

Application

3. These Regulations apply to the sale by public auction or public tender of anything that has been abandoned to Her Majesty in right of Canada under the Act, of anything the forfeiture of which is final under the Act and of goods that have been detained pursuant to subsection 146(1) of the Act.

General

4. All goods sold under these Regulations shall be sold on an "as is-where is" basis.

5. Where no bid or tender is received on goods offered for sale by public auction or public tender or where the chief officer of customs does not consider any of the bids or tenders acceptable, the chief officer of customs may cancel the sale and hold the goods for the next sale.

Sale by Public Tender

6. Goods offered for sale by public tender shall be advertised in such form and manner as may be directed by the Minister.

7. All tenders shall be made in writing and shall be submitted to the chief officer of customs in sealed envelopes marked "Tender" that shall remain sealed until the designated closing date, at which time the envelopes shall be opened in the presence of at least two officers.

8. In the event that two or more tenders are in the same amount, the first tender received shall be given precedence.

9.(1) The chief officer of customs shall notify in writing the person whose tender has been accepted.

(2) Where a person whose tender has been accepted does not complete the sale within seven days after the date on which notice is given pursuant to subsection (1), the chief officer of customs may cancel the sale to that person and accept any other tender.

GUIDELINES AND GENERAL INFORMATION

1. Customs will examine all goods listed on Customs Notice — Unclaimed Goods, form E 44, to determine whether the goods are suitable for sale by public tender or auction. Goods to be sold by public tender or by public auction, are to be listed on Statement of Goods Sold or Transferred to Auctioneer, form K 8.

2. Goods not suitable for sale and not exported may be donated to a charitable organization, recycled or destroyed.

3. In addition to Customs legislation, the Acts and Regulations of other government departments may also have requirements governing the disposal of certain goods in Canada. Goods for donation or sale may require the production of permits or the marking of items prior to their release from Customs. There may also be specific requirements regarding the method for destroying certain goods. Information concerning the Acts and Regulations of other government departments may be found in the D5 and D19 Memoranda series.

4. Customs and Excise employees and members of their immediate families are not permitted to purchase goods offered for sale under the Customs Act. Immediate family is defined as father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, spouse (including common-law spouse resident with the employee), child (including child of common-law spouse), stepchild or ward of the employee, father-in-law, mother-in-law, and relative permanently residing or with whom the employee permanently resides.

5. Goods are sold on an "as is, where is" basis and without any warranty whatsoever. All sales are final.

6. Every effort is made to provide accurate descriptions; however, no guarantee is given as to quantity, quality, or condition of the goods sold.

Bids

7. There is no requirement that goods must be sold for the duties owing on them. However, there will be circumstances which could warrant the placing of reserve (minimum) bids on goods, for example:

(a) to recover costs incurred by Customs for commercial transportation or storage; and

(b) to establish a starting point for bidding, especially for valuable articles, i.e., precious jewellery, collectors' items.

8. The Customs Manager responsible for the sale will determine whether or not reserve bids will be placed on any or all of the goods for sale. However, when a reserve bid is not met, the goods must be removed from that particular sale.

9. Goods will normally be sold to the highest bidder. The bid must specify a total amount in Canadian funds and not a percentage. However, Customs will refuse the highest bid where it is submitted by an employee of Customs and Excise or a member of an employee's family (see paragraph 4 of this Memorandum). Also, where Customs does not consider any bids sufficient to justify the sale, it may be cancelled.

10. Where the highest bid is refused or where the sale is cancelled, Customs will document the reasons.

11. Where no bid is received or where bids are insufficient to warrant a sale, the goods may be held by Customs for disposal in whichever of the following ways is most appropriate:

- (a) the goods may be held for re-offering at a later date;
- (b) where the goods were originally offered for sale by public tender, arrangements may be made for their sale by public auction;
- (c) the goods may be donated to a charitable organization;
- (d) the goods may be recycled; or
- (e) the goods may be destroyed.

Goods for Sale

12. Customs has established six concentration points for the sale of goods by public auction:

- (a) Montréal, Québec;
- (b) Toronto, Ontario;
- (c) Winnipeg, Manitoba;
- (d) Calgary, Alberta;
- (e) Edmonton, Alberta; and
- (f) Vancouver, British Columbia.

13. Regional Chief Officers of Customs may designate additional locations within their regions as concentration points for sales by tender. Goods may also be shipped to another region for sale.

14. Goods of sufficient value to justify the cost of shipping may be forwarded to a concentration point for sale by public tender or auction. When it is more economical to do so, goods may be sold locally.

15. Subject to the retention periods for holding goods in the Queen's warehouse (see Memorandum D4-1-5, Storage of Goods Regulations), goods should be forwarded to concentration points as soon as the volume or cost justifies their shipment. They are to be forwarded by the most economical means of transportation, depending on the size, weight and value of the shipment.

16. All expenses incurred by Customs are to be noted on form E 44 and mail copies are to be forwarded to the concentration point along with the goods. The expenses could include:

(a) commercial warehousing charges;

(b) transportation charges; and

(c) any other costs directly related to the sale of the goods, i.e., appraisal fees.

17. Copies of documents that are helpful in establishing a value for the goods must be forwarded with form E 44, i.e., invoices, packing slips, price lists.

18. On arrival at the concentration point, the goods will be checked and the form E 44 receipted. The goods may be controlled under either the original E 44 number (Unclaimed List Number), or by assigning a new number. When a new number is assigned, it should be shown on both copies of the form E 44. One copy of form E 44 will be returned to the originator to close their file and the other copy will be placed in a suspense file until the goods are disposed of.

Appointment of Auctioneers

19. Auctioneer appointments are for a two-year term and are contracted through Supply and Services Canada (SSC) on a tender basis.

20. SSC conducts a survey of the auctioneers located in the metropolitan areas where auctions are held to determine those interested in tendering for the appointment.

21. Requests for tender proposals are sent to each auctioneer who responds to the survey. All proposals are reviewed on the basis of established criteria. Of all tender proposals conforming to criteria, the lowest bid will be retained.

22. The following are some of the criteria common to all auctioneer appointments:

(a) the auctioneer must be a Canadian citizen or landed immigrant, and a resident of Canada. Where the auctioneer is a corporation, all issued shares of the corporation must be owned by Canadian citizens or landed immigrants resident in Canada;

(b) the auctioneer must be licensed in the province where the auctions are held and must have held the licence in that province for a period of five years;

(c) the auctioneer must undertake to adhere to all applicable federal, provincial and municipal laws and regulations;

(d)the auctioneer must post a bond with Customs. The bond must be in a form approved by Customs (see Appendix C to this Memorandum) and be issued by a bank chartered in Canada or a guarantee company approved by the Treasury Board;

(e)the amount of the bond will equal the average gross sale proceeds for the previous 12-month period, or \$25,000, whichever is the greater;

(f)the auctioneer will be responsible for the collection of all monies and for remitting a cheque to Customs for the recorded gross proceeds from the sale of Customs goods, less provincial sales tax (where applicable). Any shortages will be deducted from the auctioneer's commission; and

(g)the auctioneer will supply Customs with a copy of all sales invoices/receipts pertaining to the sale of Customs goods. Customs maintains the right to review auction procedures or conduct an audit at any time.

23.The conditions of the appointment are contained in the requests for tender proposals and outlined in a contract which is signed by the auctioneer, who also posts a bond in the required amount.

Sale by Public Auction

24.When sold by public auction Customs goods are transferred to an auctioneer to be included with other goods sold at regular consignment sales. Form K 8 (see Appendix A to this Memorandum) must be used and the certificate of transfer here on, must be completed by the auctioneer or his representative when he takes possession of the goods. Form E 44 will then be cancelled by reference to the form K 8 and the date.

25.Customs will determine the disposition of any goods that remain unsold.

Sale by Public Tender

26.Customs will advertise sales by public tender by posting a Notice of Sale by Tender, form E 34, in as many prominent places as considered necessary to publicize the sale.

27.Copies of form E 34 (see Appendix B to this Memorandum) may also be mailed to the original consignee, the transportation companies concerned, or other persons who may be interested in purchasing the goods.

28.The amount of each bid shall be submitted in Canadian funds only. Bids must be in sealed envelopes marked "tender" to eliminate the possibility of being opened prior to the closing date of the bidding. Unmarked envelopes opened by Customs in error will immediately be resealed, marked "tender", and held for the close of the bidding as stated in the Notice of Sale.

29. Tender envelopes will be marked with the date and time received and will be initialled by the receiving Customs Officer.

30. At the close of bidding, the tenders will be opened by two senior Customs Officers. The amount of the bids will be marked on each envelope and will be initialled by both Customs Officers.

31. Where a person has submitted more than one bid, only the highest bid will be retained unless it is indicated the lower bid is an amendment to the previous one.

32. The highest or any tender will not necessarily be accepted.

33. Where two or more tenders are for the same amount, the first acceptable tender received shall be given precedence.

34. All tenders will be held pending completion of the sale. The successful bidder will be notified by Customs. When the sale is not completed by that person or firm, the next acceptable bid may be taken.

35. When a large number of lots of various goods are being sold by public tender, the form K 8 must be used to summarize the details of the sale. A General Receipt, form K 21, will be issued to the buyer of each lot of goods.

Provincial Sales Tax/Goods and Services Tax

36. All federal government departments selling goods at retail (directly to the public) are required to register as vendors and to collect and remit provincial sales tax and the goods and services tax (GST) where applicable.

37. All regional Customs offices selling goods in provinces which levy provincial sales tax shall register as vendors and collect the tax in each province where goods are sold by public tender.

38. Where goods are sold by public auction, the auctioneer will be responsible for collecting and remitting the provincial sales tax and GST.

39. The taxes are levied on the actual sale price of the goods, i.e., the successful bid.

40. The provincial sales tax applies to all goods sold unless:

(a) the goods are exempt from the tax; or

(b) the person to whom the goods are sold is entitled to an exemption. A sales tax licence or properly completed exemption certificate, or both, should be presented at time of purchase, depending on provincial requirements.

41. When in doubt about the tax status of goods, Customs should contact the nearest provincial sales tax office. A telephone call would be sufficient for a few articles; however, if there is a large quantity of goods, a list should be provided to the provincial authorities prior to the sale so that they can indicate on the list which goods are exempt.

42. If the provincial authorities will not identify the goods that are exempt, the tax should be collected on all goods, except for those sold to persons entitled to an exemption. Any complaints should be referred to the nearest provincial sales tax office.

43. Where a lot consisting of various types of merchandise is sold, some of which may be taxable and some not, tax will be collected on the gross selling price of the entire lot, unless the provincial authorities have identified the lot as being exempt.

44. Provincial sales tax and GST are to be collected on vehicles sold by Customs, based on the actual sale price. If this price is lower than the value at which the provincial licensing authorities assess the vehicle, any additional tax is to be collected from the purchaser by the provincial authorities.

45. Provincial sales tax auditors should be directed to the Regional Manager of Operational Services, to arrange an appropriate date and time to conduct any audits regarding sales by tender.

46. Provincial sales tax auditors wanting to audit sale records for goods sold by public auction should be referred to the auctioneer.

47. The Regional Manager of Finance should be contacted regarding financial procedures for reporting provincial sales tax and GST.

48. Details concerning provincial registration as a vendor, the tax status of goods, the collection and remittance of tax, may be obtained from provincial taxation offices in the following cities:

(a) Halifax, Nova Scotia;

(b) Sainte-Foy, Québec;

(c) Montréal, Québec;

(d) Ottawa, Ontario;

(e) Toronto, Ontario;

(f) Hamilton, Ontario;

- (g) Windsor, Ontario;
- (h) London, Ontario;
- (i) Winnipeg, Manitoba;
- (j) Regina, Saskatchewan; and
- (h) Victoria, British Columbia.

Foreign Vehicles

49. Foreign vehicles sold by Customs, for use in Canada, must comply with the Motor Vehicle Safety Act and Regulations as outlined in Memorandum D19-12-1, Motor Vehicles Safety Regulations.

50. When a foreign vehicle is sold by Customs for use in Canada, a Notice to Provincial/Territorial Licence Authority, form K 22, will be issued to the purchaser for presentation to the appropriate provincial licensing authority. Instructions on the issuance of form K 22 are contained in Memorandum D2-6-2, Notice to Provincial/Territorial Licence Authority — Form K 22.

Goods for Donation or Destruction

51. When goods are being donated, recycled or destroyed, the form E 44 is to be cancelled by completing one of the certificate(s) included on the form and no further Customs documentation is required.

52. When possible goods should be recycled rather than destroyed. The local Customs Manager will ensure that the goods are recycled in a manner that is acceptable to the provincial and federal governments of environment, i.e., authorized company specializing in the recycling of goods.

53. Goods are to be destroyed in the presence of two designated Customs Officers. The local Customs Manager will determine the most appropriate means of destruction for goods in accordance with provincial and federal environmental requirements in regard to dangerous materials or substances, i.e., alcohol, chemical products.

54. Persons abandoning goods to the Crown are liable for the expenses associated with disposal in accordance with subsection 36(2) of the Customs Act and should be made aware of this liability.

55. The owner and importer of forfeited goods are liable for the expenses associated with disposal expenses in accordance with subsection 39(2) of the Customs Act and should be made aware of this liability.

56. Unclaimed goods become forfeited 30 days after the issuance of form E 44. Under section 37(2) of the Customs Act, the Minister may extend any period of time as prescribed.

57. All expenses incurred by Customs in the disposal of abandoned and forfeited goods as per articles 36(2) and 39(2), otherwise than by sale are to be specified on Invoice, form K 23, and distributed as per Chapter 2, Part 50 of the Financial Management Manual.

58. Disposal expenses should include all expenses reasonable incurred by Customs from the time of receipt of goods until the destruction of the goods. Such expenses would normally include:

(a) warehousing charges;

(b) transportation charges;

(c) Customs labour costs based on the median hourly rate of pay of a PM-1 Customs Inspector as specified in the Programme Administration (PM) Collective Agreement in effect at the time when the goods are destroyed. Labour costs will be assessed on a fully hourly rate; and

(d) any other costs directly related to the disposal of the goods, such as permit fees and appraisal fees.

Tobacco Products and Intoxicating Liquor

59. Tobacco products will be destroyed by the most suitable means and form E 44 will be cancelled by the destruction certificate.

60. With the exception of bonded warehoused wine and liquor, intoxicating liquors (including beer) will not be sold, but will be destroyed in a manner that is acceptable to the provincial and federal Governments environment, i.e., authorized company specializing in the destruction of hazardous and/or dangerous materials.

61. Bonded warehoused wine and liquor abandoned to the Crown may be sold to authorities entitled to import liquors in accordance with the Importation of Intoxicating Liquors Act. Form E 44 will be cancelled by form K 21, General Receipt, where warehoused wine or liquor is sold. When this liquor cannot be sold, it will be destroyed.

Hazardous and/or Dangerous Materials

62. To protect the environment, hazardous and/or dangerous goods will not be offered for sale. These goods will be considered waste materials and the local Customs Manager will determine the most appropriate means of destruction that is acceptable to the provincial and federal Governments of environment, i.e., by an authorized company specializing in the destruction of hazardous and/or dangerous materials.

63. Where a permit is required to arrange disposal, the Customs Regional Environmental Co-ordinator is to be contacted.

64. The date of abandonment or the date of forfeiture, in the case of unclaimed goods, is the date that the Crown becomes responsible for all costs against the goods. Sections 36 and 39 of the Customs Act state that the owner or importer is liable for all reasonable disposal expenses where these goods are not sold. Nevertheless, Customs may be required to pay such expenses pending the finalization of any collection action against the owner or importer.

Disposal of Goods Detained on Behalf of Other Government Departments

65. Through agreements with other departments, Customs Officers assist in the administration and enforcement of many Acts and regulations that prohibit, control or regulate the importation or exportation of goods. Where an officer is aware of or suspects that goods are being imported or exported in contravention of one of these Acts or the regulations, he/she is authorized by section 101 of the Customs Act to detain such goods until they are dealt with under the provisions of the applicable Act.

66. Where goods cannot be disposed of in accordance with instructions in the D19 Memoranda series within prescribed time periods, or instructions are lacking in the appropriate D19 Memorandum, disposal instructions should be requested from:

Chief
Import Control
Cargo and Release Division
Customs Operations Branch
Connaught Bldg.
5th floor
Ottawa, Ontario
K1A 0L5
(613) 954-7152

APPENDIX A

STATEMENT OF GOODS SOLD OR TRANSFERRED TO AUCTIONEER

[Form K8 not reproduced here]

APPENDIX B

SALE BY TENDER

[Form E34 not reproduced here]

APPENDIX C

BOND FOR CUSTOMS AUCTIONEERS

[Bond not reproduced here]

REFERENCES

ISSUING OFFICE

Port Administration Division

LEGISLATIVE REFERENCES

Customs Act, section 142

HEADQUARTERS FILE

7775-0

SUPERSEDED MEMORANDA "D"

D4-1-6, June 1, 1986

OTHER REFERENCES

D4-1-5, D5 Series, D19 Series

SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE IN BOTH OFFICIAL LANGUAGES.

THIS MEMORANDUM IS ISSUED UNDER THE AUTHORITY OF THE DEPUTY MINISTER OF NATIONAL REVENUE.