

ONTARIO TAX BULLETIN

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Overview of Tobacco Tax

What products are subject to the tax imposed under the *Tobacco Tax Act* (“Act”)?

Almost all tobacco in Ontario is subject to tobacco tax.

Under the Act, all tobacco in any form in which it is used or consumed in Ontario is subject to tobacco tax, **except**

Exceptions

- tobacco that is returned either to a manufacturer or importer to be destroyed because it is unfit for consumption; and
- tobacco (other than Ontario-marked cigarettes) that, for the purposes of sale, is exported in bulk from Ontario by a person authorized by the Minister of Finance (“Minister”) to make such export.

“Tobacco” means tobacco in any form in which it is used or consumed.

A listing of common tobacco products subject to tobacco tax includes, but is not limited to: cigarettes, cigars, cigarillos, pipe tobacco, fine cut tobacco, chewing tobacco and snuff.

Who must pay tobacco tax?

Consumers are liable to pay tobacco tax at the time of purchase.

The tobacco tax is a consumption tax imposed directly on consumers of tobacco. A consumer is any person who, on their own behalf or on behalf of some other person, purchases, receives delivery of, or brings into Ontario, tobacco for their own use or consumption, or for use or consumption by others at their expense.

Samples and free issues

Samples and free issues of tobacco products supplied to any person or organization in Ontario are subject to tobacco tax. It is the responsibility of the supplier of such samples and free issues to account for and remit the tax accordingly.

Who is exempt from the payment of tobacco tax?

Diplomats and First Nations

The following are exempt from the payment of tobacco tax:

- Members of the Diplomatic Corps authorized by the Department of External Affairs Canada where the tobacco acquired is for their exclusive use or use by the members of their staff enjoying diplomatic status; and
- First Nations individuals registered as Indians under the *Indian Act* (Canada) who purchase on a reserve unmarked cigarettes or tobacco products other than cigarettes for their exclusive use.

Tax-exempt sales by off-reserve retailers are not permitted. Tax-exempt sales to exempt persons may only be made by dealers authorized by the Ministry of Finance to make such sales. Unless they are located on an Indian reserve, retailers of tobacco products are **not** authorized to sell tobacco to exempt persons on a tax-exempt basis.

What is the rate of tobacco tax?

Tobacco tax rate As of January 1, 2001, Ontario's tobacco tax rate is 2.65¢ per cigarette on every cigarette and on every gram or part thereof of any tobacco, other than cigars and cigarettes, purchased by a consumer.

The rate of tax is subject to change. Any future change in the federal excise tax or duty specific to cigarettes will result in a corresponding change in Ontario's tobacco tax on cigarettes and other tobacco, other than cigars, effective on the same day as the change in the federal tax or duty.

Tax on cigars The tax on cigars is 45% of the retail selling price. (*Chapter 42 of the Statutes of Ontario, 2000 (Royal Assent on December 21, 2000) will change the way that the tobacco tax on cigars is calculated. Please bring yourself up-to-date on whether these changes have come into effect—a separate tax bulletin will be issued to highlight any changes.*)

How is the tobacco tax collected and remitted to the Ontario Government?

Wholesalers and retailers pay an amount on account of tax to their tobacco suppliers. Although consumers are required to pay tobacco tax at the time of purchase, under the Ontario tobacco tax collection scheme, wholesale and retail dealers must pay an amount equal to the tax to their tobacco suppliers. The dealers recover this amount from their customers when the tobacco products are sold.

Exception Wholesale dealers who are registered or designated by the Ministry of Finance as importers or collectors and who acquire tobacco exempt of tax, must calculate and remit all tax collectible or payable directly to the Minister on a monthly basis.

Who is authorized to purchase and sell tobacco products in Ontario?

Wholesaler's permit required by all wholesalers Wholesale dealers of tobacco products must hold a valid wholesaler's permit issued under the Act by the Ministry of Finance in order to be able to purchase and sell tobacco products in Ontario legally.

Vendor's permit required by all tobacco retailers Retail dealers must hold a valid vendor's permit issued under the *Retail Sales Tax Act* by the Ministry of Finance in order to be able to purchase and sell tobacco products in Ontario legally.

Tobacco importers and exporters may require a wholesaler's permit or vendor's permit. Importers of foreign tobacco are not authorized to sell tobacco in Ontario to other dealers without a wholesaler's permit issued by the Ministry of Finance. Importers who wish to sell foreign tobacco directly to consumers must hold a vendor's permit issued under the *Retail Sales Tax Act*. Importers of tobacco in bulk must also be registered as importers. (See page 5.)

No permit required by consumer

Exporters of domestic tobacco are not authorized to purchase tobacco in Ontario without either a wholesaler's or vendor's permit issued by the Ministry of Finance. Exporters of tobacco in bulk must also be registered as exporters. (See page 6.)

Individual consumers do not require a permit to purchase tobacco for their own use or consumption.

What is Ontario's Tobacco Marking Program?

Cigarette packages not marked with yellow tear tape bearing the words "CANADA DUTY PAID-DROIT ACQUITTE-ONTARIO" are unmarked and untaxed.

In 1990, Ontario introduced a system of marking taxable cigarettes in an attempt to improve compliance with the Act. Under this system, distinctive marking is required on all packages of taxable cigarettes intended for sale in Ontario. The marking signifies that tobacco tax has been properly accounted for. Cigarette packages not bearing the designated marking are untaxed.

Domestic cigarettes intended for taxable sale in Ontario are marked by manufacturers who must be registered as markers by the Ministry of Finance.

Foreign cigarettes intended for taxable sale in Ontario are marked by foreign manufacturers and importers who must be registered as stampers by the Ministry of Finance.

Unmarked cigarette dealer's permit

Wholesalers who require unmarked cigarettes for export or tax-exempt sales must obtain a special permit to acquire and store unmarked cigarettes.

It is a serious offence to purchase and sell unmarked cigarettes to taxable consumers

Under the Act, no person shall purchase, possess, store or sell unmarked cigarettes in Ontario without a permit or authorization to do so.

The Act prohibits the sale of unmarked or unstamped cigarettes to consumers required to pay tobacco tax.

What are my obligations as a consumer?

Consumers are responsible for reporting and remitting tobacco tax on all tobacco purchases brought into Ontario.

Consumers must pay tax on all tobacco purchased in Ontario and ensure that all of the cigarettes that they purchase bear the Ontario mark. It is illegal for consumers who are liable to pay tobacco tax to purchase or possess unmarked cigarettes.

Any consumer who receives delivery of or who brings into Ontario tobacco purchased outside Ontario must immediately report the matter in writing to the Minister and remit the same tax in respect of such tobacco as would have been payable if the tobacco had been purchased for consumption or use in Ontario.

Agreement with Canada Customs and Revenue Agency

At present, there is an agreement between the Ministry of Finance and the Federal Government of Canada which authorizes customs officers, as agents for the Minister, to collect the tax payable on tobacco brought into or delivered to consumers in Ontario.

Every consumer who purchases tobacco from a person who does not hold either a valid vendor's permit issued under the *Retail Sales Tax Act* or a valid wholesaler's permit issued under the Act, must report the particulars and remit the taxes payable directly to the Minister within 25 days of the purchase.

Consumers are not authorized to sell tobacco in Ontario.

What are my obligations as a retailer?

Retailer to collect tax from customers

Under the Act, retail dealers are required to collect the tax on all tobacco sold or delivered by the retail dealer to consumers.

Retailer to ensure that cigarettes are marked and that supplier is an authorized wholesaler

Retail dealers must pay an amount equal to the tobacco tax to their tobacco supplier at the time of purchase and ensure that all of the cigarettes that they purchase are Ontario-marked cigarettes.

Retail dealers must not purchase or receive delivery in Ontario of tobacco from any person who does not hold a wholesaler's permit that is valid and in force at the time of purchase.

Sales to other retail dealers not permitted

Every retail dealer who purchases tobacco from a person other than a wholesale dealer holding a valid wholesaler's permit must report the particulars and remit the taxes payable directly to the Minister within 25 days of the purchase.

Retail dealers may not sell tobacco to other dealers for resale in Ontario.

What are my obligations as a wholesaler?

Wholesaler to collect tax

Under the Act, wholesale dealers are required to collect, as agents for the Minister, the tax on all tobacco sold or delivered by the wholesale dealer to other dealers or to consumers.

Wholesaler to ensure that cigarettes are marked and that supplier is an authorized wholesaler

Wholesale dealers who are not designated as collectors by the Minister must pay an amount equal to the tobacco tax to their tobacco supplier at the time of their tobacco purchase and ensure that all of the cigarettes they purchase are Ontario-marked cigarettes.

Wholesale dealers must not purchase or receive delivery in Ontario of tobacco from any person who does not hold a wholesaler's permit that is valid and in force at the time of purchase.

Sales to unauthorized retailers not permitted

Wholesale dealers may not sell or deliver tobacco in Ontario to a retail dealer who is not in possession of a valid vendor's permit issued under the *Retail Sales Tax Act*.

Manufacturer's permit

Wholesale dealers who manufacture, fabricate or produce cigarettes for distribution, sale or storage in Ontario must also hold a valid manufacturer's permit.

Unmarked cigarette dealer's permit

The Act prohibits any wholesale dealer from purchasing, possessing, storing or selling in Ontario, unmarked cigarettes unless they hold a valid unmarked cigarette dealer's permit.

Reporting and remitting requirements

Wholesale dealers who are designated or registered by the Minister as tobacco tax collectors or importers are required, as agents of the Minister, to collect tobacco tax from every person, other than another designated collector who purchases tobacco for resale purposes, to whom the collector or importer sells or delivers tobacco in Ontario and remit the tax, in addition to any tax in respect of any tobacco it used or consumed, to the Minister on or before the 10th day of the month following the month of delivery, sale or use. The due date for designated collectors who have entered into a remittance agreement with the Minister, under which they report tobacco tax based on purchases, is extended to the 28th day of the month.

Separate reporting of sales to another collector

Designated collectors or registered importers who sell or deliver tobacco on a tax-exempt basis to another designated collector, who is not a consumer in respect of the tobacco, are required to report such sales and deliveries to the Minister on or before the 7th day of the month following the month of sale or delivery.

Requirement to maintain proper books and records

Designated collectors must maintain business records and books of account in such form and containing such information as will enable the accurate determination of the taxes that they are required to collect and remit. Every collector shall retain such records or books of account until written permission for their disposal is received from the Minister.

Security requirements

The Minister may demand security from designated collectors in an amount equal to an average three months tax collectible and payable by the collector, or \$1 million, whichever is greater.

Changes

Every wholesale dealer must advise the Minister in writing of all changes in name, address or nature of their business or of the termination of their business.

What authorization do I need to import tobacco for sale in Ontario?*Importer's registration certificate required*

Any person who wishes to import tobacco in bulk for sale in Ontario must request and obtain an importer's registration certificate from the Ministry of Finance prior to any import.

Copy to transporter

Registered importers must provide a notarial copy of their registration certificate to any interjurisdictional transporter transporting tobacco on their behalf.

Importer to collect tax as an agent of the Minister

All registered importers of tobacco are required, as agents of the Minister, to collect tobacco tax from every person, other than a designated collector, to whom the importer sells or delivers tobacco in Ontario and remit the tax, in addition to any tax in respect of any tobacco it used or consumed, to the Minister on or before the 10th day of the month following the month of delivery, sale or use. Tax-exempt sales to collectors must be reported to the Minister on or before the 7th day of the month following the month of sale.

*Reporting and remitting**Security requirements*

The Minister may require security from every importer who acquires tobacco products outside Ontario for distribution in Ontario.

Changes

Every importer must immediately notify the Minister in writing of any changes in the name or nature of the importer's business or of the termination of business.

What authorization do I need to export tobacco from Ontario?

<i>Exporter's registration certificate</i>	Any person who wishes to export tobacco in bulk must request and obtain an exporter's registration certificate from the Ministry of Finance prior to any export.
<i>Copy to transporter</i>	Registered exporters must provide a notarial copy of their registration certificate to any interjurisdictional transporter transporting tobacco on their behalf.
<i>Reporting</i>	All exporters of tobacco in bulk are required to report all exports of tobacco to the Minister on or before the 28 th day of each month in respect of exports made in the immediately preceding month.
<i>Evidence of delivery outside of Ontario</i>	Exporters must provide evidence satisfactory to the Minister that the tobacco has been exported out of Ontario. Such evidence may include shipping documents, customs documents, delivery slips, and certification that tax on the tobacco was paid to the jurisdiction into which the tobacco was delivered.
<i>Security</i>	The Minister may require security from exporters of tobacco.
<i>Changes</i>	Every exporter must immediately notify the Minister in writing of any changes in the name or nature of the exporter's business or of the termination of business.

What authorization do I need to transport tobacco in bulk?

<i>Interjurisdictional transporter's registration required</i>	In order to transport tobacco in bulk to or from Ontario by any means, the transporter must hold an interjurisdictional transporter's registration certificate issued by the Ministry of Finance.
<i>Uniform manifest form required</i>	In addition to an interjurisdictional transporter's registration certificate, all interjurisdictional transporters must have, in the possession of the driver of the motor vehicle operated by or on behalf of the interjurisdictional transporter, a completed uniform manifest form provided by the Minister in respect of every shipment of tobacco in bulk.
<i>Copy of exporter's or importer's registration certificate required</i>	If the tobacco in bulk is being transported for an importer or exporter, the interjurisdictional transporter must also have, in the possession of the driver of the motor vehicle operated by or on behalf of the interjurisdictional transporter, a notarial copy of the importer's or exporter's registration certificate.
<i>Transit permit issued by Ministry of Finance</i>	If the tobacco in bulk is being transported for a person outside Ontario who is not a registered importer or exporter, and that person wishes to transport tobacco from a location outside Ontario, through Ontario and continuing to another location outside Ontario, the interjurisdictional transporter must have, in the possession of the driver of the motor vehicle operated by or on behalf of the interjurisdictional transporter, a notarial copy of that person's transit permit issued by the Ministry of Finance.

What is “tobacco in bulk”?

Definition of “tobacco in bulk” “Tobacco in bulk” means 10,000 or more cigarettes, 200 or more cigars, or 10 kilograms or more of any other tobacco product.

A series of tobacco transactions over a period of six consecutive months, adding up to or exceeding the quantities specified in the above definition, is considered “tobacco in bulk.”

How can I obtain more information about the tobacco tax?

The information in this bulletin is intended as a guide. For specific details please refer to the *Tobacco Tax Act* and Regulations, or contact the:

Ministry of Finance
Motor Fuels & Tobacco Tax Branch
33 King St. West
Oshawa ON L1H 8H9

FAX #: 905-436-4511

Should you require more information on this or any program offered by the Ministry of Finance, call the toll-free Information Centre:

Canada and the United States	1-800-263-7965
All other areas	1-905-433-6393
Teletypewriter (TTY)	1-800-263-7776

Ce bulletin est aussi disponible en français.

Veillez appeler le 1-800-668-5821 pour demander la version française du présent bulletin.