

ONTARIO TAX BULLETIN

Published by the Ministry of Finance, Motor Fuels and Tobacco Tax Branch

SELLING TOBACCO PRODUCTS IN ONTARIO: INFORMATION FOR RETAIL DEALERS

This bulletin provides information for retailers regarding registration and compliance requirements as they apply to selling “marked” cigarettes and other tobacco products in Ontario. It also covers information regarding upcoming changes to the *Tobacco Tax Act*, including changes to tobacco tax on cigars (cigar tax). The effective date of upcoming changes to the *Tobacco Tax Act* is to be proclaimed.

A. Who is a “retail dealer” under the Act?

- ! The ***Tobacco Tax Act*** (“TTA”) defines a “retail dealer” as any person who sells tobacco to a consumer. A “retail dealer” is also referred to as a “retailer”.
- ! Tobacco includes cigarettes, cigars, loose tobacco, fine cut tobacco or any other form of tobacco.

B. What are the registration and compliance requirements of a retailer when selling or purchasing tobacco?

- ! Retailers must ensure that they purchase tobacco products only from a wholesaler who has a valid wholesale dealer’s permit or from an importer who has a registration certificate, issued by the Motor Fuels and Tobacco Tax Branch.
- ! If a retailer is operating as an importer of tobacco products, the retailer must have an importer’s registration certificate. A retailer is also required to have a wholesale dealer’s permit if tobacco products imported are being sold to other dealers for resale.
- ! Retailers must have a retail vendor’s permit issued by Retail Sales Tax Branch of the Ministry of Finance, and a wholesaler is prohibited from selling tobacco to a retailer who has no vendor’s permit. (In addition, the Ministry of Health and Long-Term Care sets out rules under the *Tobacco Control Act* prohibiting the sale or supply of tobacco products to anyone under 19 years of age. For details please contact the Ministry of Health and Long-Term Care.)
- ! Retailers must contact their municipality regarding zoning by-laws and the sale of tobacco.

C. What are the penalties for failure to comply with the *Tobacco Tax Act* registration requirements?

- ! A retailer who purchases tobacco products from an unregistered importer or from a person who does not have a wholesaler's permit will be liable, upon conviction by a court, to the following penalties:
- (a) for the purchase of unmarked cigarettes: a fine of at least the amount of tax normally payable or imprisonment for up to 2 years;
 - (b) for the purchase of marked cigarettes: a fine of \$2.00 for each carton purchased;
 - (c) for the purchase of other tobacco products: a fine of not less than \$1,000 and not more than \$50,000.
- ! A retailer who operates as an importer without having a registration certificate is, upon conviction, subject to be fined an amount not less than \$200 and not more than \$10,000, plus, three times the amount of tax the retailer would be required to collect during the period in which the retailer did not have a certificate. In addition, under the upcoming changes, the Minister is authorized to assess a penalty where a retailer operates as an importer without an importer's registration certificate. The amount of the penalty is equal to the tax the retailer would be required to collect during the period the retailer operated without the required registration certificate.

D. Cigarette Marking in Ontario

- ! In Ontario, all cigarette packages, cartons and cases are required to be marked for tobacco tax purposes. Marking must be done by a person authorized by the Ministry of Finance to mark cigarettes. This marking requirement does not apply to other tobacco products.
- ! Cigarette packages are marked with a yellow strip (tear tape) having the words "**CANADA DUTY PAID-DROIT ACQUITTE-ONTARIO**" printed in black. The strip wraps around the package over the cellophane.
- ! Cigarette cartons are "marked" with a yellow rectangle having the word "**ONTARIO**" printed in black.
- ! Cigarette cases are "marked" with the word "**ONTARIO**" printed on the case.

E. Inspection and Audit

- ! Officers of the Ministry of Finance may enter the retailer's premises to examine the records and inventory, including invoices in support of tobacco purchases. Upcoming changes will formalize the requirement for a retailer to keep, for seven years following the fiscal year to which they relate, records and invoices in support of tobacco purchases.

F. What are the requirements of a retailer regarding the purchase, possession and sale of cigarettes?

- ! A retailer must only possess “**marked**” cigarettes.
- ! A retailer cannot sell or store cigarettes contained in a package, carton or case that has not been “**marked**” with the proper Ontario tax marking.
- ! A retailer cannot advertise or publicize to consumers that the tax will be assumed, absorbed, refunded or considered as part of the retail price.

G. If a retailer contravenes the requirements regarding the purchase, possession and sale of cigarettes, the following are the applicable fines and penalties:

- ! A retailer who is convicted of possessing any quantity of **unmarked** cigarettes for resale, or for possessing more than 5 cartons of **unmarked** cigarettes for any purpose, is liable to a fine of at least 30¢ for each **unmarked** cigarette, plus an additional fine up to \$10,000.
- ! A retailer who sells **unmarked** cigarettes in Ontario, is subject to a penalty equal to \$39 per carton.
- ! A retailer who purchases for sale any **unmarked** cigarettes or possesses 1,000 or more **unmarked** cigarettes, is subject to a penalty equal to three times the tax normally payable.

H. Upcoming Changes* to Tobacco Tax on Cigars (Cigar Tax)

- ! The cigar tax rate will remain at 45%, but the rate will be applied to the “taxable price” of a cigar.
- ! “Taxable Price” of a cigar = the price for which the cigar was purchased by its retail dealer + a “prescribed percentage” of that amount **OR** the price paid for the cigar by the consumer where a consumer purchased the cigar directly from the manufacturer or importer of the cigar.
- ! Once the upcoming changes come into effect a retailer’s supplier will charge, and the retailer will collect from consumers, cigar tax based on the “taxable price” of each cigar. A retailer will be required to obtain an invoice from its supplier and specify to every consumer, by invoice or some other reasonable means, the cigar tax payable.

*The effective date of upcoming cigar tax changes is to be proclaimed and regulations are pending that will set out the “prescribed percentages” necessary for the calculation of the **taxable price**.

I. General Information

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

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