

## Exempt Sales Made by Retail Dealers (ESRDs)

### *Tobacco Tax Act*

The *Indian Act* (Canada) exempts First Nations from provincial taxation on personal property situated on reserve or designated lands. To accommodate this federal legislation, the province has established a tobacco tax exemption program. The goals of this program are to deliver the exemption to those persons who qualify for it, and to protect provincial revenue by ensuring that tobacco intended for exempt sales is not available for purchase by persons who are not entitled to the exemption.

This bulletin outlines the province's program to deliver this exemption to eligible consumers who purchase tobacco products on reserve or designated lands.

As of **October 1, 2002**, only tobacco products that bear the federal government's black stock mark may be sold exempt of tax. The mark indicates that no provincial tobacco tax has been applied to that tobacco.

The information in this bulletin is provided for your convenience and guidance and is not a replacement for the legislation. The *Tobacco Tax Act* and Regulations can be found on the web at [www.gov.bc.ca/sbr](http://www.gov.bc.ca/sbr)

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#### **DEFINITIONS**

##### **Black Stock Tobacco**

Packages, cartons and cases of cigarettes, as well as fine cut tobacco products, bearing the federal government's black stock mark (peach or clear tear tape or stamp). This tobacco is intended for exempt sales in British Columbia. Only cigarettes and fine cut tobacco products bearing this mark may be sold on a tax-exempt basis. Black stock products may only be sold by Exempt Sale Retail Dealers (ESRDs).

##### **Exempt Sale Retail Dealer**

A person who holds a valid Exempt Sale Retail Dealer (ESRD) permit under the *Tobacco Tax Act*.

##### **Indian**

A person who is an "Indian" under the *Indian Act* (Canada) and who is in possession of a *Certificate of Indian Status* card issued by the federal government. This does not include Métis people, Inuit, or non-Canadian Aboriginals because such people do not meet the definition of an Indian under the federal legislation.

##### **Reserve**

Land that meets the definitions of a reserve or designated land under the *Indian Act* (Canada).

#### **AUTHORITY TO MAKE EXEMPT SALES**

##### **Permits**

Businesses located on reserve or designated lands that want to make exempt sales of tobacco products to Indians must apply to the Director, *Tobacco Tax Act*, for an Exempt Sale Retail Dealer (ESRD) permit. Exempt sales may only be made by those who have been issued an ESRD permit.

##### **Application**

To apply for an ESRD permit, businesses must complete an *Application for Registration as an Exempt Sale Retail Dealer* (FIN 259) and attach the following information:

- A business plan.
- A map showing the business location and the location of other ESRDs in the market area.
- A band council resolution approving the sale of tax-exempt tobacco products on the reserve by the proposed business.
- The name of the tobacco wholesaler for the proposed business.
- Photographs of business premises and tobacco sales and storage facilities.

Details regarding other required information are provided on the application form.

### New Permits

A permit may be issued if it is required to meet a legitimate demand for tax-exempt tobacco products. The *Tobacco Tax Act* provides the director with the discretion to determine whether an ESRD permit will be issued. An applicant may be refused a permit if the director is satisfied that there are sufficient dealers holding an ESRD permit in the market area proposed to be serviced by the person applying for the permit.

The director considers the following factors when determining whether a new ESRD permit will be issued.

- The Indian population of the market area.
- The number and location of ESRDs in the market area.
- The location of the applicant's business in relation to other ESRDs.
- The quantity of exempt tobacco products currently available in the market area.
- The sales pattern of existing ESRDs in the area (see the Sales Patterns section in this bulletin).
- The nature of the applicant's proposed business (including hours of operation, type of business).
- Other relevant factors.

The director may refuse to issue an ESRD permit when other relevant factors indicate a permit should not be issued. These factors include the following.

- The applicant, or a person with an interest in the applicant (e.g., the director of a company), has a history of non-compliance with the *Tobacco Tax Act*.
- The applicant does not have a permanent location, secure tobacco storage, adequate accounting controls, approval from the band council, or a business plan indicating a viable business.
- There are a sufficient number of dealers in the market area.

- There is a sufficient quantity of exempt tobacco available in the market area.
- The applicant's business does not offer any significant added convenience to potential Indian customers.
- The sales patterns of existing ESRDs in the area indicate that tobacco is being purchased for a purpose other than the purchasers' own consumption or use (see Sales Patterns section in this bulletin).

### Obligations

Persons who are issued an ESRD permit are agents of the Minister of Provincial Revenue under the *Tobacco Tax Act* and are authorized to make retail sales only. As such, ESRDs have a legal obligation to take reasonable measures to ensure that they only sell tobacco to persons who are purchasing the tobacco for their own consumption or use.

## MAKING TAX-EXEMPT SALES

### Black Stock Tobacco

Effective October 1, 2002, all packages, cartons and cases of cigarettes and fine cut tobacco products intended for exempt sales in British Columbia will be required to bear the federal government's black stock mark, as determined under the *Excise Act, 2001* (Canada). The mark indicates that no provincial tobacco tax has been applied to that tobacco.

The black stock mark varies according to the type of tobacco as follows:

- for cigarettes and tobacco sticks, the mark is a peach coloured tear tape on which the words "Canada Duty Paid – Droit Acquitté" are imprinted, and
- for fine cut tobacco in pouches or in tubs, the mark is a transparent tear tape or a stamp on which the words "Canada Duty Paid – Droit Acquitté" are imprinted.

The black stock program does not apply to cigars, pipe tobacco, chewing tobacco, snuff and raw leaf tobacco. These products do not require any provincial mark or stamp and continue to be available for tax exempt sales, subject to existing ESRD allocation restrictions.

ESRDs may only purchase black stock tobacco from their authorized wholesale dealer.

### Allocations

Persons who hold an ESRD permit are authorized by the director to purchase a certain quantity (allocation) of tobacco products from their

wholesaler without paying a security equal to the tax due on the subsequent retail sale.

The allocation is intended to allow the ESRD to acquire a sufficient inventory of tobacco products on which tax has not been prepaid for the ESRD to meet the legitimate demand of eligible Indians in the market area who purchase from the ESRD.

The allocation for new ESRDs is established based on the status Indian population and legitimate demand for tobacco products in the market area, and any other relevant factors. Where there are existing ESRDs in the market area, the allocations and sales patterns of the existing ESRDs will also be considered.

### Allocation Increases

If an ESRD finds that its allocation is not sufficient to meet its volume of exempt sales, the ESRD may apply to the branch for an increase in its allocation. An increase will only be approved if it is required to meet the legitimate demand for tobacco products by persons who are eligible for the exemption.

To determine if an allocation should be increased, the branch will review the sales patterns of the ESRD to ensure that the ESRD is making only retail sales. Circumstances under which an increase in the allocation **would not** be approved include the following.

- The ESRD has not complied with the 2/8 limit (see LIMITS ON TAX-EXEMPT SALES).
- The ESRD makes frequent carton sales (see Sales Patterns).
- The ESRD has not accounted for all of its allocation of tobacco products either on its *Schedules of Sales of Tax-Exempt Tobacco to Registered Indians or Indian Bands*, or by remitting the tax due on the sales.
- The ESRD has not complied with other provisions of the legislation. For example, the ESRD has outstanding tax returns that it has failed to file.

### Exempt Sales

An ESRD may sell tobacco products exempt from tax **only** where all criteria for exemption have been met. Prior to making an exempt sale, the ESRD must verify the customer's eligibility for exemption by viewing the customer's *Certificate of Indian Status* card.

Métis cards are produced by the Métis Confederation and should not be accepted as a substitute for a *Certificate of Indian Status* card. Holders of Métis cards are not eligible for exemption from tax.

ESRDs may only purchase, possess, store or sell

black stock tobacco if it is intended for exempt retail sales and may only sell black stock tobacco to persons eligible for the tax exemption.

Unless they have received **written** authorization from the Consumer Taxation Branch to store or sell the tobacco in another location, an ESRD's tax exempt inventory shall only be stored and sold from the location indicated on their permit.

### Records

ESRDs must maintain accurate records to substantiate each exempt sale. For each exempt sale, the ESRD must record (at the time the exempt sale is actually made) the following information on a *Schedule of Sales of Tax-Exempt Tobacco to Registered Indians or Indian Bands* (FIN 361):

- date of sale,
- customer's registry number as shown on the *Certificate of Indian Status* card,
- quantity and type of tobacco products sold exempt from tax, and
- name and signature of the customer.

**Please Note:** Tax-exempt purchasers must be physically present, **and sign the schedules in their own name**, at the time the actual sale is made. An ESRD must not accept a proxy signature by customers purchasing tax-exempt tobacco on behalf of another person.

Forms are available from the Consumer Taxation Branch. Additional schedules can be obtained by contacting the branch. Please note that the schedules are numbered and, therefore, an ESRD must use only the schedules that have been issued to it by the branch.

All of the above information must be provided for each exempt sale. If any of the information is not provided or recorded, the branch will not accept the sale as an exempt sale. The ESRD will be responsible for remitting the tax due on the sale. Retailers who fail to collect the tax on sales that do not qualify for exemption will be liable for the tax deemed to have been collected on the sale, plus penalty and interest.

Your records must be available for inspection by provincial tobacco inspectors. Therefore, your records must be kept, **at all times**, at the location from which you make tax-exempt sales of tobacco.

### LIMITS ON TAX-EXEMPT SALES

Effective May 1, 2000, the Act establishes that a qualifying consumer may purchase a maximum of the equivalent of 2 cartons of cigarettes per day, to a maximum of the equivalent of 8 cartons per month

(see below for how to calculate carton equivalents). This is known as the 2/8 rule. ESRDs cannot sell more than this quantity of exempt tobacco products to a qualifying consumer.

### Calculating the Sales Limit

**All exempt tobacco products are included in the 2/8 sales limit** – not just those sold in cartons.

Tobacco products include cigarettes, cigars and loose grams of tobacco (including fine cut tobacco, raw leaf tobacco, pipe tobacco, chewing tobacco and snuff).

When selling exempt tobacco, ESRDs must make sure that **the total amount of all types of tobacco products** (cartons, packages, loose and cigars) sold to a person in a day does not exceed the equivalent of 2 cartons (400 grams), or 8 cartons (1600 grams) per month.

To determine whether a purchaser meets or exceeds the 2/8 carton limit, the following conversion may be used.

**1 Carton = 10 packs of 20 = 8 packs of 25's = 200 cigarettes = 200 grams of loose tobacco**

### Examples of Sales WITHIN the 2 Carton Daily Limit

Cartons of Cigarettes	Packs of 20 Cigarettes	Loose Tobacco or Cigars	Total Amount Sold
1 carton +	5 packs +	100 grams =	2 cartons (400 grams)
1 carton +	7 packs +	60 grams =	2 cartons (400 grams)
	5 packs +	300 grams =	2 cartons (400 grams)
1 carton	+	200 grams =	2 cartons (400 grams)

### EXAMPLES OF SALES THAT EXCEED THE 2 CARTON DAILY LIMIT

Cartons of Cigarettes	Packs of 20 Cigarettes	Loose Tobacco or Cigars	Total Amount Sold
1 carton +	1 pack +	200 grams =	2.1 cartons (420 grams)
2 cartons +	1 pack +	=	2.1 cartons (420 grams)
2 cartons +		50 grams =	2.25 cartons (450 grams)
	8 packs +	300 grams =	2.6 cartons (460 grams)
2 cartons +		1 or more cigars	More than 2 cartons

**Please Note:** Selling more than the 2/8 (400/1600

grams) limit of exempt tobacco can result in the suspension or cancellation of your ESRD permit.

### Sales Patterns

The 2/8 limit is a maximum limit on sales to the same consumer. Sales at this limit should only occur in **isolated cases** when a purchaser requires a greater-than-normal quantity for his/her own use and consumption. For example, persons may purchase 2 cartons if they will not have access to an ESRD for an extended length of time.

ESRDs should not make frequent sales of 1 or 2 cartons per sale because this is not a reasonable pattern of retail tobacco sales. Most sales should consist of a small number of packages of cigarettes or loose tobacco, consistent with an individual's personal use. This is the sales pattern of many ESRDs throughout British Columbia.

If an ESRD frequently makes sales by the carton, and the sales are made to the same customer, the Consumer Taxation Branch may consider these to be sales to persons who are purchasing for other than their own consumption or use. Because ESRDs are only authorized to make retail sales, the ESRD permit may be suspended or cancelled in these circumstances and an assessment may be issued.

As an agent for the minister, an ESRD must take reasonable steps to ensure it makes only retail sales. For example, if individuals in a group each request 2 cartons, it is unlikely that they are purchasing the tobacco for their own use. In such situations it would be reasonable for the ESRD to limit sales to 1 or 2 packages per purchaser.

### Exceptions to the Sales Limit

Where a consumer legitimately requires more than the 2/8 limit for personal use or consumption, the consumer can make a request to the Consumer Taxation Branch. The person making the request will be required to provide any details to the branch to ensure that the request is reasonable in the circumstances. A request can be made by calling 250 356-1399.

If the request is approved, the branch will assign an approval number that is valid for only that purchase. The ESRD must record this approval number on the sales schedule beside the particular purchase.

### Taxable Sales

Cigarettes and fine cut tobacco sold to persons not eligible for the tax exemption must bear the green tear tape indicating British Columbia tax has been accounted for.

Tax at the appropriate rate must be collected on **all** sales of tobacco products to persons who do not qualify for the exemption or verify their status.



The tax rates on tobacco products change periodically. The current rates are printed on each tax return form. In addition, [Bulletin TTA 005, Tax Rates on Tobacco Products](#), contains the current tax rates. This bulletin is available from any Service BC-Government Agent or Consumer Taxation Branch office. It is important to collect the correct tax on each taxable sale.

ESRDs who also sell taxable tobacco must hold a registration number under the *Social Service Tax Act*. In addition, ESRDs selling both exempt and taxable tobacco must keep separate inventories of black stock tobacco and British Columbia marked tobacco (bearing a green tear tape).

## REPORTING REQUIREMENTS

### Tax Returns

ESRDs are required to complete monthly tax returns. The tax return and any tax collected are due on the 10<sup>th</sup> day of the month following the month in which the sales being reported took place. For example, the return for sales made during the month of October is due on the 10<sup>th</sup> of November.

An *Exempt Sale Retail Dealer Tax Return* (FIN 359) will be mailed to ESRDs each month. If an ESRD does not receive a tax return by the due date, the ESRD is still responsible for reporting its sales and remitting any tax due. Complete a facsimile of the return showing all information normally shown on the return.

**Please note** that the tax return must be completed and returned by the due date, even if the quantity of exempt tobacco products sold equals the allocation of products purchased without payment of a security.

The completed *Schedule of Sales of Tax-Exempt Tobacco to Registered Indians or Indian Bands* for all exempt sales in the month must be submitted along with the completed tax return. Before forwarding the return and schedules, check that the following are completed.

- Certify that the schedules are correct by signing and dating them. The dealer's name must also be printed next to the signature.
- Number the pages of the schedules.
- Total the sales on each page of the schedules and carry the total forward to the next page.
- Carry total sales forward to the tax return (FIN 359).
- Complete both the front and the back of the tax return.

- Complete the business name and certification section of the tax return, including the title of the person completing the return, the telephone and fax numbers, the signature, and the date.

Further information regarding completing the tax return can be obtained by contacting the branch.

## PROGRAM ENFORCEMENT

### Objectives

The program outlined in this bulletin is intended to ensure that Indians are able to purchase tobacco products for their own use or consumption exempt of tax. However, the branch is responsible for ensuring that tax is collected and remitted on all taxable sales.

Therefore, the program's goals include protecting provincial revenue by ensuring that tobacco intended for exempt sales is not available for purchase by persons who are not entitled to the exemption. To ensure that this second goal is met, the program includes enforcement activities.

### Allocations

Where an ESRD's sales pattern, or other information, show that the ESRD is making sales that are not for the purchasers' own consumption or use, the director may decrease the ESRD's allocation.

Allocations may also be decreased if the existing allocation is determined to be more than is required to meet the legitimate demand of Indians in the market area. The new allocation will be a volume of tobacco products that is considered sufficient for the dealer's legitimate exempt retail sales.

### Permits

Where an ESRD fails to comply with the legislation, the ESRD permit and the dealer's authorization to sell taxable tobacco products may be suspended or cancelled. An ESRD whose permit and authorization is suspended or cancelled cannot sell tobacco products.

For example, an ESRD permit may be suspended or cancelled in the following circumstances.

- An ESRD fails to file returns when they are due.
- An ESRD makes wholesale sales (sales that are not for the purchasers' own consumption or use).
- An ESRD commits an offence under the Act.

## Assessments

An ESRD may only sell tobacco exempt of tax if all the criteria for exemption are met and the sale is completely and properly documented as outlined in this bulletin. An ESRD will be liable for collection of the tax on all other sales

Where the tax due is not collected or remitted as required, a *Notice of Assessment* will be issued to the ESRD for any tax amounts due, plus penalty and interest charges

## Retention of Records

A dealer must keep, at the dealer's principal place of business, records and books of account relating to all their sales of tobacco products. These records and books of account must be kept available for inspection by provincial tobacco inspectors.

These records or books of account, as well as all accounts or vouchers necessary to verify the information in the record or book of account, must be retained for a period of at least seven years, unless otherwise authorized by the director.

## Offences

Persons who do not comply with the requirements of the Act may be charged with committing an offence under the Act and become liable for court-imposed fines and/or imprisonment on conviction. Examples of offences under the Act include the following.

- Failure to collect taxes as required by the Act.
- Selling, or offering to sell, tobacco without a valid permit.
- Making a false or deceptive statement in a tax return or form.
- Making a false or deceptive entry in a record or books of account.

- Willfully failing to comply with the Act or regulations.
- Willfully attempting to evade compliance with the Act or regulations.

## APPEALS

### Minister

A decision of the director with respect to allocation decreases, permit refusals, suspensions, cancellations, assessments, and disallowed refund claims can be appealed to the Minister of Provincial Revenue. Appeals must be in writing and must set out clearly the reasons for the appeal and all facts relative to it. Appeals **must** be received within 90 days of the date of the decision being appealed.

### Court

A decision of the minister can be appealed to the British Columbia Supreme Court within 90 days of the date on the minister's decision.

### NEED MORE INFO?

**This bulletin is provided for convenience and guidance.**

**If you have any further questions, call us in Vancouver at 604 660-4524 or toll-free at 1 877 388-4440, or e-mail your questions to [CTBTaxQuestions@gov.bc.ca](mailto:CTBTaxQuestions@gov.bc.ca)**

**Information is also on the web at [www.gov.bc.ca/sbr](http://www.gov.bc.ca/sbr) While there, you can subscribe to our free electronic update service.**

**References:** *Tobacco Tax Act*, Sections 1, 22, 23, 24, 35 and Regulations 1, 2, 6, 8, 9, 10, 12, 13, 16, 18, 30