

Ministry of Finance

Tax Bulletin



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Exempt Sales Made by Retail Dealers (ESRDs)

Tobacco Tax Act

This bulletin provides information on the tobacco tax exemption program and how it applies to eligible consumers who purchase tobacco products on reserve or designated lands.

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Overview

The *Indian Act* (Canada) exempts Indians and Indian bands from provincial consumption taxes where the sale takes place on reserve land. In recognition of this exemption, the Province of British Columbia 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.

Effective June 1, 2008, tobacco tax applies to Nisga'a Citizens and to transactions on Nisga'a lands. Nisga'a Citizens are Nisga'a individuals included in the Nisga'a Final

Agreement and who pay provincial taxes. For more information, please see [Bulletin GEN 013](#), *Provincial Taxes on Nisga'a Lands*.

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.

Definitions

Black Stock Tobacco

Black stock tobacco consists of 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

An Exempt Sale Retailer Dealer is a person who holds a valid *Exempt Sale Retail Dealer Permit* under the *Tobacco Tax Act*.

Indian

An Indian is a person who qualifies as 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 Indians from the United States, as they do not meet the definition of an Indian under the federal legislation.

Reserve Land

Reserve land is land that qualifies as reserve land under the *Indian Act* (Canada), and includes land classified as designated reserve land.

Authority to Make Exempt Sales

Permits

Businesses located on reserve 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 Permit* (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 (ESRD) and/or Exempt Fuel Retailer (EFR)* form ([FIN 262](#)) and attach the following:

- 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, and
- 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 retailers 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 section below, Sales Patterns),
- the nature of the applicant's proposed business (including hours of operation, type of business), and
- 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, and
- 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 the section below, Sales Patterns).

Obligations

Persons who are issued an ESRD permit are agents of the Minister of Finance 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 ACQUITTE 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 ACQUITTE 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 tobacco 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 tobacco 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 ministry 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 ministry 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 the section below, Limits on Tax-Exempt Sales),
- the ESRD makes frequent carton sales (see the section below, Sales Patterns),
- the ESRD has not accounted for all of its allocation of tobacco products either on its *Schedule of Sales of Tax-Exempt Tobacco to Registered Indians or Indian Bands* (FIN 361), or by remitting the tobacco tax due on the sales, or
- 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 tobacco 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 ministry 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 tobacco 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. The signature of the purchaser must confirm the details of their exempt purchase recorded on the *Schedule of Sales of Tax-Exempt Tobacco to Registered Indians or Indian Bands* (FIN 361).

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

If an ESRD does not record all of the required information for an exempt sale on the *Schedule of Sales of Tax-Exempt Tobacco to Registered Indians or Indian Bands* (FIN 361), the ministry will not accept the sale as an exempt sale. ESRDs who fail to collect the tobacco tax on sales that do not qualify for exemption will be liable for the tobacco tax deemed to have been collected on the sale, plus penalty and interest.

An ESRD's records must be available for inspection by provincial tobacco inspectors. Therefore, the records must be kept, **at all times**, at the location from which the tax-exempt sales of tobacco are made.

Limits on Tax-Exempt Sales

Effective May 1, 2000, the *Tobacco Tax Act* established that a qualifying purchaser 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 purchaser.

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 = 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 purchaser. Sales at this limit should only occur in **isolated cases** when a purchaser requires a greater-than-normal quantity for their 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 ministry 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 customer legitimately requires more than the 2/8 limit for personal use or consumption, the customer can make a request to the ministry. The person making the request will be required to provide any details to the ministry to ensure that the request is reasonable in the circumstances. A request can be made by calling 250 387-1856.

If the request is approved, the ministry 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 tobacco tax has been accounted for.

Tobacco 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](#), *Tobacco Tax Rates*, contains the current tobacco tax rates. This bulletin is available from the ministry or any [Service BC Centre](#). It is important to collect the correct tobacco tax on each taxable sale.

All vendors selling taxable tobacco at retail are required to hold and prominently display a valid *Tobacco Retailer Authorization* (TRA) certificate with a unique permit number assigned to each retail location.

For more information on tobacco retail authorization requirements, please see [Bulletin TTA 003](#), *Tobacco Retailers*.

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 tobacco tax collected are due on the 10th 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 10th 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 tobacco tax due. Complete a facsimile of the return showing all information normally shown on the return.

Please note: 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* (FIN 361) for all exempt sales in the month must be submitted along with the completed tax return. Before submitting the return and schedules, check that the following are completed:

- the schedules are certified correct by signing and dating them, and the dealer's name is printed next to the signature,
- the pages of the schedules are numbered,
- the sales on each page of the schedules are totalled and carried forward to the next page,
- the total sales are carried forward to the tax return (FIN 359),
- both the front and the back of the tax return are completed, and
- the business name and certification section of the tax return are completed, 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 ministry.

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 tobacco tax. However, the ministry is responsible for ensuring that tobacco 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, shows 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 TRA certificate 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), or
- an ESRD commits an offence under the *Tobacco Tax Act*.

Assessments

An ESRD may only sell tobacco exempt of tobacco 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 tobacco tax on all other sales.

Where the tobacco 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

An ESRD 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 five years, unless otherwise authorized by the director.

Offences

Persons who do not comply with the requirements of the *Tobacco Tax 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,
- wilfully failing to comply with the Act or regulations, and
- wilfully 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 Finance. 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?

Tobacco website: www.sbr.gov.bc.ca/business/Consumer_Taxes/Tobacco_Tax/tobacco_tax.htm

Toll free in Canada: 1 877 388-4440

E-mail: CTBTaxQuestions@gov.bc.ca

The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation. The *Tobacco Tax Act* and Regulations are on our website at www.sbr.gov.bc.ca/business/Consumer_Taxes/Tobacco_Tax/bulletins-leg-notices.htm

References: *Tobacco Tax Act*, Sections 1, 22, 23 and 35, and Regulations 1, 2, 6, 6.3, 8, 9, 10, 12, 13, 16, 18 and 30