



Program to Temporarily Prohibit the Selling, Offering for Sale and Storing of Tobacco

This bulletin was revised June 2008 to incorporate formatting changes and changes in ministry name and contact information only.

- This bulletin will be of interest to tobacco retail dealers and wholesalers.
- This bulletin provides information about a program to temporarily prohibit the selling, offering for sale and storing of tobacco at a retail location where a retail dealer has repeatedly contravened the *Tobacco Tax Act* and/or the *Smoke-Free Ontario Act*. Wholesalers are also prohibited from delivering, or causing to be delivered, tobacco to locations that are under a temporary prohibition.
- This bulletin provides general information. It is not exhaustive and should not be considered as a substitute for the *Tobacco Tax Act* and its regulations.

Background

Tobacco Tax Act Amendments

The *Tobacco Tax Act* (Act) has been amended effective May 17, 2007, to enact a “Temporary Prohibition Program”. This program prohibits all persons from selling, offering for sale and storing tobacco products at a location where a retail dealer has repeatedly contravened the Act and/or committed certain offences under the *Smoke-Free Ontario Act*. The length of the prohibition may range up to 180 days.

Retail dealers are advised to review both the *Tobacco Tax Act* and the *Smoke-Free Ontario Act* to understand the specific offences that may result in a prohibition.

Tobacco Tax Act Contraventions

A person who contravenes the Act may be subject to a penalty. Contraventions may also result in a person being charged with an offence which, upon conviction, may result in fines and/or imprisonment. Additionally, tobacco that relates to a contravention may be seized and forfeited. The following are a few examples of contraventions of the *Tobacco Tax Act*:

- selling or storing unmarked cigarettes (i.e. packages that do not have Ontario’s yellow tear tape and other required markings)
- purchasing tobacco from wholesalers not registered under the Act, or
- the failure to provide evidence of proper payment of tobacco tax.

Smoke-Free Ontario Act

The *Smoke-Free Ontario Act* is administered by the Ministry of Health Promotion. Certain offences under that act are also “tobacco offences” for the purposes of the Temporary Prohibition Program. Specifically:

- selling tobacco to a person under 19 years of age
- selling cigarettes in packages that do not have the required health warnings, or
- failure to post the required health warning and age limit signs.

Terms of a Temporary Prohibition

The Minister of Revenue may prohibit the selling, offering for sale and storage of tobacco products for repeated contraventions of the Act. A prohibition bars selling, offering for sale and storing tobacco products in a particular location for up to 180 days.

There are also prohibitions under the *Smoke-Free Ontario Act*. The length of prohibitions in the act range from six to twelve months.

Basis for a Temporary Prohibition

Tobacco retail dealers may face a temporary prohibition if, within a five-year period, the retail dealer has been:

- assessed two or more penalties under the Act
- convicted of two or more tobacco offences, or
- both assessed a penalty and convicted of a tobacco offence,

and the respective penalties and convictions relate to activities at, or in connection with, the particular location owned or occupied by a retail dealer.

Effective Date

Penalties and convictions which occurred prior to May 17, 2007 will not be considered for the purpose of this program.

Imposition of Prohibition

Duration of Prohibition

The duration of a temporary prohibition will depend on the number and nature of previous contraventions within a five-year period. The duration of the prohibition increases in stages, as shown in the following chart.

Determining Prohibition Period

<i>If there is a current contravention subject to:</i>	<i>And over the past 5 years, contraventions include:</i>	<i>A temporary prohibition period may be imposed:</i>
A penalty assessment	Not more than 2 penalties or 1 or more offences	Up to 15 days
A penalty assessment	3 or more penalties	Up to 30 days
A conviction for an offence	1 or more penalties	Up to 15 days
A conviction for an offence	1 offence	Up to 30 days
A conviction for an offence	2 offences	Up to 60 days
A conviction for an offence	3 or more offences	Up to 180 days

Publication of Prohibited Retail Locations

The ministry will publish the name and location of every retail dealer who is under a temporary prohibition. This information may also be disclosed to tobacco wholesalers as they are not permitted to deliver, or cause to deliver, tobacco products to locations subject to a temporary prohibition.

Prohibition Process

Notification to Retail Dealer

The minister will notify the retail dealer of an impending temporary prohibition. A Notice of Temporary Prohibition will be delivered to the retail dealer, either by hand delivery or registered mail, prior to the imposition of the prohibition.

Hearing	When a retailer receives a notice of an impending temporary prohibition, the retail dealer may request a hearing. The request, stating reasons for the objection, must be made in writing to the minister within five days of receiving notification of the prohibition. A hearing will be held within 15 days from the time the notice was issued. Details on how to request a hearing are set out in the instructions in the Notice of Temporary Prohibition.
Conditions and Limitations	Instead of a temporary prohibition, the minister may impose specific conditions and limitations with respect to the retail dealer's tobacco activities; however, if the retail dealer fails to comply with the conditions and limitations, an immediate prohibition may be imposed upon delivery of a Notice of Temporary Prohibition.
Hearing Following Prohibition	Within 10 days of receiving notification of an immediate prohibition, the retail dealer may request a hearing to cancel the prohibition. The request must be made in writing to the minister, stating the reasons for the objection. A hearing will be scheduled within 10 days of the minister receiving the request. Details on how to request a hearing are set out in the instructions in the Notice of Temporary Prohibition.
Wholesalers	Wholesalers may not deliver, or cause to be delivered, tobacco to a location that is subject to a temporary prohibition. To confirm whether a retail dealer is under prohibition at a particular location, check the ministry's website. Additionally, signs will be posted at locations where a temporary prohibition is in effect.

Posting of Signs at Locations Under Prohibition

Signs Required	Where a retail dealer is under prohibition, the retail dealer must ensure signs provided by the ministry are posted at the relevant location to notify the public of the prohibition.
Not to be Removed	If the signs are not posted as required, a person authorized by the minister may enter the premises and post the prohibition signs. Signs must not be removed while the prohibition is in effect.

Offences and Penalties

Failure to Comply – Retail Dealer	Should a retail dealer fail to comply with a temporary prohibition, all tobacco products at the retail location may be seized and penalties assessed ranging from \$5,000 to \$10,000. Additionally, the retail dealer may be charged, and if convicted, be subject to minimum fines ranging from \$5,000 to \$50,000, depending on the circumstances.
Failure to Comply – Wholesaler	Wholesalers must not deliver, or cause to be delivered, tobacco products to retail locations that are subject to a temporary prohibition. If a wholesaler delivers tobacco products to a location subject to a temporary prohibition, the minister may suspend the wholesaler's permit and a penalty may be assessed equal to three times the tax that would be payable under the Act on the tobacco that was delivered.

Other Tobacco Publications of Interest

- [Ontario Tax Bulletin TT 1-2008 - Summary of Tobacco Tax Rules for Retail Dealers](#)
- [Ontario Tax Bulletin TT 2-2008 - What to Expect from a Tobacco Inspection](#)

Additional Information

If this bulletin does not completely address your particular situation, refer to the Act and related regulations, or contact the:

Ministry of Revenue
Tax Compliance Branch
Audit and Inspection – Tobacco Tax
33 King Street West
Oshawa, ON L1H 8H9

Tel.: 1 866 ONT-TAXS (1 866 668-8297)
Fax: 905 436-4511
Teletypewriter (TTY): 1 800 263-7776

This bulletin and various other English and French tax materials published by the Ministry of Revenue may be obtained online at ontario.ca/revenue.

The *Tobacco Tax Act* and Ontario's other public statutes and regulations may be obtained online at www.e-laws.gov.on.ca.

Ce bulletin est disponible en français.

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