



Procedures for Hearings Under Section 20 of the *Tobacco Tax Act* With Respect to the Temporary Prohibition Program

- This bulletin will be of interest to tobacco retail dealers who have received notice of a temporary prohibition and who have requested a hearing to show why the temporary prohibition should not be imposed.
- 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.

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General

Introduction Section 25.1 (1) of the *Statutory Powers Procedure Act* states that a Tribunal may make rules governing the practice and procedure of hearings held by the Tribunal.

The following are the rules governing the practice and procedure to conduct hearings held with respect of the Temporary Prohibition Program, as authorized by section 20 of the *Tobacco Tax Act*.

Hearings	Hearings are conducted under the: <ul style="list-style-type: none"> • <i>Statutory Powers Procedure Act</i>, and • Rules made by the Tribunal.
Locations	Hearings will be held: <ul style="list-style-type: none"> • through telephone conference calls (electronic hearings), or • in Ministry of Revenue offices (oral hearings).
Attendees	Attendees include: <ul style="list-style-type: none"> • Authorized delegate of the Minister • Court reporter • Ministry of Revenue legal representative • Retail dealer with (optional) representative • Witness with (optional) representative.
Observers	Observers may include: <ul style="list-style-type: none"> • Ministry of Revenue representatives

Definitions

For the purpose of these hearings,

Act - *Tobacco Tax Act*

Electronic Hearing - a hearing held by telephone conference call or some other form of electronic technology allowing persons to hear one another

Hearing - a hearing in any proceeding

Minister - Minister of Revenue

Oral Hearing - a hearing at which the parties or their representatives attend before the Tribunal in person

Proceeding - a proceeding presided by this Tribunal

Retail Dealer - one or more persons, whether or not incorporated and however described, upon which a temporary prohibition under the *Tobacco Tax Act* is being proposed or has been issued

Statutory Power of Decision - a power or right, conferred by or under a statute, to make a decision deciding or prescribing:

- the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
- the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not

Tribunal - one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by a statute

Written Hearing - a hearing held by means of the exchange of documents, whether in written form or by electronic means.

Construction of Tribunal

1. The *Tobacco Tax Act* provides the retail dealer an opportunity to appear before a tribunal to show cause why the temporary prohibition should not be imposed [subsection 20 (6)] or should be cancelled [subsection 20 (15)].
2. Pursuant to subsection 7(1) of the *Ministry of Revenue Act*, the Minister has delegated the authority to a Ministry of Revenue delegate.

Composition of Tribunal

The Tribunal panel will be composed of one Ministry of Revenue representative who is the Chairperson of the Tribunal.

Statutory Powers of the Tribunal

1. The purpose of this Tribunal is to exercise the statutory power of decision conferred by the *Tobacco Tax Act* where the retail dealer is afforded the opportunity for a hearing.
2. The statutory powers of the Tribunal include the power to rule on:
 - a. a request from the retail dealer to have an oral hearing rather than an electronic hearing
 - b. a proposed temporary prohibition of the retail dealer – subsection 20 (2) of the *Tobacco Tax Act*
 - c. an immediate temporary prohibition imposed on the retail dealer – subsection 20 (10) of the *Tobacco Tax Act*.

Types of Hearings to be Held

1. Electronic hearings conducted through a telephone conference call will be held by the Tribunal.
2. Should the retail dealer satisfy the Tribunal that holding a hearing via telephone conference call is likely to cause the retail dealer significant prejudice, an oral hearing will be held.
3. A written hearing, where there is only an exchange of documents, will not be held.

Participants to be Able to Hear One Another

All parties participating in a hearing must be able to hear one another and any witnesses throughout the hearing.

Decision of Tribunal to Not Proceed with Hearing

The Tribunal may make decisions not to proceed with a hearing if the retail dealer submits a request for a hearing:

- a. with incomplete documentation, or
- b. after the due date.

Dismissal of Proceeding Without Hearing

1. The Tribunal may dismiss a proceeding without a hearing if:
 - a. the proceeding has insufficient grounds
 - b. the proceeding relates to matters that are outside the jurisdiction of the Tribunal, or
 - c. some aspect of the statutory requirements for bringing the proceeding has not been met.
2. Before dismissing the proceeding under this section, the Tribunal shall give notice of its intention to:
 - a. all parties to the proceeding if it is being dismissed for reasons referred to in clause 1(b) above, or
 - b. the party who commences the proceeding, if it is being dismissed for any other reason.
3. The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal. The notice will also inform the parties of their right to make written submissions with respect to the dismissal to the Tribunal within five days of the notice being delivered.

Effect of Non-attendance at Hearing After Due Notice

1. Where notice of an oral hearing has been given and the party does not attend the hearing, the Tribunal may proceed and the party is not entitled to any further notice in the proceeding.
2. Where notice of an electronic hearing has been given and the party does not request an oral hearing nor participate in the electronic hearing, the Tribunal may proceed and the party is not entitled to any further notice in the proceeding.

Hearings to be Held in the Absence of Public

1. Hearings are not open to the public.
2. Holding an electronic hearing or an oral hearing which is open to the public is not practical as it:
 - a. may allow for or require financial or personal matters to be disclosed, and
 - b. is not in the interest of any person affected.

Administration of Oaths

The Tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings and may require evidence to be given under oath or affirmation.

Examination of Witnesses

A party to an oral or electronic hearing may;

- a. call and examine witnesses and present evidence and submissions, and
- b. conduct cross-examinations of witnesses for full and fair disclosure of all matters relevant to the proceeding.

Right of Witnesses to Representation

1. A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but the witness's representative may take no other part in the hearing without leave of the Tribunal.
2. As an oral hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence.

Time Frames

1. A hearing requested in respect of a proposed temporary prohibition must be held not more than 15 days after the date of the notice given by the Minister – subsection 20 (7) of the *Tobacco Tax Act*.
2. A hearing requested in respect of an immediate temporary prohibition must be held not more than 10 days after the Minister receives the request – subsection 20 (15) of the *Tobacco Tax Act*.
3. The decision of the Tribunal shall be given by the Tribunal Chairperson as expeditiously as possible after the close of the hearing so as to not cause undue hardship to any participating party.

Decision

1. The decision of the Chairperson will be the decision of the Tribunal.
2. In the case of a hearing with respect to a proposed temporary prohibition, the Tribunal may:
 - a. confirm the proposed temporary prohibition
 - b. rescind the proposed temporary prohibition, or
 - c. in lieu of the proposed temporary prohibition, impose reasonable conditions and limitations on the retail dealer.
3. In the case of a hearing with respect to an immediate temporary prohibition, the Tribunal may:
 - a. uphold the temporary prohibition, or
 - b. cancel the temporary prohibition.
4. The Tribunal will give its final decision in any proceeding in writing and will provide the reasons in writing if requested by a party.
5. The Tribunal will send the retail dealer, or representative, a copy of its final decision.
6. The Tribunal will send the copies of the final decision by:
 - a. letter mail to the most recent address known to the Tribunal which will be deemed to be received on the fifth day after it is mailed, or
 - b. hand delivery which will be deemed to be received on the date of delivery.

Record of Proceeding

The Tribunal will compile a record of the hearing which has been held and include:

- a. any application, complaint, reference or other document by which the proceeding was commenced
- b. the notice of any hearing
- c. any verbal orders made by the Tribunal
- d. all documentary evidence filed with the Tribunal
- e. the transcript, if any, of the oral evidence given at the hearing, and
- f. the decision of the Tribunal and any reasons therefore.

Other Publications of Interest to Tobacco Retailers

- [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](#)
- [Ontario Tax Bulletin TT 3 – 2008 Program to Temporarily Prohibit the Selling, Offering for Sale and Storing of Tobacco](#)
- [Brochure – If You Sell Tobacco](#)

Additional Information

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

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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.

ISBN: 978-1-4249-8409-1 (Print)
ISBN: 978-1-4249-8410-7 (HTML)
ISBN: 978-1-4249-8411-4 (PDF)

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