



## Ontario's First Nations Cigarette Allocation System *Tobacco Tax Act*

- This bulletin outlines Ontario's First Nations Cigarette Allocation System as provided for in Ontario Regulation 649/93 (O. Reg. 649/93) made under the *Tobacco Tax Act*.
- 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.

### General

#### Background

Under section 87 of the *Indian Act* (Canada), the personal property of a registered (Status) Indian situated on a reserve is exempt from taxation. In recognition of this exemption, the provincial *Tobacco Tax Act* (act) and regulations provide for Ontario's First Nations Cigarette Allocation System (allocation system). Under the allocation system, First Nations individuals may buy allocation cigarettes on a reserve, for their exclusive use, that are exempt from Ontario tobacco tax. The allocation system is sometimes called the "cigarette quota."

#### Summary of the Allocation System

Each year, the Ministry of Revenue (ministry) calculates (more about the calculation below) the total quantity, for each reserve, of allocation cigarettes that ministry-authorized tobacco wholesalers are permitted to deliver to ministry-authorized reserve retailers for the allocation year. The allocation year runs from April 1 to March 31. The Elected Council or, in some cases, the ministry, then allots a portion of the reserve's total allocation to each of the ministry-authorized retailers on that reserve.

Allocation cigarettes have the federal peach coloured tear tape on the package. Ontario [tobacco tax](#) is not imposed on allocation cigarettes.

During the allocation year, each ministry-authorized reserve retailer may order allocation cigarettes from their designated ministry-authorized tobacco wholesaler up to the maximum of the on-reserve retailer's allotment (quota amount). The on-reserve retailers must sell allocation cigarettes only to First Nations individuals who are buying the allocation cigarettes on a reserve for their exclusive use.

#### Allocation Cigarettes – more detail

Allocation cigarette packages have federal, peach-coloured tear tapes. Ontario's tobacco tax has not been accounted for on the cigarettes in packages having the federal, peach-coloured tear tape.

Allocation cigarettes are required to be supplied only by tobacco wholesalers registered with the ministry and authorized by the ministry to sell allocation cigarettes in certain quantities. Those wholesalers must deliver allocation cigarettes to the reserve and only to retailers on reserve that have been authorized by the ministry to sell allocation cigarettes. Wholesalers must not deliver more allocation cigarettes than the reserve retailer's allotment of allocation.

**Some cigarettes with peach-coloured tear taped are illegal**

Where cigarette packages with the federal, peach-coloured tear tape have been distributed without complying with all the requirements of the allocation system, the cigarettes are illegal. There are penalties and fines for the possession, distribution, purchase or sale of such cigarettes.

**How the Allocation System Works****Allocation System**

The allocation system is a consistent and fair approach to allotting cigarettes exempt from Ontario's tobacco tax for First Nations consumers. The allocation system takes into account:

- on-reserve and off-reserve populations of First Nations adults\*
- smoking patterns of First Nations individuals\*\*
- special events on the reserve.

\*As reported yearly by Indian and Northern Affairs Canada.

\*\*As reported by Statistics Canada.

**Allocation Options**

The Elected Council of a First Nations band may:

- allot the authorized annual (April 1 to March 31) quantity of allocation cigarettes among each reserve retailer and advise the ministry of the allotments it has made
- change the allotment of allocation previously made to on-reserve retailers
- cancel an on-reserve retailer's allotment (quota) and transfer the unpurchased portion to another on-reserve retailer
- get an increase in the annual base allocation of 10 per cent for special events and sales to First Nations individuals who are not members of the reserve
- get an increase in the annual base allocation of 20 per cent by entering into a retail agreement with the ministry in which the council agrees to allot allocation to reserve retailers and monitor the sales of these allocation cigarettes to ensure that sales are made only to First Nations individuals.

Where a Council elects not to allot allocation among reserve retailers, the ministry will divide the allocation among the on-reserve retailers taking into account the number of on-reserve retailers and their volume of business. If the ministry is unable to determine volumes of business, the allocation will be divided equally.

In some cases, the allocation will be allotted by the ministry based on an agreement between the Elected Council and the minister.

**Authorized Wholesalers****Authorized Wholesalers**

Each authorized on-reserve retailer is notified of the allotment of allocation for the allocation year before April 1. The retailer selects a ministry-authorized wholesaler as the supplier of allocation cigarettes. The ministry notifies that wholesaler of the quantity of allocation cigarettes it may sell to that on-reserve retailer. The supplier must deliver the allocation cigarettes to the on-reserve retailer at a site on that reserve.

## Authorized Retailers

<b>Selling Cigarettes</b>	On-reserve retailers (who have been authorized by the minister to buy allocation cigarettes) must sell allocation cigarettes to First Nations individuals only. First Nations individuals must buy the allocation cigarettes on a reserve and for their exclusive use. It is illegal to sell allocation cigarettes to non-First Nations individuals.
<b>Possession of Allocation Cigarettes</b>	On-reserve retailers (who have been authorized by the minister to buy allocation cigarettes) must not possess more allocation cigarettes than they are authorized by the ministry to purchase. Retailers who have not been authorized by the minister to buy allocation cigarettes must not possess any allocation cigarettes.

## Definitions

<b>Allocation Cigarettes</b>	<p>Allocation cigarettes have a federal, peach-coloured tear tape around the package and peach coloured stamps on each end of the carton. They are purchased from wholesalers that have a valid authorization issued by the ministry. Only cigarettes with this mark may be sold tax-exempt to First Nations individuals.</p> <p>Ontario's tobacco tax has not been accounted for on the cigarettes in packages with federal, peach-coloured tear tape.</p>
<b>Allocation Year</b>	Allocation year means the one year period from April 1 to March 31.
<b>First Nation Individual</b>	<p>For the purposes of the allocation system, a First Nation individual is a person who qualifies as an Indian under the federal <i>Indian Act</i> and who is in possession of a Certificate of Indian Status Card (Status Card) issued by Indian and Northern Affairs Canada.</p> <p>This does not include Métis people, Inuit or Indians from the United States, as they do not meet the definition of "Indian" under the federal legislation.</p>
<b>Marked Cigarettes</b>	<p>Marked cigarettes are packages of cigarettes that have Ontario's yellow tear tape. The presence of Ontario's yellow tear tape on the package of cigarettes indicates that Ontario's tobacco tax has been taken into account.</p> <p>Marked cigarettes are not part of the allocation system. There is no refund of tobacco tax on cigarettes that have Ontario's yellow tear tape.</p>
<b>Reserve</b>	Reserve is land that qualifies as reserve land under the federal <i>Indian Act</i> .
<b>Reserve Retailer</b>	A reserve retailer is a retail dealer located on a reserve that, in the ordinary course of its business, sells tobacco to First Nations individuals.

## 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  
Client Accounts and Services Branch  
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](http://ontario.ca/revenue).

The *Tobacco Tax Act* and Ontario's other public statutes and regulations may be obtained online at [ontario.ca/e-laws](http://ontario.ca/e-laws).

*Cette publication est disponible en français sous le titre « Système d'attribution de cigarettes aux Premières nations en Ontario ».  
Vous pouvez en obtenir un exemplaire en appelant le 1 866 ONT-TAXS (1 866 668-8297) ou en visitant [ontario.ca/revenu](http://ontario.ca/revenu).*

ISBN: 0-7794-8370-7 (Print)  
ISBN: 0-7794-8372-3 (PDF)  
ISBN: 0-7794-8371-5 (HTML)

© Queen's Printer for Ontario, 2010