

TT 3-2000

Tax Refunds

Bad Debts and Lost, Destroyed, Stolen or Contaminated Tobacco

Please note that the following form, referenced in Ontario Tax Bulletin TT 3-2000, has been replaced as noted:

Previous Form Name (referenced in Bulletin)	Current Form Name(s)
Application for Tobacco Tax Refund TT 21 (pg.5)	Application for Refund - BDT Bad Debt



Tax Refunds

Bad Debts and Lost, Destroyed, Stolen or Contaminated Tobacco

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

Highlights

Income Tax Act (Canada) requirements rescinded

- Previously, one of the conditions necessary for a bad debt refund claim was that the applicant had claimed a deduction for the debt under the *Income Tax Act (Canada)* and the deduction had been allowed. This condition has been eliminated for refund applications received on or after February 1, 2000.

Special Provisions for Collectors

- Collectors applying for a bad debt refund or a tax refund related to lost, destroyed, stolen or contaminated tobacco, are no longer required to attach the supporting information and documentation, although that documentation must be retained for subsequent verification.

Time to Apply Extended to 4 Years

- The period within which a person may apply for a tax refund relating to a bad debt or a tax refund related to lost, destroyed, stolen or contaminated tobacco has been extended from three years to four years. (see chart on [page 4](#)).
- This bulletin replaces the 1988 guide note entitled "*Tobacco Tax Refund for Bad Debts and Loss of Product*". All of the amendments were brought about by O.Reg. 21/00 and in effect since February 1, 2000.
- 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.

Eligibility - Collectors, Importers, Retail Dealers, Wholesalers

Under Regulation 1033, as amended, an *applicant* who is either a collector, importer, retail dealer or wholesaler of tobacco may apply for a refund of an amount on account of tax collectible or payable that has been remitted by the applicant to the Minister, or that has been paid over by the applicant in accordance with the Act for subsequent remittance to the Minister, if:

- the tax is in respect of tobacco sold by the applicant and all or part of the sale price has not been paid and has become an uncollectible debt ("bad debt") , or
- the tax is in respect of tobacco that has been lost, stolen, destroyed or contaminated, and cannot be sold or used by the applicant.

No refund is allowed if:

- any portion of the sale price of the tobacco (to which the bad debt relates) has been assigned by private contract, with or without recourse, to a person other than the Minister. There is an exception, where a portion of the sale price of the tobacco has been assigned for security purposes (ie. a deposit or pledge as a guarantee of the fulfilment of an undertaking or the payment of a loan, to be forfeited in case of default).
- a refund of an amount on account of the tax has previously been made, or the applicant is otherwise entitled under the Act or the regulations to receive or to apply to receive a refund of, or an allowance in compensation for, the amount on account of tax.
- in the case of a refund claim resulting from a bad debt, the applicant and the debtor were not dealing at arm's length within the meaning of section 251 of the *Income Tax Act* (Canada) at the time of the sale of the tobacco to which the debt relates.
- the Minister is not satisfied that:
 - i) the debt is uncollectible [*in the case of a bad debt*], or
 - ii) the lost, destroyed, stolen or contaminated tobacco cannot be used or sold by the applicant and compensation referable to the amount of refund has not been received by the applicant
- the refund application is not made within the designated time limit of four-years (see chart on page 5).

Determination of Refund Amount

- Bad debt (excluding receivership or bankruptcy debt): the amount of the refund which may be claimed is equal to that portion of the amount remitted or paid over by the applicant on account of tax that the uncollectible debt bears to the total sale price of the tobacco.
- Bad debt resulting from receivership or bankruptcy debt: the amount of the refund which may be claimed is equal to that portion of the amount remitted or paid over by the applicant on account of tax, that the receivership or bankruptcy debt bears to the total sale price for the tobacco.
- Lost, stolen, destroyed or contaminated tobacco: the amount of the refund which may be claimed is equal to the amount remitted or paid over by the applicant on account of tax.

Requirements for Applicants who are not Collectors

- A) **Bad Debt Refunds:** If the refund applicant is not a collector under the Act, a refund may be applied for by the applicant delivering a refund application, together with all other information and documents that the Minister requires, including:
- 1) Copies of all invoices for the sale of tobacco in respect of which the refund is claimed.
 - 2) Proof satisfactory to the Minister that the amount claimed was remitted to the Minister, or paid over by the applicant in accordance with the Act, for remittance to the Minister.
 - 3) A signed statement by the applicant certifying the amount of the debt and certifying that the applicant does not have any right to receive total or partial payment in satisfaction of the debt from any person other than the debtor or the debtor's representative.
 - 4) Proof satisfactory to the Minister that all reasonable collection action has been taken to obtain payment of the debt, that the debt is unsecured, that the debt is uncollectible, and that the applicant has written off the debt as uncollectible in accordance with generally accepted accounting principles.

- 5) If the debt is a receivership debt, a signed statement by the applicant certifying that the applicant has filed a claim for the debt to which the refund relates with the debtor's receiver.
 - 6) If the debt is a bankruptcy debt, a copy of the applicant's proof of claim in the bankruptcy, proof satisfactory to the Minister that the claim was not disallowed and that the applicant will not receive payment of the debt from the trustee in bankruptcy or other person.
 - 7) If the debt is a bankruptcy debt or a receivership debt, an assignment to the Minister of the portion of the debt equal to the amount of the refund claimed
- B) Lost, Destroyed, Stolen or Contaminated Tobacco: If the refund applicant is not a collector under the Act, a refund for lost, destroyed, stolen or contaminated tobacco may be applied for by the applicant delivering a refund application, together with all other information and documents that the Minister requires, including:
- 1) A copy of any settlement by or written confirmation from an insurance company confirming settlement of any claim.
 - 2) A copy of any police report for loss due to theft.
 - 3) A copy of any fire marshal's report for a loss due to fire.
 - 4) A copy of the Ministry of Environment's report, with respect to a loss resulting from an accident or spillage.
 - 5) Proof that the amount claimed was remitted to the Minister or paid over by the applicant in accordance with the Act for subsequent remittance to the Minister.

Requirements for Applicants who are Collectors

Refunds for Bad Debt and Lost, Destroyed, Stolen or Contaminated Tobacco:

If the refund applicant is a collector, the following rules apply:

- 1) An application for the refund may be delivered with the collector's monthly tax return. The collector may deduct the amount of the refund claimed from the amount that the collector would otherwise remit to the Minister with the return. The deduction for the amount of the refund claimed should be shown in the return under 'Ministry Authorized Adjustments' (line 5 on return TT-101 S and line B on return TT-101P).
- 2) The collector is no longer required to attach the supporting information and documentation to the refund application. Nevertheless, this documentation must be retained by the collector or subsequent verification by the Minister.
- 3) If all or part of the refund is disallowed, the Minister will issue and serve a statement of disallowance. The collector is then required to remit, with the next tax return or at any earlier time, the amount of the refund disallowed, together with applicable interest, even if an objection or an appeal has been made.

Repayment of Refund to the Ministry of Revenue

If an applicant receives payment in satisfaction of all or part of a debt after a refund has been made, the applicant must reimburse the Minister for the portion of the payment that the Minister determines was paid to the applicant on account of tax payable.

Application Forms

Eligible **collectors and non-collectors** must complete:

- Application for Tobacco Tax Refund - TT 21 for tax refund relating to bad debt and for lost, destroyed, stolen or contaminated tobacco.

Time Limitation Period

An application for a refund must be made within four years. The chart below sets out the details.

Type of Claim	Starting Date for four years
Non-bankruptcy bad debt	The last day of the applicant's fiscal year in which the debt was written off as an uncollectible account.
Bankruptcy or receivership	Date on which the claim was filed with trustee in bankruptcy or receiver
Loss, destruction, theft , or contamination	Date the incident took place

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.

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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