



General Requirements for the Importation of Tobacco under the *Tobacco Tax Act* of Ontario

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

- All references to legislation in this bulletin are to the *Tobacco Tax Act* (TTA) unless otherwise noted
- 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.

Definitions

“Importer” means a person who brings or causes to be brought into Ontario tobacco in bulk.

“Interjurisdictional transporter” means the operator of a motor vehicle, the operator or shipping agent of record of a vessel, the operator of railway equipment on rails or the operator of an aircraft who engages in the transportation of tobacco in bulk and who operates for such purposes,

- a) one or more motor vehicles inside and outside Ontario to which number plates are attached as required by the *Highway Traffic Act*,
- b) one or more vessels under the *Canada Shipping Act*,
- c) railway equipment on rails in connection with and as part of a public transportation system inside and outside of Ontario, or
- d) aircraft, the operator of which is approved as a carrier of goods or passengers under the *Aeronautics Act* (Canada) or regulations made thereunder, or the *National Transportation Act*, 1987 (Canada), or regulations made thereunder, and includes the consignee or consignor of tobacco in bulk who is not the holder of a permit to mark cigarettes.

“Marked cigarettes” mean packages of cigarettes, cartons and cases that are marked or stamped with an indicium as required under the tobacco tax regulations;

“Registered importer” means an importer to whom a registration certificate has been issued under the *Tobacco Tax Act*.

“Tobacco in bulk” means 10,000 or more cigarettes, 200 or more cigars, or 10 kilograms or more of any tobacco, other than cigarettes or cigars. A series of tobacco imports over any six consecutive months, which in sum meets or exceeds 10,000 cigarettes, 200 cigars or 10 kilograms of any other tobacco product, is considered “tobacco in bulk”.

Tobacco brought into or received in Ontario

1. by returning residents (ie. other than tobacco in bulk) from outside Canada
2. from other Canadian jurisdictions
3. by importers (ie. tobacco in bulk)

1) **EXEMPTION FOR RETURNING RESIDENTS FROM OUTSIDE CANADA**

Returning Ontario residents are required to pay tax at a point of entry into Canada on tobacco products (other than tobacco in bulk) purchased outside Canada and brought back into Ontario for consumption.

Every returning resident must make a report to a customs officer, provide the customs officer with all information required in respect of the tobacco and remit the tax payable on the tobacco to the customs officer.

At present, there is an agreement between the Ministry of Revenue and the Federal Government of Canada which authorizes customs officers as agents for the Minister to collect the tax payable on tobacco brought into or delivered to consumers in Ontario.

A returning resident will pay tax only on the quantity of imported tobacco which is subject to the Federal Government's Goods and Services Tax. This is the quantity that exceeds the tobacco allowance under the Federal returning residents exemption rule.

If, owing to this exemption, no tax is payable under the *Excise Tax Act*, then no tax is payable under the *Tobacco Tax Act*.

2) **TOBACCO IMPORTATIONS FROM OTHER CANADIAN JURISDICTIONS**

Every Ontario resident and every person carrying on business in Ontario who brings into Ontario or receives delivery in Ontario of tobacco (other than tobacco in bulk) acquired for personal consumption or for the consumption of others, must report the importation immediately to the Minister of Revenue, supply all invoices and pay the same tax as if the product had been purchased in Ontario.

3) **REQUIREMENTS FOR IMPORTERS**

Importer Registration

In order to import tobacco products in bulk into Ontario, you must be registered as an importer.

To be registered as an importer, you must apply to the Minister of Revenue (Minister), for a registration certificate. The Minister may, as a requirement for the issuance of the registration certificate, impose conditions and restrictions. In addition, the Minister will require all applicants to post security with the Minister. The amount of security required is discussed below.

Security Required for Importation of Tobacco Products Other than Marked Cigarettes

Every importer who acquires tobacco products, other than marked cigarettes, outside Ontario for distribution in Ontario, must provide security to the Minister, in a form acceptable to the Minister.

The amount of security must be equal to the greater of \$10,000 or the average tax that would be collectable and payable by the importer for any three months in the 12-month period immediately preceding the date of the Minister's demand, if the tobacco products were sold to a customer in Ontario in that 12-month period.

Security Required for Importation of Marked Cigarettes

Every importer who acquires marked cigarettes outside Ontario for distribution in Ontario, must provide security to the Minister, in a form acceptable to the Minister. The amount of security must be equal to the greater of \$500,000 or the average three months' tax that would be collectable and payable by the importer calculated on the basis of the twelve-month period immediately preceding the request for security, if the cigarettes were sold to a consumer in Ontario in the twelve-month period.

Collection, Reporting and Transportation Requirements of Importers

Every registered importer must collect and remit to the Minister of Revenue the tax collectable and payable from every person to whom the importer has sold or delivered tobacco and the tax on all tobacco in respect of which the importer is a consumer.

A registered importer is required, by the 10th day of each month, to file a return with the Minister and remit to the Minister with such return the tax collectable and payable by the registered importer during the previous month.

A registered importer who is also an interjurisdictional transporter, must ensure that the driver of any motor vehicle operated on behalf of the importer possesses a notarial copy of the importer's certificate of registration.

A registered importer must provide to an interjurisdictional transporter transporting the importer's tobacco a notarial copy of the importer's certificate of registration.

Importer Registration Requirements for Cigar Retailers/Dealers

Every importer of cigars in bulk must register as an importer and provide security as noted above under the heading "Security Required for Importation of Tobacco Products Other than Marked Cigarettes".

Requirements for Stamping Cigarettes Imported into Ontario

Imported cigarettes for distribution in Ontario must either be marked by a "registered marker" or stamped by a "registered stamper". If the importer is not a "registered marker" (only manufacturers may apply for a marker registration), the importer must hold a permit to stamp the imported cigarettes.

A "registered stamper" (ie. a holder of a permit to stamp cigarettes) must ensure that all imported cigarettes are stamped in accordance with the Act and regulations:

- Each package of cigarettes is stamped (marked) with a tear tape meeting the specification set out in the regulation;
- Each carton of cigarettes is stamped (marked) on each of its end flaps with an indicium meeting the specifications of the regulation;
- Each case of cigarettes is stamped (marked) with the word "Ontario" in the font and size set out in the regulation.

Requirements for Interjurisdictional Transporters

Every interjurisdictional transporter who transports tobacco in bulk must have a certificate of registration as an interjurisdictional transporter and must complete a uniform manifest form for every shipment of tobacco in bulk transported into or out of Ontario.

When transporting tobacco in bulk, every interjurisdictional transporter must ensure that the driver of the motor vehicle in which the tobacco in bulk is being transported possesses:

- the interjurisdictional transporter's registration certificate; and
- a completed uniform manifest form; and
- a copy of the registration certificate issued to the importer or exporter, if the tobacco is being transported for an importer or exporter.

Penalties and Offences

Penalty Re: Unmarked Cigarettes

A penalty equal to three times the tax on marked cigarettes may be assessed against any person who, except as permitted by the Act, possesses 1,000 or more unmarked cigarettes, and if the number of unmarked cigarettes in possession is 10,000 or more, an additional penalty of \$91 for every 200 cigarettes may be assessed in many circumstances. [subsections 29(4) & 29(6)]

Penalty Re: Failure to File a Return or Remit Tax with Return

A penalty equal to 10% of the tax collectable and 5% of the tax payable may be assessed against any person who fails to deliver a return as required or who fails to remit with their return the tax collectable or the tax payable by the person. [subsection 17(3)]

Penalty Re: Failure to Collect Tax

A penalty equal to the amount of the tax collectable plus an additional 10% of that amount may be assessed against any person who fails to collect tax that the person is responsible to collect. [subsection 19(2)]

Penalty Re: Contravention of Act and Seizure of Tobacco in Bulk

A penalty equal to three times the tax that would be payable may be assessed against any person from whom tobacco in bulk is seized for contravening the Act. [subsection 24(12)]

Penalty Re: Unauthorized Sale of Unmarked Cigarettes

A penalty equal to \$39 per carton may be assessed against any person who, except as permitted by the Act or regulations, sells or offers for sale or keeps for sale in Ontario unmarked cigarettes. [subsection 29(3)]

Offence Re: Contravention of the Act

Any person who contravenes a provision of the Act or regulations for which no other penalty exists, is guilty of an offence and on conviction is liable to a fine of not less than \$1,000 and not more than \$25,000. [subsection 35(1)]

Offence Re: Purchase of Tobacco From Unauthorized Person

It is an offence to purchase tobacco for resale from a person who is not designated as a collector, who is not an importer holding a registration certificate or who is not a wholesaler holding a permit. [subsection 35(2)]

Offence Re: Refusal to Collect Tax

Every importer who refuses or neglects to collect tax in accordance with the Act is guilty of an offence and on conviction is liable to a fine of not less than the amount of tax that such person refused or neglected to collect, plus a fine of not less than \$500 and more than \$10,000. [subsection 4(8)]

Offence Re: Registration Certificate

Every person who operates as an importer or exporter in Ontario without holding a registration certificate, or who contravenes any condition or restriction contained in the registration certificate issued to the person or who contravenes any other requirement specified in Section 5 of the Act is guilty of an offence. Upon conviction, such person is liable to a fine of not less than \$200 and not more than \$10,000, plus, in respect of a conviction for operating as an importer or exporter without holding a registration certificate, to a fine of not less than three times the amount of tax payable by consumers under Section 2 of the Act on all tobacco imported into or exported out of Ontario by the person during the period the person did not hold a registration certificate. [subsection5(13)]

Offence Re: Purchase of Tobacco From Unauthorized Importer

Every person who purchases or receives tobacco from an importer who does not hold a registration certificate issued under this Act is guilty of an offence. Upon conviction, such person is liable to a fine of not less than the tax payable by the consumer under Section 2 of the Act on the tobacco so purchased by the person. [subsection5(14)]

Offence Re: Failure of Interjurisdictional Transporter to Produce Documents

Every interjurisdictional transporter transporting tobacco in bulk into or out of Ontario who fails to produce any of the documents required to be kept in the possession of the driver is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than \$1,000 for each document not produced. [subsection6(16)]

Offence Re: Contravention of Permit to Purchase and Sell Unmarked Cigarettes

Every person who, being the holder of a permit to purchase and sell unmarked cigarettes, contravenes the Act or regulations or any condition or restriction contained in the person's permit is guilty of an offence. Upon conviction, such person is liable to a fine of not less than \$1,000 and not more than \$10,000, plus a fine of not less than an amount equal to three times the amount of tax, if any, that should have been paid or remitted by the person in compliance with the Act or the regulations. [subsection9(5)]

Offence Re: Failure to File a Return

Every person who fails to make a return as required is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than 5% of the amount of tax that would have been reported, had the person's return been properly completed and filed. [subsection17(4)]

Offence Re: Failure to Remit Tax

Every person who is required to pay over to a collector or registered importer or to remit to the Minister the tax imposed by this Act and who fails to pay over or remit the tax is guilty of an offence. Upon conviction, such person is liable to a fine of not less than an amount equal to 25% of the tax and not more than an amount equal to twice the amount of the tax that should have been paid over or remitted. [subsection18(6)]

Offence Re: Unauthorized Possession of Unmarked Cigarettes

Every person who, unless permitted under the Act or the regulations, possesses any unmarked cigarettes for the purposes of sale or 1,000 or more cigarettes contained in packages that are not marked or stamped, is guilty of an offence. Upon conviction, such person is liable to a fine of not less than \$300 and not more than \$10,000, plus an additional fine of not less than 30 cents for each cigarette contained in a package of cigarettes that is not marked or stamped in accordance with the regulations. [subsection29(2)]

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)
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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.

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