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Sales to First Nations and the Tobacco Tax Exemption Program

Tobacco Tax Act

Latest Revision: *The revision bar (|) identifies changes to the previous version of this bulletin dated October 2016. For a summary of the changes, see Latest Revision at the end of this document.*

This bulletin explains the tobacco tax exemption program and how it applies to First Nations individuals and bands who purchase tobacco products on First Nations land.

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Overview

First Nations individuals and bands are generally exempt from tobacco tax when they purchase tobacco products on First Nations land. In recognition of this exemption, BC has established a tobacco tax exemption program. The goals of this program are to provide the exemption to those persons who qualify for it, and to protect provincial

revenue by limiting access to tobacco intended for tax-exempt sales to persons who are entitled to the exemption.

Tobacco products that bear the federal government's black stock mark may be sold tax-exempt under the tobacco tax exemption program. The mark indicates that no provincial tobacco tax has been applied to that tobacco. Although the black stock program does not apply to cigars, pipe tobacco, chewing tobacco, snuff and raw leaf tobacco, these tobacco products can also be sold tax-exempt to eligible First Nations.

Definitions

In this bulletin:

- **Band** has the same meaning as in section 2 of the *Indian Act* (Canada).
- **Black stock tobacco** consists of packages, cartons and cases of cigarettes and fine cut tobacco bearing the federal government's black stock mark (peach tear tape or stamp). This tobacco is intended for exempt sales in BC. Only cigarettes and fine cut tobacco bearing this mark may be sold tax-exempt. Black stock products may only be sold by exempt sale retail dealers (ESRDs). For more information on the marking details, see [Bulletin TTA 006](#), *BC's Tobacco Marking Program*.
- An **exempt sale retail dealer** (ESRD) is a person who holds a valid *Exempt Sale Retail Dealer Permit* (ESRD permit).
- A **First Nations individual** is an individual who is an Indian under the *Indian Act* (Canada) and whose property is exempt from taxation under section 87 of the *Indian Act* (Canada) or a provision of a final agreement equivalent to that section.
- **First Nations land** means reserve land or former reserve land now part of treaty lands. First Nations land does not include Nisga'a or Tsawwassen lands.
- **Treaty First Nations individuals** are members of First Nations that have a treaty in effect with Canada and BC that sets out a unique taxation structure.

Applying for an ESRD Permit

Businesses located on First Nations land that wish to make tax-exempt sales of tobacco products to First Nations individuals and bands must apply to us for an ESRD permit. Tax-exempt sales may only be made by those who have been issued an ESRD permit.

How to Apply

To apply for an ESRD permit, you must complete an *Application for Registration as an Exempt Sale Retail Dealer (ESRD) and/or Exempt Fuel Retailer (EFR)* ([FIN 262](#)) and attach the following:

- A copy of your business plan
- A map showing your business location and the location of other ESRDs in the market area (if known)
- A band council resolution approving the sale of tax-exempt tobacco products on First Nations land by your proposed business
- The name of the tobacco wholesaler for your proposed business
- Photographs of your business premises and your tobacco sales and storage facilities

Details regarding other required information are provided on the application form.

Issuing Permits

A permit may be issued if we determine there is not a sufficient supply of, or access to, tax-exempt tobacco products to meet the demand by First Nations customers in your market area.

To determine this, we consider the following:

- The population of First Nations individuals in your market area
- The number and location of ESRDs already in your market area
- The location of your business in relation to other ESRDs
- The total allocation of exempt tobacco products currently authorized to be sold in your market area
- The sales pattern of existing ESRDs in the area (see Sales Patterns below)
- The nature of your proposed business (including hours of operation, type of business) and whether your business will offer any significant added convenience to potential First Nations customers
- Other relevant factors

We may refuse to issue you a permit if we consider there are sufficient retailers holding ESRD permits in your proposed market area. This involves considering whether existing ESRDs have a sufficient allocation of tax-exempt tobacco available for resale, are accessible to customers eligible to purchase tax-exempt tobacco and are therefore able to satisfy the demand for tax-exempt tobacco in the market area.

Also, we may refuse to issue you a permit if:

- you or a person with an interest in your business (e.g. director of a corporation) has a history of not complying with the *Tobacco Tax Act* and regulations, or
- you do not have a permanent location, secure tobacco storage, adequate accounting controls, approval from the band council, or a business plan indicating a viable business.

If your application is approved, a permit will be issued. If your application is denied, you will receive a letter in the mail outlining the reasons you do not qualify for a permit and providing information on your right to appeal that decision.

Purchasing Tax-Exempt Tobacco

Black stock tobacco intended for tax-exempt sales in BC must bear the federal government's black stock mark. The mark indicates that no provincial tobacco tax has been applied to that tobacco.

The black stock program does not apply to cigars, pipe tobacco, chewing tobacco, snuff and raw leaf tobacco. These products do not require a BC mark or stamp and can be available for tax-exempt sales.

As an ESRD, you may only purchase black stock tobacco from your authorized wholesale dealer.

You may only purchase, possess, store or sell black stock tobacco if it is intended for exempt retail sales and may only sell black stock tobacco to First Nations individuals and bands.

You may only store and sell your tax-exempt inventory from the location indicated on your permit, unless you have received written authorization from us to store or sell the tobacco in another location.

Allocations

As an ESRD permit holder, you are authorized by us to purchase a certain quantity (allocation) of tobacco products from your wholesaler without paying **security**.

Note: Security is an amount equal to the tax that must be paid by the final purchaser on the retail sale of the tobacco, unless a specific exemption applies. Ordinarily, a wholesale dealer sells tobacco products to a retail dealer who pays a security to the wholesaler. As no tobacco tax is charged to eligible First Nations purchasers, you do not have to pay security to your wholesaler.

The allocation is intended to allow you to acquire a sufficient inventory of tobacco products for resale so that you can meet the demand of your First Nations customers.

The allocation for new ESRDs is based on the First Nations population and demand for tobacco products in the market area, and any other relevant factors. Where there are existing ESRDs in the market area, the allocations and sales patterns of the existing ESRDs will also be considered.

Increases

If your allocation is not sufficient to meet the demand of your First Nations customers, you may apply to us for an increase in your allocation. For example, an indication your allocation is not sufficient is if you are purchasing your full monthly allocation and selling out your tax-exempt tobacco inventory before the end of the month.

We consider the following when determining if there is sufficient demand for an increase in your allocation:

- The population of First Nations individuals in your market area
- Your current allocation and purchase and sales patterns
- The allocation and purchase and sales patterns of the other ESRDs in your market area
- Any other relevant factors (e.g. the reason you require an allocation increase)

To request an allocation increase, send us an email or letter explaining the reason you require an increase.

Decreases

We regularly review allocation amounts and may decrease your allocation if it is significantly more than you require. We consider the same factors listed above (see Increases) to determine your allocation of tax-exempt tobacco products.

If we increase or decrease your allocation, we will send you a letter outlining the decision and your right to appeal if you disagree. We will also notify your wholesale dealer of your new allocation amount.

Selling Tax-Exempt Tobacco

When you sell tobacco products to a First Nations individual or band on First Nations land, you must verify the purchaser is eligible to purchase tax-exempt tobacco. You must follow the procedures in this section to verify the purchaser is eligible.

Note: First Nations individuals are exempt from paying tobacco tax when they purchase tobacco for personal use. Personal use does not include:

- Purchases of tobacco on behalf of a non-eligible person (a person who would not be entitled to the exemption if making the purchase directly), even if the non-eligible person will reimburse the First Nations individual
- Purchases where a non-eligible person is paying for tobacco requested by a First Nations individual
- Purchases of tobacco for resale to another person, even if that other person is eligible for the exemption

If you have reason to believe that tobacco is not being purchased for the personal use of a First Nations individual, you must not sell tax-exempt tobacco.

First Nations Individuals

Indigenous and Northern Affairs Canada (INAC) issues *Certificate of Indian Status* cards to each individual registered as an Indian under the *Indian Act* (Canada), provided they apply for the card.

Recently, INAC introduced a new secure *Certificate of Indian Status* (SCIS) card. Including the SCIS card, there are four valid types of *Certificate of Indian Status* cards in circulation. In time, the older cards will be replaced with the SCIS card.

Generally, only individuals who hold such a card are eligible to purchase tax-exempt tobacco as First Nations individuals (see below regarding expired cards).

However, Treaty First Nations individuals (e.g. Nisga'a citizens) are not eligible for exempt tobacco products after the applicable date outlined in their treaty. The new SCIS card issued to Treaty First Nations individuals states, "Cardholder is not eligible for sales/transaction tax exemption after DATE".

The other three remaining *Certificate of Indian Status* cards in circulation do not indicate when the cardholder is no longer eligible for the sales tax exemptions (see below for more information on Treaty First Nations individuals that do not qualify for an exemption).

Each *Certificate of Indian Status* card bears the cardholder's photograph, name, signature, and either a band name and number or a registration number. The first three digits of the registration number is the band number.

When presented with a *Certificate of Indian Status* card by an individual requesting to purchase tax-exempt tobacco as a First Nations individual, you must ensure the

individual qualifies for exemption and follow the documentation procedures listed below.

1. Check that the photograph on the status card is that of your customer.
2. Record the individual's name, *Certificate of Indian Status* registration number, and quantity of tobacco products on the *Schedule of Exempt Tobacco Sales (FIN 361)*.
3. Obtain your customer's signature on the *Schedule of Exempt Tobacco Sales (FIN 361)*.
4. Check that this signature matches the signature on the card.

If you do not follow the above procedures to verify that a purchaser is eligible for tax-exempt tobacco, you may be liable for the tobacco tax on the products sold and subject to penalties and interest.

Treaty First Nations Individuals that do not Qualify for Exemption

Nisga'a Nation citizens and Tsawwassen Nation members have *Certificate of Indian Status* cards, but are not eligible for the exemption on tobacco products. If you are presented with a *Certificate of Indian Status* card that identifies the individual as a member of one of the following First Nations, you must not provide a First Nations exemption to that individual. For more information, see Treaty First Nations below.

Number	First Nation	
577	Tsawwassen First Nation	
671	Nisga'a First Nation	Village of Gingolx
677	Nisga'a First Nation	Village of New Aiyansh
678	Nisga'a First Nation	Village of Laxgalt'sap
679	Nisga'a First Nation	Village of Gitwinksihkw

Temporary Confirmation of Registration Document

If an individual has recently applied for and has not yet received their *Certificate of Indian Status Card*, you may accept their *Temporary Confirmation of Registration Document* (TCRD) issued by INAC as proof the individual qualifies to purchase tax-exempt tobacco as a First Nations individual. If an individual provides you with a TCRD, they must also show a piece of government-issued photo identification, such as a passport, driver's licence or BC Identification Card (BCID).

When presented with a TCRD, you must determine whether the individual qualifies for exemption and follow the documentation procedures listed below.

1. Check that the photo identification matches your customer.
2. Check that the information on the photo identification matches the information on the TCRD.
3. Check that the TCRD has not expired.

4. Record the individual's name, *Certificate of Indian Status* registration number, and quantity of tobacco products on the *Schedule of Exempt Tobacco Sales (FIN 361)*.
5. Obtain your customer's signature on the *Schedule of Exempt Tobacco Sales, (FIN 361)*.
6. Check that this signature matches the signature on the photo identification.

Expired Certificate of Indian Status Card

If an individual presents you with an expired *Certificate of Indian Status Card*, you may accept the card if they also provide you with additional government-issued photo identification that matches the individual with the *Certificate of Indian Status Card* (e.g. passport, driver's licence, BCID card).

Bands – Direct Sales

Purchases of tobacco products made in the name of a band (e.g. the purchase order or invoice is specifically made in the name of the band) on First Nations land are exempt from tobacco tax. You must record the band's name, 3-digit number and quantity of tobacco products on the *Schedule of Exempt Tobacco Sales (FIN 361)*, and obtain the signature of the band's representative who takes possession of the tobacco.

Bands – Sales to Authorized Individuals

If an individual purchases tobacco **on behalf of** a band (i.e. the purchase order is not specifically made in the name of the band), the individual must have written authorization from the band to act for the band. The authorization must show the band name and number, be signed by an appropriate band official, and state the tobacco is for band use.

When presented with an individual's written authorization to act for the band, you must verify the individual's identification and follow the documentation procedures listed below.

1. Verify the individual's identification matches the name of the individual authorized by the band.
2. Obtain the signature of the individual purchasing on behalf of the band on the *Schedule of Exempt Tobacco Sales (FIN 361)*.
3. Record the band's name, 3-digit number and quantity of tobacco products on the *Schedule of Exempt Tobacco Sales (FIN 361)*.

Documenting Exempt Sales

For each tax-exempt sale, you must keep a record (at the time the tax-exempt sale is actually made) of the sale on a *Schedule of Exempt Tobacco Sales (FIN 361)*. Tax-exempt purchasers must be physically present and sign the schedules at the time the actual sale is made. You cannot accept a proxy signature by individuals purchasing tax-exempt tobacco on behalf of another person.

Note: The schedules are numbered and you must only use the schedules that have been issued to you by us.

In addition to documenting exempt sales, you must keep records of your tobacco purchases and maintain accurate inventory records. Your records must be available for inspection by provincial tobacco inspectors and must be kept, at all times, at the location from which the tax-exempt sales of tobacco are made.

Limits on Tax-Exempt Sales

First Nations individuals and bands may purchase a maximum of the equivalent of 2 cartons of cigarettes per day, to a maximum of the equivalent of 8 cartons per month (see below for how to calculate carton equivalents). This is known as the 2/8 rule. You cannot sell more than this quantity of tax-exempt tobacco products to a First Nations purchaser (individual or band) without prior approval from us (see Exceptions to the Sales Limit below). Selling more than the 2/8 (400/1600 grams) limit of tax-exempt tobacco can result in the suspension or cancellation of your ESRD permit.

Calculating the Sales Limit

All tax-exempt tobacco products are included in the 2/8 sales limit – not just those sold in cartons. Tobacco products include cigarettes, cigars and loose grams of tobacco (including fine cut tobacco, raw leaf tobacco, pipe tobacco, chewing tobacco and snuff).

When selling tax-exempt tobacco, you must make sure that the total amount of all types of tobacco products (cartons, packages, loose and cigars) sold to a First Nations purchaser does not exceed the equivalent of 2 cartons (400 grams) in a day, or 8 cartons (1600 grams) per month.

To determine if a purchaser meets or exceeds the 2/8 carton limit, the following conversion may be used:

1 Carton = 10 packs of 20 = 8 packs of 25 = 200 cigarettes = 200 grams of loose tobacco

Examples of Sales Within the 2-Carton Daily Limit

Cartons of Cigarettes	Packs of 20 Cigarettes	Loose Tobacco or Cigars	Total Amount Sold
1 carton +	5 packs +	100 grams =	2 cartons (400 grams)
1 carton +	7 packs +	60 grams =	2 cartons (400 grams)
	5 packs +	300 grams =	2 cartons (400 grams)
1 carton +		200 grams =	2 cartons (400 grams)

Examples of Sales that Exceed the 2-Carton Daily Limit

Cartons of Cigarettes	Packs of 20 Cigarettes	Loose Tobacco or Cigars	Total Amount Sold
1 carton +	1 pack +	200 grams =	2.1 cartons (420 grams)
2 cartons +	1 pack +	=	2.1 cartons (420 grams)
2 cartons +		50 grams =	2.25 cartons (450 grams)
	8 packs +	300 grams =	2.6 cartons (460 grams)
2 cartons +		1 or more cigars	More than 2 cartons

Sales Patterns

The 2/8 limit is a maximum limit on sales to the same purchaser. Sales at this limit should only occur in isolated cases when a purchaser requires a greater than normal quantity for their own use. For example, a First Nations purchaser may purchase 2 cartons if they will not have access to an ESRD for an extended length of time.

You should not make frequent sales of 1 or 2 cartons per sale because this is not a reasonable pattern of retail tobacco sales. Most sales should consist of a small number of packages of cigarettes or loose tobacco, consistent with a purchaser’s own use. This is the sales pattern of most ESRDs throughout BC.

If you frequently make sales by the carton and the sales are made to the same customer, we may consider these to be sales to persons who are purchasing for other than their own use. You must take reasonable steps to make retail sales only to purchasers who are eligible for the exemption.

Exceptions to the Sales Limit

If a First Nations purchaser requires more than the 2/8 limit for own use, the purchaser can call us directly at 250 387-9115 and provide us with details of why they are requesting to purchase more than their daily limit (but not more than their monthly limit). We will ask the purchaser to put the request in writing for confirmation and record keeping purposes. If we approve the request, we will assign a special authorization number that is valid for only that purchase. You must record this special authorization number on the *Schedule of Exempt Tobacco Sales (FIN 361)*.

Taxable Sales

Cigarettes and fine cut tobacco sold to persons not eligible for a tobacco tax exemption must bear BC's unique mark indicating provincial tobacco tax has been accounted for. For more information on BC's tobacco marking program, see [Bulletin TTA 006](#), *BC's Tobacco Marking Program*.

Tobacco tax must be collected on all sales of tobacco products to persons who do not qualify for a tobacco tax exemption or persons who do not provide the required documentation to obtain the exemption.

The tax rates on tobacco products change periodically. The current rates are printed on each tax return form and are also on our [website](#).

If you sell taxable tobacco as a retail dealer you must hold and prominently display a valid Tobacco Retail Authorization (TRA) certificate with a unique permit number assigned to each retail location. For more information, see [Bulletin TTA 003](#), *Tobacco Retailers*.

If you sell both exempt and taxable tobacco you must keep separate inventories of black stock tobacco and BC marked tobacco (e.g. packages of cigarettes or fine cut tobacco bearing the BC stamp).

If you do not collect the tobacco tax on sales that do not qualify for exemption, we may issue a *Notice of Assessment* requiring that you pay the tobacco tax that should have been collected on the sale, plus penalty and interest.

Corporations, Cooperatives, Tribal Councils and Band-empowered Entities

Corporations or cooperatives with First Nations shareholders, tribal councils and band-empowered entities are not eligible to purchase tobacco exempt from tax.

Treaty First Nations

Treaty First Nations Governments

Currently, the following First Nations governments have a treaty in effect with Canada and BC that sets out a unique taxation structure.

Effective Date of Treaty	First Nations Government or Government Entity
May 11, 2000	Nisga'a Lisims Government Nisga'a Village Governments Other Government Entities of the Nisga'a Nation See Nisga'a Nation Taxation Agreement and Amendment Agreement
April 3, 2009	Tsawwassen First Nation Government and Government Entities See Tsawwassen First Nation Tax Treatment Agreement and Amendment Agreement
April 1, 2011	Maa-nulth First Nations and Government Entities which include the following distinct Treaty Governments: <ul style="list-style-type: none"> ▪ Huu-ay-aht First Nations ▪ Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations ▪ Toquaht Nation ▪ Uchucklesaht Tribe ▪ Yuułu?if?ath (legally Ucluelet First Nation) See Maa-nulth First Nations Tax Treatment Agreement and Amendment Agreement
April 5, 2016	Tla'amin (Sliammon) First Nation and Government Entities See Tla'amin Tax Treatment Agreement

Treaty First Nations governments and their members do not qualify for the general exemptions for purchases and leases of goods or services on First Nations land and must pay tobacco tax, unless a specific agreement is in place (See Treaty First Nations Lands and Individuals with Tobacco Tax Exemptions below).

Treaty First Nations governments may apply for a refund of taxes paid under certain circumstances. For more information, see the agreements listed in the above table.

Treaty First Nations Lands and Individuals with Tobacco Tax Exemptions

Under respective Final Agreements between the Government of Canada, Province of British Columbia and the following First Nations Governments, the tobacco tax exemptions for First Nations individuals (including the citizens or members of the Treaty First Nations) on the following First Nations lands continues to be in effect as follows.

Treaty First Nation	Tobacco Tax Exemption Expiry Date
Maa-nulth First Nations <ul style="list-style-type: none"> ▪ Huu-ay-aht First Nations ▪ Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations ▪ Toquaht Nation ▪ Uchucklesaht Tribe ▪ Yuułu?ił?ath (legally Ucluelet First Nation) 	May 1, 2019
Tla'amin First Nation (Sliammon)	May 1, 2024

For more treaty information see:

- [Maa-nulth First Nations](#)
- [Tla'amin Nation](#)

Reporting Requirements

Tax Returns

As an ESRD, you must complete monthly tax returns. The tax return and any tobacco tax collected are due on the 10th day of the month following the month the sales being reported took place. For example, the return for sales made during the month of October is due November 10th.

An *Exempt Sale Retail Dealer Tax Return (FIN 359)* will be mailed to you each month. The tax return must be completed and returned by the due date, even if the quantity of exempt tobacco products sold equals the allocation of products purchased without payment of a security.

It is important that you file your tax return on time. If you have a history of late returns you may not be approved for future requests, such as a request to increase your allocation.

If you do not receive a tax return by the due date, you are still responsible for reporting your sales and remitting any tobacco tax due. To obtain the tax return, call us at 250 387-9115.

The completed *Schedule of Exempt Tobacco Sales (FIN 361)* for all exempt sales in the month must be sent to us with the completed tax return. Before submitting the return and schedule, check they are complete. For information on completing the tax return, contact us.

Enforcement

Objectives

The tobacco tax exemption program is intended to ensure that First Nations individuals and bands are able to purchase tax-exempt tobacco products for their own use. However, the program's goals also include protecting provincial revenue by limiting access to tax-exempt tobacco to persons who are not entitled to the exemption. To ensure that this second goal is met, the program includes enforcement activities.

Cancellation of ESRD Permits and TRA Certificates

If you do not follow the requirements of your ESRD permit or your TRA certificate, we may suspend or cancel your permits. If your permit and authorization is suspended or cancelled, you cannot sell tobacco products.

For example, your permit may be suspended or cancelled in the following circumstances:

- You do not file returns when they are due
- You make wholesale sales (sales that are not for the purchasers' own use)
- You do not comply with the conditions of your authorization or requirements of the *Tobacco Tax Act* and regulations

Assessments, Penalties and Interest

As an ESRD, you may only sell tax-exempt tobacco if all the criteria for exemption are met and the sale is completely and properly documented as outlined above. You must collect the tobacco tax on all other sales.

If the tobacco tax due is not collected or remitted as required, we may issue a *Notice of Assessment* requiring you to pay any tax amounts due, plus penalty and interest **charges**.

Retention of Records

You must keep at your principal place of business, records and books of account relating to all your sales of tobacco products. These records and books of account must be kept available for inspection by provincial tobacco inspectors.

These records or books of account, as well as all accounts or vouchers necessary to verify the information in the record or book of account, must be retained for a period of at least five years, unless we authorize otherwise.

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The information in this bulletin is for your convenience and guidance and is not a replacement for the legislation.

Latest Revision

October 2017

- Added information on:
 - what 'personal use' does not include
 - how to accept expired *Certificate of Indian Status Cards* as documentation
 - Added information to reflect that members of the Tsawwassen First Nation do not qualify for the exemption on tobacco products
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References: *Tobacco Tax Act*, Sections 1, 22, 22.1, 22.2, 23, 24 and 35, and Regulations 1, 2, 6, 6.4, 8, 9, 10, 12, 13, 16, 18 and 30