

First Nations Cigarette Allocation System

This publication outlines Ontario's First Nations Cigarette Allocation System outlined in Ontario Regulation 649/93 (O. Reg. 649/93) made under the Tobacco Tax Act. It provides general information only and does not replace the Tobacco Tax Act and Regulations.

Formal Review of the First Nations Cigarette Allocation System

In 2015, the government launched a formal review of the First Nations Cigarette Allocation System, led by independent co-facilitators Kathleen Lickers and Peter Griffin.

The facilitators were tasked with engaging First Nation communities and leadership, as well as other key stakeholders such as the industry and public health experts to gather input and perspectives, and provide options to the government on ways to modernize and improve the allocation system, including alternative approaches that could be used.

The facilitators have provided their final report to the government, which is available on the facilitators' website at allocationreview.ca.

The Ministry of Finance is currently reviewing the facilitators' final report and carefully considering each of the recommendations.

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 authorize 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 Finance (ministry) calculates 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 stamp on the package. Ontario tobacco tax has not been accounted for 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 a federal peach-coloured stamp. Ontario's tobacco tax has not been accounted for on the cigarettes.

The federal peach-coloured stamp became mandatory on all tobacco products in Canada, effective April 1, 2011. Before this, allocation cigarettes had federal peach-coloured tear-tape. As a transitional measure, existing allocation cigarette inventories with tear-tape already in the market may be sold until liquidated.

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 stamp are illegal

Where cigarette packages with the federal, peach-coloured stamp 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 purpose of the allocation system is to ensure that there are enough allocation cigarettes for purchase on a reserve by adult members of the band for their own consumption. The allocation system takes into account:

- on-reserve and off-reserve populations of First Nations adults¹
- smoking patterns of First Nations individuals
- special events on the reserve.

¹ As reported yearly by Indian and Northern Affairs Canada.

Allocation options

Under the allocation system, the Elected Council has the opportunity to:

- obtain an increase in the annual base allocation of 10 per cent for special events and sales to First Nations consumers who are not members of the reserve, and
- enter into a retail agreement with the ministry which entitles Elected Council to obtain an increase in their reserve's annual base allocation of 20 per cent. Upon entering into a retail agreement, Elected Council agrees to:
 - **allot** allocation to reserve retailers and advise the ministry of the allotments it has made
 - **monitor** the sales of allocation cigarettes to ensure that sales are made only to First Nations consumers
 - change the allotment of allocation previously made to on-reserve retailers, and
 - cancel an on-reserve retailer's allotment and transfer the unpurchased portion to another on-reserve retailer.

Where an Elected Council does not sign a retail agreement, the ministry divides the reserve's total allocation between the ministry authorized retailers on that reserve. The ministry considers the number of on-reserve retailers and their volume of business. If the ministry does not know their volume of business, it divides the allocation evenly.

Authorized wholesalers

Each authorized on-reserve retailer is notified of their 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 their retail location on reserve.

Authorized retailers

Selling cigarettes

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 allocation cigarettes on reserve and only for their exclusive use. It is illegal to sell allocation cigarettes to non-First Nations individuals.

Possession of allocation cigarettes

On-reserve retailers (who have been authorized by the Minister of Finance 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

Allocation cigarettes

Allocation cigarettes have a federal peach-coloured stamp around the package and peach-coloured indicia on each end of the carton. They are to be purchased from wholesalers that have a valid authorization issued by the ministry. Only First Nations individuals may be sold tax-exempt cigarettes.

Ontario's tobacco tax has not been accounted for on the cigarettes in packages with the federal peach-coloured stamp.

Allocation year

Allocation year means the one year period from April 1 to March 31.

First Nations individual

For the purposes of the allocation system, a First Nations individual is a person who qualifies as an Indian under the federal Indian Act and who may be in possession of one of the following documents issued by the federal Aboriginal Affairs and Northern Development Canada:

- Certificate of Indian Status Card (Status Card)
- Temporary Confirmation of Registration Document
- Secure Certificate of Indian Status.

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.

Marked cigarettes

Marked cigarettes are packages of cigarettes that have a yellow Ontario adapted federal stamp. The presence of Ontario's yellow stamp on the package of cigarettes indicates that Ontario's tobacco tax has been taken into account.

Marked cigarettes are not part of the allocation system. There is no refund of tobacco tax on cigarettes that have Ontario's yellow stamp.

Reserve

Reserve is land that qualifies as reserve land under the federal Indian Act.

Reserve retailer

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.

Request for written interpretations

To obtain a written interpretation on a specific situation not addressed in this publication, please send your request in writing to:

Ministry of Finance
Advisory Services, Tobacco Tax
33 King Street West, 3rd Floor
Oshawa ON L1H 8H5

For more information

Visit ontario.ca/tobaccotax or contact the Ministry of Finance at 1 866 ONT-TAXS (1 866 668-8297) or 1 800 263-7776 for teletypewriter (TTY).

Cette publication est disponible en français sous le titre « Système d'attribution de cigarettes aux Premières Nations - Taxe sur le tabac ». Vous pouvez en obtenir un exemplaire en appelant le 1 866 ONT-TAXS (1 866 668-8297) ou en visitant ontario.ca/finances.

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