

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Tobacco Products (Licensing)

Circular No. 80

**A GUIDE TO LEGISLATION
TOBACCO PRODUCTS (LICENSING) ACT, 1986**

This circular has been prepared as a general guide to the provisions of the Tobacco Products (Licensing) Act. It is not intended to be a complete statement of the law and must not be construed to waive or modify any legal obligation provided in the Act.

Printed copies of the Act and its regulations are available from the State Information Centre, Grenfell Street Centre Plaza, 25 Grenfell Street, Adelaide.

For further details on any matters relating to the Act mentioned in this Circular contact the Returns Section of the State Taxation Office (08 226 3849 or (08) 226 3830.

29 July, 1993

COMMISSIONER OF STAMPS

INDEX

1. INTRODUCTION	3
2. LICENCES	3
2.1 Types of Licences	3
2.2 UNLICENSED TOBACCO MERCHANTS.....	4
3. CALCULATION OF LICENCE FEE.....	4
4. PAYMENT OF LICENCE FEE	4
4.1 Restricted Licences	4
4.2 Unrestricted Licences.....	5
4.3 Consumption Licences.....	5
5. PENALTIES APPLICABLE UNDER THE ACT	5
6. CHANGE OF OWNERSHIP	5
6.1 Surrender of Licence	5
6.2 Notification of Changed Licence Particulars	5
7. RECORDING DETAILS OF SALES	5
7.1 Keeping Records	5
7.2 Powers of Inspectors	6
8. INTERSTATE TRADE.....	6

1. INTRODUCTION

Tobacco Merchants Licenses are administered pursuant to the Tobacco Products (Licensing) Act, 1986, which came into operation on 18 December, 1986.

The Act provides for consumers of tobacco products to make an appropriate contribution to the collection of revenue, as the consumption of tobacco products places a substantial burden on the State's health services and subsequently on its financial resources.

A tobacco merchant may choose whether or not to be licensed. However, tobacco merchants who choose not to be licensed must comply with a series of requirements relating to the regulation of sales to consumption licence holders. A consumption licence is required where a consumer purchases tobacco from an unlicensed tobacco merchant.

Tobacco licence fees form part of the general revenue of the State with 5.5% of the revenue collected being paid to the South Australian Sports Promotion Cultural and Health Advancement Trust. The basis of calculation of fees are set out in a separate circular.

2. LICENCES

2.1 Types of Licences

"*Restricted*" tobacco merchant licence means a tobacco licence issued subject to the condition that the tobacco merchant must not, during the selling period for which the licence remains in force, sell tobacco products* except tobacco products purchased from another merchant.

"Unrestricted" tobacco merchant licence means a tobacco merchant's licence which is not subject to any condition.

"Consumption" licences may be issued to a person where that person decides to consume tobacco products purchased from an unlicensed tobacco merchant.

In the ordinary course of business it is usual for retailers to hold a ***Restricted*** licence and for wholesalers to hold an ***Unrestricted*** licence.

*Tobacco product means

- (a) a cigarette
- (b) a cigar
- (c) cigarette or pipe tobacco
- (d) tobacco prepared for chewing or sucking

(e) snuff

or

(f) any other product containing tobacco of a kind prescribed by regulation.

2.2 Unlicensed Tobacco Merchants

In the event that a tobacco merchant chooses not to be licensed the Tobacco Products (Licensing) Act, 1986 places the following obligations on that person/organisation:-

An unlicensed tobacco merchant who proposes to carry on business must notify the Commissioner before commencing to do so.

PENALTY: \$10,000

An unlicensed tobacco merchant must display a sign informing prospective purchasers that the merchant is an unlicensed tobacco merchant.

PENALTY: \$20,000

An unlicensed tobacco merchant must obtain from every person who purchases a tobacco product from the merchant a declaration (as prescribed in the Act) and forward it to the Commissioner.

PENALTY: \$20,000

An unlicensed tobacco merchant must lodge monthly returns with the Commissioner setting out various details of tobacco products sold during the preceding month.

PENALTY: \$20,000

3. CALCULATION OF LICENCE FEE

This is dealt with in a separate circular.

4. PAYMENT OF LICENCE FEE

4.1 Restricted Licences

Two months prior to expiration of a licence, an application for renewal will be posted to the licence holder for **payment prior to expiration** of the current licence.

4.2 Unrestricted Licences

In accordance with the agreement between the Treasurer and unrestricted licence holders, payment to be made by 2.30 pm on the 15th day of the calendar month preceding the licence month.

4.3 Consumption Licences

Payable upon application in writing stating the applicant's name and address and containing a statement that the applicant is of or over the age of 16 years.

5. PENALTIES APPLICABLE UNDER THE ACT

Various penalties may be applied against persons who do not comply with the provisions of the Act.

6. CHANGE OF OWNERSHIP

6.1 Surrender of Licence

If a licence holder sells or ceases to operate a business, then the licensee should complete the "Surrender of Licence" section on the back of the issued licence and return it to the State Taxation Office. A licence is not transferable, therefore any subsequent operator must apply for a separate licence if the business is to be operated on a licensed merchant basis unless the new operator is already licensed in respect of other premises.

6.2 Notification of Changed Licence Particulars

If a licence holder changes the premises from which tobacco products are sold or opens additional premises, the licence holder is required to notify the State Taxation Office in writing advising of the changes or alternatively may attend at the Office. No fees are charged for these amendments.

7. RECORDING DETAILS OF SALES

7.1 Keeping Records

A tobacco merchant is required to keep written records (accounts, records, invoices, receipts, books and documents etc.) of dealing in tobacco products including purchasing and selling thereof and is required to preserve those records for a period of at least 5 years.

7.2 Powers of Inspectors

A tobacco merchant is required to produce records of dealings in tobacco products to an Inspector of the State Taxation Office upon request.

Amongst other things an Inspector may -

- enter premises used for tobacco merchandising or in which records relating to tobacco merchandising are kept;
- inspect tobacco products on the premises;
- require any person on the premises to produce records relating to tobacco merchandising for inspection by the inspector (records may be retained for further inspection);
- if any such record is not a documentary record in the English language - may require any person to produce for the Inspector a written statement in the English language of the record;
- put to any person on the premises questions relating to tobacco merchandising;
- if an Inspector has reasonable grounds to suspect that a tobacco merchant has committed an offence against this Act, seize all tobacco products:
 - (a) on or adjacent to the merchant's premises;or
 - (b) apparently in the merchant's possession for the purpose of sale.

8. INTERSTATE TRADE

From time to time some tobacco merchants located interstate attempt to solicit business in South Australia. The Tobacco Products (Licensing) Act, 1986 places a clear obligation on the holder of a restricted licence to ensure when purchasing tobacco products for sale in pursuance of that licence that the vendor is a licensed tobacco merchant. Some merchants investigated by the State Taxation Office who have been soliciting business are not licensed pursuant to the Act.

There are avenues available to the restricted licence holder to assist in determining whether the vendor is a licensed tobacco merchant. Section 30 of the Act requires licensed tobacco merchants to endorse every invoice that they issue in respect to the sale of tobacco products by wholesale.

Section 30 provides “A licensed tobacco merchant shall endorse or cause to be endorsed on every invoice issued by the merchant in relation to the sale of tobacco products by wholesale:

**SOLD BY LICENSED TOBACCO MERCHANT -
LICENCE NO. (*here insert the number of the licence*)**

PENALTY \$10,000’

The Act provides that a merchant who breaches the condition of a restricted licence may be prosecuted in respect of that breach and/or be subjected to reassessment of licence fees based on the value of tobacco products sold that were purchased in that manner at a rate of 105%. Furthermore if an offence against the provisions of the Act is suspected the tobacco products in the merchant’s possession or on or adjacent to the merchant’s premises may be seized.

Any merchant who is in doubt about the status of a vendor or person offering to supply tobacco products should contact the State Taxation Office to discuss the matter or clarify the merchant’s credentials.

Historical Use Only