

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Tobacco Products

Circular No. 152
(Replaces Circular No. 80)

TOBACCO PRODUCTS REGULATION ACT 1997
A GUIDE TO LEGISLATION

This Circular has been prepared as a general guide to the provisions of the *Tobacco Products Regulation Act 1997*, in respect of the licensing requirements, in particular the obligations placed on the retailer. This circular is designed to assist retailers, it is not intended to be a complete statement of the law and must not be constructed or construed to waive or modify any legal obligation provided in the Act.

For specific information on any of the health aspects contained in the Act contact should be made directly with the South Australian Health Commission on (08) 8226 6050.

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

For further details on any matters relating to the Act mentioned in this Circular please contact Revenue Services, State Taxation Office on (08) 8204 9888.

19 June, 1997

COMMISSIONER OF STATE TAXATION

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1. INTRODUCTION.

Tobacco Merchants Licences are administered pursuant to the *Tobacco Products Regulation Act 1997*, as amended by the *Tobacco Products Regulation (Miscellaneous) Amendment Act 1997*, which came into operation on 5 June 1997. This Act repeals the *Tobacco Products (Control) Act 1986* and the *Tobacco Products (Licensing) Act 1986*.

In recognition of the fact that the consumption of tobacco products impairs the health of the citizens of the State and places a substantial burden on the State's financial resources, the objects of this Act are;

- (a) to create an economic disincentive to consumption of tobacco products and secure from consumers of tobacco products an appropriate contribution to State revenue (irrespective of the source of the tobacco products) by a scheme under which -
 - (i) licence fee will be payable by consumers who take out consumption licences; but
 - (ii) tobacco merchants who choose to pay ad valorem licence fees will free consumers from the licensing requirements for the consumption of tobacco products obtained through the merchant; and
- (b) to reduce the incidence of smoking and other consumption of tobacco products in the population, especially young people by the implementation of a number of initiatives;
- (c) to protect non-smokers from unwanted and unreasonable exposure to tobacco smoke; and
- (d) generally, to promote and advance sports, culture, good health and healthy practices and the prevention and early detection of illness and disease related to tobacco consumption.

This Circular deals primarily with licensing issues associated with the Act.

2. LICENCES.

A person must not carry on the business of tobacco merchandising unless the person holds a tobacco merchant's licence. Maximum penalty \$20 000.

Class and terms of licences.

Tobacco merchants' licences are divided into the following classes;

- (a) class A licence -

- (i) **unrestricted class A licence** (formerly unrestricted tobacco merchant licence) - licences that are not subject to any condition and
- (ii) **restricted class A licence** (formerly restricted tobacco merchant licence) - licences that are subject to a condition that the licensee must not, during the period for which the licence remains in force;
 - (A) sell tobacco products ¹ except tobacco products purchased from the holder of a class A licence; or
 - (B) purchase tobacco products for sale except from the holder of a class A licence.

If the condition of a licence is not observed;

- (a) the licensee is **guilty of an offence** and liable to a fine not exceeding \$20 000; and
 - (b) in the case of a restricted class A licence, the licence fee for each month in which the condition is not observed will be **reassessed** by the Commissioner as if the licence were an unrestricted class A licence and the relevant period were that month.
- (b) class B licence - licences that are subject to a condition that the licensee must not, during the period for which the licence remains in force, sell tobacco products by retail without obtaining from the purchaser a declaration in the prescribed form before the purchaser leaves the licensee's premises or, if the tobacco product is not taken by the purchaser from the premises, before it is dispatched to the purchaser.

A class B licence holder may sell tobacco products to an unrestricted class A licence holder or a consumer who holds a current consumption licence. The condition attached to a restricted class A licence **precludes**

¹ Tobacco product means,

- (a) a cigarette; or
- (b) a cigar; or
- (c) cigarette or pipe tobacco; or
- (d) tobacco prepared for chewing or sucking; or
- (e) snuff; or
- (f) any other product containing tobacco of a kind prescribed by regulation and includes any packet, carton, shipper or other device in which any of the above is contained.

the sale of tobacco products by a class B licence holder to a restricted class A licence holder. A class B licence holder **must not sell** tobacco products to consumers who do not hold current consumption licences.

In the ordinary course of business it would be usual for retailers to hold a *restricted class A licence* and for wholesalers/manufacturers to hold an *unrestricted class A licence*.

3. CANCELLATION OR SUSPENSION OF LICENCE.

The Commissioner may, by written notice to the holder of a tobacco merchant's licence, **suspend or cancel** the licence if satisfied that the licensee or an associate of the licensee has contravened this Act or a corresponding law or is not or is no longer for any reason a **fit and proper person**.

4. CALCULATION OF LICENCE FEE.

Unrestricted Class A Licence (Wholesaler/Manufacturer).

Where an unrestricted class A licence holder has sold tobacco products, to the holder of a **class A licence**, the licence fee is \$2 per month, plus the prescribed percentage¹ of the aggregate value of tobacco products of each prescribed category² so sold by the merchant during the relevant period³.

Where an unrestricted class A licence holder has sold tobacco products, to the holder of a **class B licence**, the licence fee is \$2 per month, plus a percentage equal to the prescribed percentage¹ plus 5 per cent of the aggregate value of tobacco products of each prescribed category² so sold by the merchant during the relevant period³.

¹ Prescribed percentage means:

- (a) in relation to a category A tobacco product - 100 per cent; or
- (b) in relation to a category B tobacco product - 102 per cent; or
- (c) in relation to a category C or a category D tobacco product - 105 per cent.

² Prescribed categories means;

- (a) category A tobacco products - where the average tar content is 1,2 or 4;
- (b) category B tobacco products - where the average tar content is 8;
- (c) category C tobacco products - where the average tar content is 12, 16 or a greater number;
- (d) category D tobacco products - any other tobacco products.

³ **“relevant period”**, in relation to the grant of a tobacco merchant's licence, means the calendar month ending one calendar month before the commencement of the calendar month for which the licence is, or is to be, granted.

Restricted Class A Licence (Retailer) and Class B Licence.

The fee for a restricted class A licence or a class B licence is \$2 per month to a maximum of \$10 for periods between 5 and 12 months. A restricted class A licence **may be** automatically renewed for a period of up to twelve months. A class B licence **will not necessarily be renewed automatically and at this stage a new application will be required for each licence month.**

The fee for a restricted class A licence is subject to reassessment if the conditions of the licence are not observed and the merchant may be liable to prosecution.

Consumption Licence.

A Consumption Licence may be granted for the following terms:

<u>Period</u>	<u>Fee</u>
3 Months	\$500
6 Months	\$1 000
12 Months	\$2 000

5 CLASS B LICENCE HOLDERS.

A class B licence holder must lodge monthly returns with the Commissioner setting out various details of tobacco products sold during the preceding month. Penalty \$20 000.

A class B licence holder must display a sign informing prospective purchasers that the merchant is a class B licence holder. Penalty \$20 000.

A class B licence holder must obtain from every person who purchases a tobacco product by retail from the merchant a declaration (as prescribed in the Act) and forward it to the Commissioner. Penalty \$20 000.

A class B licence holder may sell tobacco products to an unrestricted class A licence holder or a consumer who holds a current consumption licence. The condition attached to a restricted class A licence **precludes the sale** of tobacco products by a class B licence holder to a restricted class A licence holder. A class B licence holder **must not sell** tobacco products to consumers who do not hold current consumption licences.

6 CHANGE OF OWNERSHIP.

Surrender of Licence.

If a licence holder sells or ceases to operate a business, then the licensee is to 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 , unless the new operator is already licensed in respect of other premises.

Historical Use Only

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. RECORD KEEPING.

A tobacco merchant is required to keep all records (accounts, records, invoices, receipts, books and documents etc) of dealings in tobacco products including purchasing and selling thereof and is required to retain those records for a period of at least 5 years. Penalty \$10 000

8 POWERS OF AUTHORISED OFFICERS.

A person who, hinders or obstructs, uses abusive, threatening or insulting language, refuses or fails to comply with the directions of an authorised officer or refuses or fails to answer questions to the best of the persons knowledge, information or belief, when questioned by an authorised officer is guilty of an offence. Penalty \$20 000

9 UNLICENSED MERCHANTS / INTERSTATE TRADE.

The Tobacco Products Regulation Act 1997 places a clear obligation on the holder of a restricted class A licence to ensure when purchasing tobacco products for sale in pursuance of that licence that the **vendor is an appropriately licensed tobacco merchant within South Australia.**

There are avenues available to the restricted class A licence holder to assist in determining whether the vendor is a licensed tobacco merchant within South Australia. Section 27 of the *Tobacco Products Regulation Act 1997* requires licensed tobacco merchants to endorse or cause to be endorsed on every invoice issued by the merchant in relation to the sale of tobacco products by wholesale, the following statement;

“SOLD BY LICENSED TOBACCO MERCHANT - LICENCE No. (here insert the licence number).”

Penalty \$10 000.

A public register of licence holders is available for inspection, during normal office hours at the State Taxation Office, State Administration Centre, Victoria Square East, Adelaide.

The Tobacco Products Regulation Act 1997* provides that a merchant who breaches the condition of a restricted class A licence may be prosecuted in respect of that breach (fine not exceeding \$20 000) and/or be subject to reassessment of licence fees based on the value of tobacco products sold that were purchased in that manner at a rate of 105 per cent, 107 per cent, 110 per cent depending on the category of tobacco products so sold. Furthermore if an offence against the provisions of the *Tobacco Products Regulation Act

1997 is suspected, tobacco products in the merchant's possession or on or adjacent to the merchant's premises may be seized.

If convicted of an offence against this Act the Commissioner may cancel or suspend a merchant's licence.

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 status.

10 **TRANSITIONAL PROVISIONS.**

Existing licences issued under the now repealed legislation remain in force until their expiry date. Licence holders **must now** abide by the provisions of the *Tobacco Products Regulation Act 1997* as outlined in this Circular.

Historical Use Only

TOBACCO PRODUCTS REGULATION ACT 1997
RESTRICTED CLASS A LICENCE

Tobacco Merchants Licences are administered pursuant to *the Tobacco Products Regulation Act 1997*, as amended by the *Tobacco Products Regulation (Miscellaneous) Amendment Act 1997*, which came into operation on 5 June 1997. This Act repeals the *Tobacco Products (Control) Act 1986* and the *Tobacco Products (Licensing) Act 1986*.

A State Taxation Office Circular No 152 which provides a general overview of the new licensing requirement has been sent to all existing restricted licence holders. If you do not have a copy of that Circular it is available from the State Taxation Office on (08) 8204 9888.

If you have a current restricted tobacco merchants licence issued under the now repealed legislation it will remain in force as a restricted class A tobacco merchants licence by virtue of the transitional provisions until its expiry date. It is therefore important that you are aware specifically of your obligations as a restricted class A licence holder.

Section 11 (1) of the Tobacco Products Regulation Act 1997, states:

“A person must not carry on the business of tobacco merchandising unless the person holds a tobacco merchant’s licence.” Maximum penalty \$20 000

Section 12(1)(a)(ii) of the Tobacco Products Regulation Act 1997, states:

“restricted class A licences - licences that are subject to a condition that the licensee **must not**, during the period for which the licence remains in force -

- (A) **sell** tobacco products except tobacco products purchased from the holder of a class A licence, or
- (B) **purchase** tobacco products for sale except from the holder of a class A licence.”

The licensee **cannot purchase** tobacco products from the holder of a class B licence or any unlicensed person or company.

The Tobacco Products Regulation Act 1997 provides that a merchant who breaches the condition of a restricted class A licence may be prosecuted in respect of that breach (fine not exceeding \$20 000) and/or be subject to reassessment of licence fees based on the value of tobacco products sold that were purchased in that manner at a rate of 105 per cent, 107 per cent, 110 per cent depending on the category of tobacco products so sold. Furthermore if an offence against the provisions of the Tobacco Products Regulation Act 1997 is suspected, tobacco products in the merchant’s possession or on or adjacent to the merchant’s premises may be seized.

The Commissioner may, by written notice to the holder of a tobacco merchant's licence, suspend or cancel the licence if satisfied that the licensee or an associate of the licensee has contravened this Act or a corresponding law or is not or is no longer for any reason a fit and proper person.

The *Tobacco Products Regulation Act 1997* places a clear obligation on the holder of a restricted class A licence to ensure when purchasing tobacco products for sale in pursuance of that licence that the **vendor is an appropriately licensed tobacco merchant within South Australia.**

There are avenues available to the restricted class A licence holder to assist in determining whether the vendor is a licensed tobacco merchant within South Australia. Section 27 of the *Tobacco Products Regulation Act 1997* requires licensed tobacco merchants to endorse or cause to be endorsed on every invoice issued by the merchant in relation to the sale of tobacco products by wholesale, the following statement;

“SOLD BY LICENSED TOBACCO MERCHANT - LICENCE No. (here insert the licence number).”

If invoices provided by wholesalers to you do not contain the above information you should clarify that the person is appropriately licensed.

A public register of licence holders is available, during normal office hours at the State Taxation Office, State Administration Centre, Victoria Square East, Adelaide and 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 on (08) 8204 9888 to discuss the matter or clarify the merchants status.

Historical Use Only

CLASS B LICENCES

This Notice has been prepared as a general guide to the provisions of the *Tobacco Products Regulation Act 1997*, in respect of the licensing requirements, in particular the obligations placed on the retailer. This circular is designed to assist retailers, it is not intended to be a complete statement of the law and must not be constructed or construed to waive or modify any legal obligation provided in the Act.

A State Taxation Office Circular No 152 which provides a general overview of the new Act and its requirements is available from the State Taxation Office on (08) 8204 9888.

A person must not carry on the business of tobacco merchandising unless the person holds a tobacco merchant's licence. Maximum penalty \$20 000.

Should you decide to merchandise tobacco products without holding a restricted class A licence you can apply for a class B licence.

The Commissioner may refuse to grant a tobacco merchant's licence if satisfied that the applicant or any associate of the applicant has contravened this Act or a corresponding law or is not for any reason a fit and proper person.

LICENCE FEE.

The fee for a class B licence is \$2 per month to a maximum of \$10 for periods between 5 and 12 months. A class B licence will not necessarily be renewed automatically and at this stage a new application will be required for each licence month.

CONDITION OF A CLASS B LICENCE.

Class B licences are subject to a condition that the licensee must not, during the period for which the licence remains in force, sell tobacco products by retail without obtaining from the purchaser a declaration (as prescribed in the Act) before the purchaser leaves the licensee's premises or, if the tobacco product is not taken by the purchaser from the premises, before it is dispatched to the purchaser. The licensee must forward those declarations to the Commissioner. Penalty \$20 000.

A class B licence holder must lodge monthly returns with the Commissioner setting out various details of tobacco products sold during the preceding month. Penalty \$20 000.

A class B licence holder must display a sign informing prospective purchasers that the merchant is a class B licence holder. Penalty \$20 000.

A class B licence holder may sell tobacco products to an unrestricted class A licence holder or a consumer who holds a current consumption licence. The condition attached to a restricted class A licence precludes the sale of tobacco products by a class B licence holder to a restricted class A licence holder. A class B licence holder must not sell tobacco products to consumers who do not hold current consumption licences.

CHANGE OF OWNERSHIP.

Surrender of Licence.

If a licence holder sells or ceases to operate a business, then the licensee is to 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, unless the new operator is already licensed in respect of other premises.

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.

RECORDING KEEPING.

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

Penalty \$10 000

POWERS OF AUTHORISED OFFICERS.

A person who, hinders or obstructs, uses abusive, threatening or insulting language, refuses or fails to comply with the directions of an authorised officer or refuses or fails to answer questions to the best of the persons knowledge, information or belief, when questioned by an authorised officer is guilty of an offence. Penalty \$20 000.

The *Tobacco Products Regulation Act 1997* provides that a merchant who breaches the condition of their licence may be prosecuted in respect of that breach (fine not exceeding \$20 000). Furthermore if an offence against the provisions of the Tobacco Products Regulation Act 1997 is suspected, tobacco products in the merchant's possession or on or adjacent to the merchant's premises may be seized.

If convicted of an offence against this Act the Commissioner may cancel or suspend a merchant's licence.