



Ottawa, September 9, 2008

# MEMORANDUM D4-3-2

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## **In Brief**

### **DUTY-FREE SHOP – LICENSING**

1. This memorandum supersedes Memorandum D4-3-2, dated February 11, 1991.
2. Revisions made to this memorandum are the result of organizational changes, burden reductions and technical reviews.



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# MEMORANDUM D4-3-2

## DUTY-FREE SHOP — LICENSING

### LEGISLATION

For the regulations governing the guidelines and general information contained in this directive, refer to Memorandum D4-3-1, *Duty Free Shop — Regulations*.

### GUIDELINES AND GENERAL INFORMATION

#### APPLICATION AND SELECTION PROCESS

##### Eligibility for a license

1. The eligibility requirements for a licence to operate a duty-free shop vary depending upon whether it is located at a land border crossing or at an airport. Refer to Memorandum D4-3-1, *Duty Free Shop — Regulations*.
2. Note that the *Customs Act*, Section 24 (1), provides the Minister of Public Safety (Minister) with discretion when considering whether to issue duty-free shop licences. The Minister has the discretion to consider matters that are relevant to the overall intent of the program and government policy in the choice of a suitable operator.
3. The duty-free shop licence issued by the Minister is a licence to acquire goods free of certain duties and taxes (other taxes, such as excise taxes, may be applicable) for sale to travellers who will immediately export the goods from Canada. The licence holds no monetary value and it does not express an implied guarantee of income in its own right, nor does it grant the licensee privileges in other government programs or jurisdictions where other licences, permits or contracts are required.

##### Letter of Interest

4. Anyone interested in establishing a duty-free shop at a site where there is no existing shop may submit a letter of interest to the Duty Free Shop Program (Program) at the address provided at the end of this memorandum.
5. The Program will review the request. If the border crossing point or airport proposed is accepted and it is determined that it would be in the public best interest to select an operator through a formal call for applications, the Program will inform the Frontier Duty Free Association (FDFA) and the Association of Canadian Airport Duty Free Operators (ACADFO) that a formal call for applications is to be run at a specific location.

### Advertisements

6. Applications for the establishment of duty-free shops at land border crossings are invited by means of national advertisements undertaken by the Canada Border Services Agency (CBSA). A call for applications may include more than one site. A separate application is required for each location.
7. At airports, the airport authority invites applications for a lease for the establishment of duty-free shops. The successful candidate then makes a separate application to the Minister for a licence.

### Application

8. The application package is composed of an applicant identification form and various schedules that must be completed in their entirety and supported by all the required documentation in order for the application to be recommended for further consideration. Application packages are made available at all regional CBSA offices, at the CBSA offices nearest to the proposed location(s) of the duty-free shop(s) at the time of advertising and from the Program office.
9. For land-border duty free shops, the successful applicant is determined by the Minister on the basis of an evaluation. If more than one application qualifies, preference is given to an applicant that qualifies as a small or medium-size business and an eligibility list is created, ranking the applications in order of their final scores. Proposals are evaluated against specific selection criteria in five main groupings: financial stability, management capabilities and retail/allied experience, site and building proposal, business plan and proposed level of local employment.
10. The Program advises all applicants of the results of the selection process. Unsuccessful applicants may make a written request for feedback on the evaluation of their application after the award of the licence. Original copies of all applications will be retained by the CBSA for a period of 6 years. Duplicate copies may be returned to the applicant(s) if a written request for their return is received from the applicant(s) within 90 days from the date on which the official announcement of the successful operator(s) is given.

## LICENSING PROCEDURES

### Issuance of a License

11. Upon notification, the successful applicant must submit Form BSF664, *Duty Free Shop Application/Amendment* to the Program office with the documents listed below to complete his or her application. The applicant will have 90 days to submit the required documents; otherwise, he or she could be disqualified.

### Documentation to be submitted

12. The applicant must submit copies of the following:
- (a) The lease and appropriate schedules;
  - (b) Facility plans or blueprints indicating location(s) of any proposed duty-free shop concessions and related storage area(s);
  - (c) Interior layouts and plans or blueprints for any proposed warehouse, off-site storage facility or any type of kiosk;
  - (d) The operator's security bond; and
  - (e) The required provincial liquor authority to sell alcohol. When the permit cannot be acquired before the duty-free licence is issued, the licensee shall not sell alcohol products until the permit is received and a copy forwarded to the CBSA.

### License Amendment

13. If the Minister intends to amend a licence, the licensee will be advised in writing and such an amendment would not come into effect until 90 days from the date on which such notice was given. Refer to Memorandum D4-3-1, *Duty Free Shop — Regulations*.

14. Before an amendment comes into effect, a licensee may make representations as to why the licence should not be amended. Where there are existing restrictions imposed in a licence, the licensee may apply in writing to the Minister requesting their removal. Such requests will only be considered when the reason(s) for the restriction(s) no longer exist. The request is to be mailed to the Program office at the address at the bottom of this Memorandum.

### LICENSE RENEWAL

15. A duty-free shop licence is issued for a maximum of five-year period and the duty free shop licensee must request renewal of its licence at least three months prior to the date of expiry of the existing licence, by submitting the appropriate form to the Duty Free Shop Program office at the address at the end of this memorandum.

- (a) **Land border duty free shop**; Form BSF664, *Duty Free Shop Application/Amendment*. The form provide the names, titles, telephone numbers, residential

addresses, dates of birth, and citizenship of the company's board of directors and owners.

- (b) **Airport duty free shop**; Form BSF664, *Duty Free Shop Application/Amendment*. The form provide the names, titles, telephone numbers, residential addresses, dates of birth, and citizenship of the company's board of directors and owners.

16. The licensee must also include a copy of the security bond for the duty free shop and, where applicable, the required provincial liquor authority to sell alcohol. When the permit cannot be acquired prior to the renewal of the duty free licence, the licensee is not to sell alcohol products till the permit is received and a copy forwarded to CBSA.

17. When a request for licence renewal has been submitted, a review covering the entire licensing period for the duty-free shop operation will be conducted by the CBSA. This review will confirm that the licensee continues to meet all obligations under the law as explained in the regulations.

18. If the Minister is satisfied with the outcome of the review, a new licence will be issued for a further five-year period or for a shorter period at the Minister's discretion.

19. If a duty-free shop licence runs its full term and is not renewed, it will be deemed to have expired and to be no longer valid.

### LICENSE SUSPENSION OR CANCELLATION

20. The Minister may suspend or cancel a licence for the operation of a duty-free shop pursuant to the provisions of the regulations. If the Minister suspends or cancels a licence, he will advise the licensee by registered mail of the reasons this action is proposed and the effective date of suspension or cancellation. The duty-free shop will be locked and secured by the CBSA.

21. In the case of cancellation, the shop will remain locked and sealed until the inventory has been properly disposed of. In the case of suspension, the duty-free shop will remain locked and sealed until a decision is made by the Minister either to reinstate or cancel the licence.

22. Regardless of whether a duty-free shop licence has been cancelled, suspended or has expired, immediately after the effective date, the local CBSA chief of operations will conduct a complete audit of the duty-free shop inventory and ensure that records are maintained and up to date.

### Suspension

23. A licensee will be given 30 days to make written representations as to why his or her licence should be reinstated. A suspended licence may subsequently be reinstated where the duty-free shop licensee can demonstrate to the satisfaction of the Minister that the reason(s) for the suspension no longer exist and that appropriate steps have been taken to prevent occurrences of a similar nature in the future.

## **Cancellation**

24. The licensee will be given 90 days from the date of notification to make written representation as to why the licence should not be cancelled.

25. A notice of cancellation may be withdrawn before its effective date if the licensee can demonstrate, to the satisfaction of the Minister, that the reason(s) for the cancellation no longer exist.

26. At any time when a licensee wishes to terminate the licence to operate a duty-free shop, the Minister is to be notified in writing three months before the proposed effective date of cancellation, where circumstances allow. This notice of cancellation, which should include an outline of the licensee's plans for disposing of the assets of the shop, must be submitted to the Program office.

## **RECEIVERSHIP OR BANKRUPTCY**

27. Where it is reasonable to expect that a duty-free shop will be placed under the control of a receiver or may go bankrupt, the duty-free shop licensee must notify the Minister immediately in writing through the Program office.

28. The trustees and the licensee may be given limited access to the duty-free shop but no sale or movement of goods is to take place without prior approval of the CBSA. In the case of a receivership, the licensee may request that the receivers be allowed to continue the day-to-day operations of the shop. In the case of a bankruptcy, the duty-free shop licence is automatically cancelled.

29. In both cases, the local CBSA office will conduct a complete audit of the duty-free shop inventory and ensure that records are up to date.

## **CHANGE IN NAME OR OWNERSHIP STRUCTURE**

30. Where a corporation holds a licence, and a shareholder or shareholders wish to dispose of their interests in the entity holding the duty-free shop licence, or a licensee wants to change the name by which the duty-free shop is known or the company name in which the licence was issued, Form BSF664, *Duty Free Shop Application/Amendment* needs to be completed and forwarded to the Program office along with a certified copy of the amendment to the articles of incorporation, if applicable, and copies of documents pertaining to the sale and/or transfer of any shares is to be sent to the Program office.

31. For clarification purposes, a change in ownership structure may involve:

(a) contraction – where one or more of a group of shareholders decide to withdraw from the entity that holds the duty free shop licence;

(b) expansion – where one or more new shareholders are added; or

(c) redistribution – where shares are transferred between existing shareholders; and,

(d) shares up for sale- where all shareholders sell their shares to another corporation, or to a Canadian citizen or permanent resident or to both.

## **Death of Shareholder or Sole Proprietor**

32. When shares are sold or transferred to the remaining partner(s) or shareholder(s) in the event of the death of a partner or major shareholder of a duty free shop, Form BSF664, *Duty Free Shop Application/Amendment* is to be completed and forwarded to the Program office along with a certified copy of the amendment to the articles of incorporation, if applicable.

33. In the event of the death of a sole proprietor, Form BSF664, *Duty Free Shop Application/Amendment* is to be completed by the executor of the estate and sent to the Program office. The duty-free shop is to be locked and secured by a border services officer and a Form K26, *Notice of Detention*, is to be issued to the beneficiary or executor of the estate.

34. In such an event, the local CBSA office will conduct a complete audit of the duty-free shop upon receiving such notification and ensure all inventory records are up to date. The representative (estate) will be held responsible for all deficiencies or other discrepancies noted in the inventory audit. The beneficiary or executor will be given limited access to the duty-free shop but no sale or movement of goods is to take place without prior approval of the CBSA.

35. The beneficiary or the executor will be granted 30 days from the date that official notification of cancellation of the licence is given to make an application to the Minister for a licence to continue operating the duty-free shop.

36. If the beneficiary does not wish to make an application for the continued operation of the duty-free shop or the application made by the beneficiary is rejected, goods in the duty-free shop inventory are to be disposed of in accordance with the provisions of Memorandum D4-3-5, *Duty Free Shop – Inventory Control and Sales Requirements* and the licence will be cancelled.

## **ADDITIONAL INFORMATION**

37. Any inquiries regarding this memorandum should be directed to the following:

Export Process and Duty Free Shop Program  
Licensing, Export and Accounting Policy Division  
Border and Compliance Programs Directorate  
Admissibility Branch  
Canada Border Services Agency  
Ottawa ON K1A 0L8

Telephone: 613-948-7117 or 613-954-7215  
Fax: 613-946-0241

**REFERENCES**

<b>ISSUING OFFICE –</b> Export Process and Duty Free Shop Program Licensing, Export and Accounting Policy Division Admissibility Branch	<b>HEADQUARTERS FILE –</b>
<b>LEGISLATIVE REFERENCES –</b>	<b>OTHER REFERENCES –</b>
<b>SUPERSEDED MEMORANDA “D” –</b> D4-3-2, February 11, 1991	

Services provided by the Canada Border Services Agency are available in both official languages.

