

The tobacco products definition of *wholesale price* has been revised to be the price for which the tobacco products are sold to a distributor, before the allowance of any discount, trade allowance, rebate or other reduction, and including the federal excise taxes paid by the manufacturer or other person. The invoice received by a distributor for its purchase of a tobacco product is presumptive evidence of the wholesale price of the tobacco product. This definition applies to all tobacco products possessed in this state for sale on or after October 1, 2020.

Accordingly, TSB-M-13(12)M is no longer in effect for purchases on or after October 1, 2020.

See TSB-M-20(1)M, (1)S, *Summary of Alcoholic Beverages Tax, Cigarette and Tobacco Products Tax, and Sales and Use Tax Changes Enacted in the 2020-2021 Budget Bill*



## **Determining a Distributor's Wholesale Price of Cigars Using the Industry Standard Adjustment Ratio**

This memorandum explains an alternative method that distributors of tobacco products may use to determine the wholesale price of cigars for purposes of computing the amount of tax due under Article 20 of the Tax Law.

Article 20 of the Tax Law imposes a tax on all tobacco products, including cigars, possessed in this state by any person for sale. Cigars are taxed at the rate of 75% of the *wholesale price*, which is defined as "(t)he established price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate or other reduction." The tax is imposed on any distributor who imports, or causes to be imported into this state any tobacco products, or who manufactures any tobacco products in this state.

### **Determining the wholesale price**

Generally, if a distributor of tobacco products is unable to determine the established price for which a manufacturer sold cigars, the manufacturer's invoice price is presumed to be the wholesale price. However, there may be instances when a manufacturer's established price and invoice price are not available, such as when a distributor purchases the cigars from an intermediary. In these situations, the distributor's purchase price is presumed to be the wholesale price, unless:

- evidence of a lower wholesale price can be established, or
- any industry standard of markups relating to the purchase price in relation to the wholesale price is established.

### **Industry standard adjustment ratio for cigars**

The regulations provide that the Tax Department may determine the wholesale price of any tobacco product based on available evidence. Accordingly, to promote a fair and efficient administration of the tobacco products tax, the department has established an *industry standard adjustment ratio* for cigars equal to the average manufacturer's selling price divided by the average distributor's purchase price. This adjustment ratio can be used to determine the wholesale price of cigars when an established price or manufacturer's invoice price is not available.

Effective for cigars imported into New York on or after December 1, 2013, the adjustment ratio is **38%** (0.38). This percentage was determined based on a review of U.S. and foreign cigar manufacturers' selling prices of cigars and distributors' purchase prices of cigars derived from department records and industry data. To determine the wholesale price of cigars, the distributor multiplies its purchase price by the adjustment ratio. The resulting amount is multiplied by 75% (0.75) to determine the tax due.

*Example: A distributor purchased 100 cigars from an intermediary for \$150. The distributor is unable to determine the price the manufacturer sold the cigars for, so he elects to use the industry standard adjustment ratio to determine the wholesale price for purposes of computing the tax he owes on the importation of the cigars. The distributor multiplies his purchase price by the adjustment ratio (0.38) to establish a wholesale price of \$57. The wholesale price is then multiplied by the tax rate of 0.75 to arrive at a tax due of \$42.75.*

If you believe that the wholesale price is **lower** than the amount you computed using the adjustment ratio, you must use a manufacturer's invoice or other evidence to establish the lower price.

**Little cigars, snuff, and other tobacco products not affected**

The industry standard adjustment ratio applies only to cigars. It does not apply to little cigars, snuff, or other tobacco products.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.