

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, and section 475 (not subdivided) of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Cigarette Tax Regulations and the Cigarette Marketing Standards Regulations, as published in Article 1 and Article 2, respectively, of Subchapter I of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subparagraph (i) of paragraph (2) of subdivision (b) of section 74.2 of such regulations is amended to read as follows:

(i) The department will furnish State of New York cigarette stamps in [75 cent,] \$1.50[,], and \$1.87½ denominations or the equivalent thereof. In addition, joint stamps of a distinctive color and design will be furnished in \$3.00 (\$1.50 State tax plus \$1.50 city tax per package of 20 cigarettes) and \$3.755 (\$1.87½ State tax plus \$1.88 city tax per package of 25 cigarettes) denominations, or the equivalent thereof, for use on packages of cigarettes to be sold in the City of New York. Such stamps will be of an adhesive and/or heat transfer nature. (Stamps will also reflect prepayment of sales tax on cigarettes imposed under section 1103 of the Tax Law.)

Section 2. Subparagraph (ii) of paragraph (2) of subdivision (b) of section 82.2 of such regulations is amended to read as follows:

(ii) Agent's presumptive minimum markups. In the absence of filing with the Department of Taxation and Finance satisfactory proof of a lesser cost of doing business of the agent making the sale, the cost of doing business by the agent shall presumed to be:

("a") $\frac{7}{8}$ percent (.875%) of the basic cost of cigarettes plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes with respect to sales to CMSA wholesale dealers;

("b") $1\frac{1}{2}$ percent (1.5%) of the basic cost of cigarettes plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes with respect to sales to chain stores; and

("c") $3\frac{7}{8}$ percent (3.875%) of the basic cost of cigarettes plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes with respect to sales to CMSA retail dealers.

Section 3. Paragraph (2) of subdivision (e) of section 82.2 of such regulations is amended to read as follows:

(2)(i) Agent's sales to other agents (illustrated). A licensed cigarette agent may not sell cigarettes in New York State to any other agent at a price which is less than the basic cost of cigarettes or, using the example in section 80.2 of this Title, \$55 per carton. (See section 74.3(a)(3) of this Title for rules pertaining to custom stamping.)

(ii) Agent's sales to CMSA wholesale dealers (illustrated). In the absence of substantiating a lesser actual cost of doing business, a licensed cigarette agent may not sell cigarettes in New York State to any CMSA wholesale dealer at a price which is less than the basic cost of cigarettes plus $\frac{7}{8}$ percent of such basic cost plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes (the presumed cost of doing business by the agent with respect to such sales) or, using the example in section 80.2, of this Title, \$55.69 per carton computed as follows:

Basic cost of cigarettes.....		\$55.00
Presumed cost of doing business		
Percentage mark-up (.875% of \$55.00).....	+	.48125
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Cost of the agent for sales to CMSA wholesale dealers (rounded to next higher cent).....		\$55.69

(iii) Agent's sales to chain stores (illustrated). A licensed cigarette agent may not sell cigarettes in New York State to a chain store having 15 or more retail outlets, excluding vending machine operators, where such cigarettes are delivered to a central warehouse owned and operated by such chain store and which are then delivered by the chain store to its retail outlets, at a price which is less than the basic cost of cigarettes or, using the example in section 80.2 of this Title, \$55.00 per carton. In the case of other chain stores and in the absence of substantiating a lesser actual cost of doing business, a licensed cigarette agent may not sell cigarettes in New York State to such a chain store at a price which is less than the basic cost of cigarettes plus $1\frac{1}{2}$ percent of such basic cost plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of

20 cigarettes (the presumed cost of doing business by the agent with respect to such sales) or, using the example in section 80.2 of this Title, \$56.03 per carton computed as follows:

Basic cost of cigarettes.....	\$55.00
Presumed cost of doing business	
Percentage mark-up (1.5% of \$55.00).....	+ .825
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....	+ .20
Cost of the agent for sales to chain stores (rounded to next higher cent).....	\$56.03

(iv) Agent's sales to CMSA retail dealers (illustrated). In the absence of substantiating a lesser actual cost of doing business, a licensed cigarette agent may not sell cigarettes in New York State to any CMSA retail dealer at a price which is less than the basic cost of cigarettes plus $3\frac{7}{8}$ percent of such basic cost plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes (the presumed cost of doing business by the agent with respect to such sales) or, using the example in section 80.2 of this Title, \$57.34 per carton computed as follows:

Basic cost of cigarettes.....	\$55.00
Presumed cost of doing business	
Percentage mark-up (3.875% of \$55.00).....	+ \$2.13125
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....	+ .20
Cost of the agent for sales to CMSA retail dealers (rounded to next higher cent).....	+ 57.34

(v) Agent's sales to consumers (illustrated). A licensed cigarette agent may not sell cigarettes in New York State at retail, or to any person who cannot prove its status as other than a consumer, at a price which is

less than the cost of the CMSA retail dealer or, using the example in section 80.2 of this Title, \$61.35 per carton. See section 82.5 of this Part.

Barbara G. Billet
Acting Commissioner and Executive Deputy
Commissioner of Taxation and Finance

DATED: Albany, New York
January 15, 2008