

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, and Chapter 93 of the Laws of 2002, the Commissioner of Taxation and Finance, at an open meeting held on even date with the signing of this rule, hereby makes and adopts as an emergency measure 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. Subdivision (a) of section 74.2 of such regulations is amended to read as follows:

(a) The tax on cigarettes possessed for sale in the State is paid by the purchase of stamps as hereinafter provided and the payment of the tax is evidenced by the affixation of such stamps to individual packages of cigarettes. In the case of cigarettes possessed for sale in the City of New York, both State and city taxes must be paid. This [may be] is done by purchasing and affixing joint stamps showing payment of both taxes. [If packages of cigarettes already bearing stamps showing payment of the State tax alone are delivered within the City of New York for sale, separate stamps showing payment of the city tax must also be purchased and affixed to such packages.]

Section 2. 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 \$[1.58] 3.00 (\$1.50 State tax plus [8 cents] \$1.50 city tax per package of 20 cigarettes) and \$[1.97½] 3.755 (\$1.87½ State tax plus [10 cents]

\$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.

Section 3. Paragraph (1) of subdivision (b) of section 74.3 of such regulations is REPEALED and paragraphs (2), (3), and (4) of such subdivision are renumbered to be paragraphs (1), (2), and (3).

Section 4. The introductory paragraph of paragraph (1) of subdivision (b) of section 74.3 of such regulations, as renumbered by Section 3 of this rule is amended to read as follows:

(1) [Notwithstanding any provisions of paragraph (1) of this subdivision to the contrary, as] As compensation for an agent's services and expenses in affixing stamps showing payment of tax in the amount of 75 cents for each 10 cigarettes, or fraction thereof, plus for packages in excess of 20 cigarettes, 37½ cents for each additional five cigarettes or fraction thereof, each agent is allowed commissions computed on the par value thereof. In the case of stamps representing payment of State tax only, and in the case of joint stamps showing payment of both State tax and New York City tax, the "par value" for purposes of this paragraph shall be deemed to mean the face value of such stamps representing payment of State cigarette tax only at the rate imposed by law. The rates of such commissions [during the period of time in which the city tax is imposed at the basic rate of 4 cents for each 10 cigarettes or fraction thereof] are as follows:

Section 5. Paragraph (4) of subdivision (a) of section 80.2 of such regulations is amended to read as follows:

(4) "Illustration." This illustration is fundamental to this Article and will be referred to throughout in further explanation of the cigarette marketing standards. For illustration purposes only, the basic cost of cigarettes is assumed to be \$[40.00] 55.00 per carton, computed as follows:

Invoice cost (per carton), less all trade discounts except discounts for cash.....	[\$24.20]	<u>\$25.00</u>
New York State cigarette tax.....		15.00
New York City cigarette tax.....	[.80]	+ <u>15.00</u>
Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>

Section 6. 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, [\$40.00] \$55.00 per carton.

(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 **f** 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, [\$40.55] \$55.69 per carton computed as follows:

Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>
Presumed cost of doing business		
Percentage mark-up (.875% of [\$40.00] <u>\$55.00</u>).....	[+ .35]	+ <u>.48125</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Cost of the agent for sales to CMSA wholesale dealers (<u>rounded to next higher cent</u>).....	[\$40.55]	<u>\$55.69</u>

(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, [\$40.00] \$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 1½ 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, [\$40.80] \$56.03 per carton computed as follows:

Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>
Presumed cost of doing business		
Percentage mark-up (1.5% of [\$40.00] <u>\$55.00</u>).....	[+ .60]	+ <u>.825</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Cost of the agent for sales to chain stores (<u>rounded to next higher cent</u>).....	[\$40.80]	<u>\$56.03</u>

(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 3½ 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, [\$41.75] \$57.34 per carton computed as follows:

Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>
Presumed cost of doing business		
Percentage mark-up (3.875% of [\$40.00] <u>\$55.00</u>).....	[+ 1.55]	<u>+ 2.13125</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Cost of the agent for sales to CMSA retail dealers (<u>rounded to next higher cent</u>).....	[\$41.75]	<u>\$57.34</u>

(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, [\$44.68] \$61.35 per carton. See section 82.5 of this Part.

Section 7. Subdivision (f) of section 82.3 of such regulations is amended to read as follows:

(f) "Illustrations." (1) The following illustrations exemplify the provisions of this section with respect to purchases and sales of cigarettes by CMSA wholesale dealers. Such illustrations are a continuance of section 82.2(e)(2)(ii) of this Part and will be referred to throughout this Part in further explanation of the cigarette marketing standards.

(2) Purchases by the CMSA wholesale dealer (illustrated). A CMSA wholesale dealer may not purchase cigarettes in New York State at a price which is less than the cost of the agent with respect to sales to CMSA wholesale dealers or, using the cited example in section 82.2, [\$40.55] \$55.69 per carton.

(3)(i) CMSA wholesale dealer's sales to other CMSA wholesale dealers (illustrated). A CMSA wholesale dealer may not sell cigarettes in New York State to any other CMSA wholesale dealer at a price which is less than the cost of the agent with respect to sales to CMSA wholesale dealers or, using the cited example in section 82.2, [\$40.55] \$55.69 per carton.

(ii) CMSA wholesale dealer's sales to chain stores (illustrated). In the absence of substantiating a lesser actual cost of doing business, a CMSA wholesale dealer may not sell cigarettes in New York State to any chain store at a price which

is less than the basic cost of cigarettes plus the cost of doing business by the agent with respect to sales to CMSA wholesale dealers plus 3 percent of the basic cost (the presumed cost of doing business by the CMSA wholesale dealer with respect to such sales) or, using the cited example in section 82.2, [\$40.80] \$56.03 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>
Agent's presumed cost of doing business		
Percentage mark-up (.875% of [\$40.00] <u>\$55.00</u>).....	[+ .35]	+ <u>.48125</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Wholesaler's presumed cost of doing business (.625% of [\$40.00] <u>\$55.00</u>).....	[+ .25]	+ <u>.34375</u>
Cost of the CMSA wholesale dealer for sales to chain stores		
<u>(rounded to next higher cent)</u>	[\$40.80]	<u>\$56.03</u>

(iii) CMSA wholesale dealer's sales to CMSA retail dealers (illustrated). In the absence of substantiating a lesser actual cost of doing business, a CMSA wholesale dealer 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 the cost of doing business by the agent with respect to sales to CMSA wholesale dealers plus 3 percent of the basic cost (the presumed cost of doing business by the CMSA wholesale dealer with respect to such sales) or, using the cited example in section 82.2, [\$41.75] \$57.34 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>
Agent's presumed cost of doing business		
Percentage mark-up (.875% of [\$40.00] <u>\$55.00</u>).....	[+ .35]	+ <u>.48125</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Wholesaler's presumed cost of doing business (3% of [\$40.00] <u>\$55.00</u>).....	[+ 1.20]	+ <u>1.65</u>
Cost of the CMSA wholesale dealer for sales to CMSA retail dealers		
<u>(rounded to next higher cent)</u>	[\$41.75]	<u>\$57.34</u>

(iv) CMSA wholesale dealer's sales to consumers (illustrated). A CMSA wholesale dealer 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 cited example in section 82.2, [\$44.68] \$61.35 per carton. See section 82.5 of this Part.

Section 8. Paragraphs (2) and (3) of subdivision (d) of section 82.4 of such regulations are amended to read as follows:

(2) Purchases by a chain store (illustrated). A chain store may not purchase cigarettes in New York State at a price which is less than the cost of the agent or the cost of the CMSA wholesale dealer, with respect to sales to chain stores or, using the cited examples in sections 82.2 and 82.3, [\$40.00] \$55.00 or [\$40.80] \$56.03 per carton, as the case may be.

(3) Sales by chain stores (illustrated). A chain store may not sell cigarettes in New York State at a price which is less than the cost of the CMSA retail dealer or, using the cited examples in sections 82.2 and 82.3, [\$44.68] \$61.35 per carton. See section 82.5 of this Part.

Section 9. Paragraphs (2) and (3) of subdivision (e) of section 82.5 of such regulations are amended to read as follows:

(2) Purchases by a CMSA retail dealer (illustrated). A CMSA retail dealer may not purchase cigarettes in New York State at a price which is less than the cost of the agent or the cost of the CMSA wholesale dealer, with respect to sales to CMSA retail dealers or, using the cited examples in sections 82.2 and 82.3, [\$41.75] \$57.34 per carton.

(3) Sales by CMSA retail dealers (illustrated). In the absence of substantiating a lesser actual cost of doing business, a CMSA retail dealer, including an agent, a CMSA wholesale dealer, a chain store or any other person with respect to their sales of cigarettes to consumers, may not sell cigarettes in New York State at a price which is less than the basic cost of cigarettes plus the cost of doing business by the agent with respect to sales to CMSA retail dealers plus seven percent of the sum of the basic cost plus the cost of doing business by the agent (the presumed cost of doing business by the CMSA retail dealer) or, using the cited examples in sections 82.2 and 82.3, [\$44.68] \$61.35 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$40.00]	<u>\$55.00</u>
Agent's presumed cost of doing business		
Percentage mark-up (3.875% of [\$40.00] <u>\$55.00</u>).....	[+ 1.55]	<u>+ 2.13125</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Retailer's presumed cost of doing business		
(7% of: ([\$40.00] <u>\$55.00</u> + (3.875% of [\$40.00] <u>\$55.00</u>) + .20).....	[+ 2.1954]	<u>+ 4.0131875</u>
Cost of the CMSA retail dealer (rounded to next higher cent).....	[\$44.68]	<u>\$61.35</u>

Section 10. This rule shall take effect on July 2, 2002; provided, however, section 1 of the rule concerning the reference to a separate New York City stamp shall take effect on the date the Notice of Emergency Adoption is filed with the Department of State.

Arthur J. Roth
Commissioner of Taxation and Finance

DATED: Albany, New York
June 28, 2002