

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, subdivision (1) of section 472, and section 475 (not subdivided), of the Tax Law, and Part D of Chapter 134 of the Laws of 2010, 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 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 70.1 of such regulations is amended to read as follows:

(a) Except as otherwise provided in this Subchapter or the Tax Law, all cigarettes:

(1) possessed in New York State by any person for sale; or

(2) used in New York State by any person, are subject to the cigarette tax imposed pursuant to article 20 of such law. The cigarette tax is imposed at the rate of [~~\$2.75~~] \$4.35 for each 20 cigarettes or fraction thereof. Provided, however, if a package of cigarettes contains more than 20 cigarettes, the rate of tax on those cigarettes in excess of 20 is [~~68¾ cents~~] \$1.0875 for each five cigarettes or fraction thereof. Accordingly, a package of 20 cigarettes is subject to a tax of [~~\$2.75~~] \$4.35, while a package of 25 cigarettes is subject to a tax of [~~\$3.4375~~] \$5.4375.

Section 2. Paragraph (2) of subdivision (a) of section 74.1 of such regulations is amended to read as follows:

(2) The tax on the possession of cigarettes for sale is imposed at the rate of [~~\$2.75~~] \$4.35 for each 20 cigarettes or fraction thereof. If a package of cigarettes contains more than 20 cigarettes, the rate of tax on those cigarettes in excess of 20 is [~~68¾ cents~~] \$1.0875 for each five cigarettes or fraction thereof.

Section 3. 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 [~~\$2.75~~] \$4.35 and [~~\$3.4375~~] \$5.4375 denominations or the equivalent thereof. In addition, joint stamps of a distinctive color and design will be furnished in [~~\$4.25~~] \$5.85 ([~~\$2.75~~] \$4.35 State tax plus \$1.50 city tax per package of 20 cigarettes) and [~~\$5.3175~~] \$7.3175 ([~~\$3.4375~~] \$5.4375 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 4. The introductory paragraph of paragraph (1) of subdivision (b) of section 74.3 of such regulations is amended to read as follows:

(1) As compensation for an agent's services and expenses in affixing stamps showing payment of tax in the amount of [~~\$2.75~~] \$4.35 for each 20 cigarettes, or fraction thereof, plus for packages in excess of 20 cigarettes, [~~68¾ cents~~] \$1.0875 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 are as follows:

Section 5. Paragraph (1) of subdivision (b) of section 74.5 of such regulations is amended to read as follows:

(1) The tax on cigarettes used in the State is imposed at the rate of [~~\$2.75~~] \$4.35 for each 20 cigarettes or fraction thereof. If a package of cigarettes contains more than 20 cigarettes, the rate of tax on those cigarettes in excess of 20 is [~~68¾ cents~~] \$1.0875 for each five cigarettes or fraction thereof.

Section 6. Section 79.2 is repealed and a new section 79.2 is added to read as follows:

Section 79.2 Tax due on June 30, 2010, inventory based on increased cigarette tax. (Tax Law, Sections 471 and 475).

(a) Effective July 1, 2010, amendments made by Part D of Chapter 134 of the Laws of 2010 to section 471 of article 20 of the Tax Law increased the tax on cigarettes possessed in New York State by any person for sale from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. Provided, however, if a package of cigarettes contains more than 20 cigarettes, the rate of tax on those cigarettes in excess of 20 increased from 68¾ cents to \$1.0875 for each five cigarettes or fraction thereof.

(b) Every dealer of cigarettes, including agents licensed to purchase and affix stamps, shall take a physical inventory of all cigarettes possessed in this State as of the close of business on June 30, 2010. In addition, every dealer who is a licensed agent shall take a physical inventory of all unaffixed cigarette tax stamps possessed as of the close of business on such date. Because it may be impossible to take a physical inventory of cigarettes in all vending machines that are on location throughout the State, a dealer may take as many physical inventories of the contents of such machines as is possible with available personnel. For those machines that cannot be physically inventoried as of the close of business on June 30, 2010, cigarettes may be accounted for at one-half of the normal fill capacities of such machines, as reflected in the individual inventory records maintained for such machines.

(c)"Returns and payments." (1) On or before September 20, 2010, every such dealer shall file a return with the Department of Taxation and Finance, on a form prescribed by the department for such purpose, showing the quantity of all cigarettes and unaffixed stamps possessed as of the June 30, 2010, close of business inventory. Such return must reflect the entire wholesale and/or retail inventories of the dealer within the State,

as required by the department, regardless of the number of business locations of the dealer. Every dealer must pay, with the filing of such return, an additional amount of tax for all cigarettes in such inventory which are contained in packages bearing stamps evidencing tax payment at the rates in effect prior to July 1, 2010, and for all unaffixed cigarette tax stamps in such inventory evidencing tax payment at such rates. The additional amount of tax shall be paid at the rate of \$1.60 for each 20 cigarettes or fraction thereof unless cigarettes are contained in packages of more than 20, in which case the additional amount of tax for those cigarettes in excess of 20 shall be at the rate of 40 cents for each five cigarettes or fraction thereof (\$2.00 per package of 25 cigarettes). Such tax shall be paid regardless of whether the affixed or unaffixed stamps show payment of the New York State tax or both the New York State and City of New York taxes.

(2) The additional amount of tax due on inventory based on the increased cigarette tax must be paid by check or money order, payable to NYS Cigarette Tax.

(d) Failure to file a return on cigarette and cigarette tax stamp inventory or to pay the additional amount of tax due thereon, or failure to comply with any provision of this section may result in civil or criminal sanctions, or both.

Section 7. 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 [~~\$68~~] \$86.00 per carton, computed as follows:

Invoice cost (per carton), less all trade discounts except discounts for cash.....	[\$25.50]	<u>\$27.50</u>
New York State cigarette tax.....	[27.50]	<u>43.50</u>
New York City cigarette tax.....		+ 15.00
Basic cost of cigarettes.....	[\$68.00]	<u>\$86.00</u>

Section 8. 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, [\$68] \$86.00 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 7/8 percent of such basic cost plus 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, [\$68.80] \$86.96 per carton computed as follows:

Basic cost of cigarettes.....	[\$68.00]		<u>\$86.00</u>
Presumed cost of doing business			
Percentage mark-up (.875% of [\$68.00] <u>\$86.00</u>).....	[.595]	+	<u>.7525</u>
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)	[\$68.80]		<u>\$86.96</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 of this Title, [\$68] \$86.00 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 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 5 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, ~~[\$69.22]~~ \$87.49 per carton computed as follows:

Basic cost of cigarettes.....	[\$68.00]		<u>\$86.00</u>
Presumed cost of doing business			
Percentage mark-up (1.5% of [\$68.00] <u>\$86.00</u>).....	[1.02]	+	<u>1.29</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton		+	.20
Cost of the agent for sales to chain stores	[\$69.22]		<u>\$87.49</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 3⅞ percent of such basic cost plus 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, ~~[\$70.84]~~ \$89.54 per carton computed as follows:

Basic cost of cigarettes.....	[\$68.00]		<u>\$86.00</u>
Presumed cost of doing business			
Percentage mark-up (3.875% of [\$68.00] <u>\$86.00</u>).....	[\$2.635]	+	<u>\$3.3325</u>
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).....	[70.84]		<u>\$89.54</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 of this Title, [~~\$75.80~~] \$95.80 per carton. See section 82.5 of this Part.

Section 9. Paragraphs (2) and (3) of subdivision (f) of section 82.3 of such regulations are amended to read as follows:

(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 of this Part, [~~\$68.80~~] \$86.96 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 of this Part, [~~\$68.80~~] \$86.96 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 5/8 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 of this Part, [~~\$69.22~~] \$87.49 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$68.80]		<u>\$86.00</u>
Agent's presumed cost of doing business			
Percentage mark-up (.875% of [\$68.80] <u>\$86.00</u>)	[.595]	+	<u>.7525</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+	.20
Wholesaler's presumed cost of doing business (.625% of [\$68.00] <u>\$86.00</u>)	[.425]	+	<u>.5375</u>
Cost of the CMSA wholesale dealer for sales to chain stores	[\$69.22]		<u>\$87.49</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 of this Part, [\$70.84] \$89.54 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$68.00]		<u>\$86.00</u>
Agent's presumed cost of doing business			
Percentage mark-up (.875% of [\$68.00] <u>\$86.00</u>).....	[.595]	+	<u>.7525</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+	.20
Wholesaler's presumed cost of doing business (3% of [\$68.00] <u>\$86.00</u>).....	[2.04]	+	<u>2.58</u>
Cost of the CMSA wholesale dealer for sales to CMSA retail dealers (rounded to next higher cent).....	[\$70.84]		<u>\$89.54</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 of this Part, [\$75.80] \$95.80 per carton. See section 82.5 of this Part.

Section 10. 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. Using the cited examples in sections 82.2 and 82.3 of this Part, 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 may

not purchase cigarettes from an agent for less than [~~\$68~~] \$86.00 a carton. Other chain stores may not purchase cigarettes from an agent or a CMSA wholesale dealer for less than [~~\$69.22~~] \$87.49 per carton.

(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 of this Part, [~~\$75.80~~] \$95.80 per carton. See section 82.5 of this Part.

Section 11. 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 of this Part, [~~\$70.84~~] \$89.54 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 of this Part, [~~\$75.80~~] \$95.80 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$68.00]		<u>\$86.00</u>
Agent's presumed cost of doing business			
Percentage mark-up (3.875% of [\$68.00] <u>\$86.00</u>).....	[2.635]	+	<u>3.3325</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+	.20
Retailer's presumed cost of doing business			
7% of: ([\$68.00] <u>\$86.00</u> + (3.875% of [\$68.00] <u>\$86.00</u>) + .20).....	[4.95845]	+	<u>6.2673</u>

Cost of the CMSA retail dealer (rounded to next higher cent)..... [\$75.80] \$95.80

Section 12. This rule shall take effect on July 1, 2010; provided, however, section 6 shall take effect on the date the Notice of Emergency Adoption is filed with the Department of State.

Dated: Albany, New York
June 29, 2010

Jamie Woodward
Acting Commissioner and Executive Deputy
Commissioner of Taxation and Finance