

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 1 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 a permanent rule 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 [~~55½~~] 75 cents for each 10 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 [~~27¾~~] 37½ cents for each five cigarettes or fraction thereof. Accordingly, a package of 20 cigarettes is subject to a tax of [~~\$1.11~~] \$1.50, while a package of 25 cigarettes is subject to a tax of [~~\$1.38¾~~] \$1.87½.

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 [~~55½~~] 75 cents for each 10 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 [~~27¾~~] 37½ cents 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 [~~55½ cent, \$1.11 and \$1.38¾~~] 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 [~~\$1.19~~] \$1.58 (~~[\$1.11]~~ \$1.50 State tax plus 8 cents city tax per package of 20 cigarettes) and [~~\$1.48¾~~] \$1.97½ (~~[\$1.38¾]~~ \$1.87½ State tax plus 10 cents 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 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 [~~55½~~] 75 cents for each 10 cigarettes, or fraction thereof, plus for packages in excess of 20 cigarettes, [~~27¾~~] 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 2 cents for each 10 cigarettes or fraction thereof are as follows:

Section 5. The introductory paragraph of paragraph (2) of subdivision (b) of section 74.3 of such regulations is amended to read as follows:

(2) Notwithstanding any provisions of paragraph (1) of this subdivision to the contrary, as compensation for an agent's services and expenses in affixing stamps showing payment of tax in the amount of [55½] 75 cents for each 10 cigarettes, or fraction thereof, plus for packages in excess of 20 cigarettes, [27¾] 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 6. 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 [55½] 75 cents for each 10 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 [27¾] 37½ cents for each five cigarettes or fraction thereof.

Section 7. Section 79.2 of such regulations is amended to read as follows:

Section 79.2 Additional cigarette tax on inventory. (Tax Law, Sections 471 and 475).

(a) Effective [March 1, 2000] April 3, 2002, by enactment of chapter 1 of the Laws of [1999] 2002, 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 [28] 55½ cents to [55½] 75 cents for each 10 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 [14] 27¾ cents to [27¾] 37½ cents 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 [February 29, 2000] April 2, 2002. 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 on [February 29, 2000] April 2, 2002, 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)(i) On or before [May 22, 2000] June 20, 2002, 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 [February 29th] April 2, 2002, 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. Except as provided in subparagraph (ii) of this paragraph, every dealer shall pay, with the filing of such return, an additional tax for all cigarettes in such inventory which are contained in packages bearing stamps evidencing tax payment at the rates in effect prior to [March 1, 2000] April 3, 2002, and for all unaffixed cigarette tax stamps in such inventory evidencing tax payment at such rates. The additional tax shall be paid at the rate of [27½] 19½ cents for each 10 cigarettes or fraction thereof ([55] 39 cents per package of 20 cigarettes) unless cigarettes are contained in packages of more than 20, in which case the additional tax for those cigarettes in excess of 20 shall be at the rate of [13¾] 9¾ cents for each five cigarettes or fraction thereof ([68¾] 48¾ cents 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.

(ii) Notwithstanding any other provision of this Title to the contrary, a dealer who has an additional cigarette tax liability on inventory may elect to pay such tax in two installments. The first installment is due with the filing of the return on

or before [May 22, 2000] June 20, 2002, and shall not be less than 25 percent of the entire additional cigarette tax due. Provided, however, in no event shall such installment be less than \$200 or the entire additional cigarette tax due, if less than \$200. Thus a dealer having an additional cigarette tax liability on inventory of \$100 would be liable for the full payment on [May 22, 2000] June 20, 2002; a dealer having such a liability of \$440 would be liable for a first installment of at least \$200; and a dealer having such a liability of \$10,000 would be liable for a first installment of at least \$2,500 (\$10,000 x 25 percent). The second and final installment must be paid to the department on or before [September 20, 2000] October 21, 2002, and must be accompanied by a final payment document prescribed by the department for this purpose. (Statutorily, the second installment is due on October 20, 2002, which is a Sunday. Section 2399.3 of the Procedural Regulations contained in Chapter IX of Title 20 NYCRR provides that a filing will be considered timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, i.e. October 21, 2002.) Where the department has cause to believe that the final installment of the additional cigarette tax on inventory may be jeopardized by delay, the department may require such payment at any time prior to [September 20, 2000] October 21, 2002. (See subdivision (e) of this section for sanctions concerning untimely installments.)

(2) The additional cigarette tax on inventory and any applicable installment should be paid by check or money order, payable to [the Commissioner of Taxation and Finance] NYS Cigarette Tax.

(d)(1) Failure to file a return on cigarette and cigarette tax stamp inventory or to pay the additional tax due thereon, or failure to comply with any provision of this section may result in civil or criminal sanctions, or both.

(2) In the case of any dealer who elects to pay the additional cigarette tax liability in installments, as described in subdivision (c) of this section, if the required first installment is not properly paid on or before [May 22, 2000] June 20, 2002, the entire amount of additional tax shall be due and owing, and any civil penalty and interest imposed pursuant to section 481 of the Tax Law and Part 78 of this Title will accrue from such date on the entire tax liability that remains unpaid.

Where the required first installment is timely paid but any portion of the second and final installment is paid after [September 20, 2000] October 20, 2002, any civil penalty and interest so imposed will accrue from such date on the unpaid balance.

Section 8. Paragraph (4) of subdivision (a) of section 80.2 of such regulations is amended to read as follows:

(4) [Illustration.] "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 [\$30.00] \$40.00 per carton, computed as follows:

Invoice cost (per carton), less all trade discounts except discounts for cash.....	[\$18.10]	<u>\$24.20</u>
New York State cigarette tax.....	[11.10]	<u>15.00</u>
New York City cigarette tax.....		+ .80
Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>

Section 9. 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, [\$30.00] \$40.00 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, [\$30.47] \$40.55 per carton computed as follows:

Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>
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Presumed cost of doing business

Percentage mark-up (.875% of [\$30.00] <u>\$40.00</u>).....	[+ .2625]	<u>+ .35</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)].....	[\$30.47]	<u>\$40.55</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, [\$30.00] \$40.00 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, [\$30.65] \$40.80 per carton computed as follows:

Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>
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Presumed cost of doing business

Percentage mark-up (1.5% of [\$30.00] <u>\$40.00</u>).....	[+ .45]	<u>+ .60</u>
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)].....	[\$30.65]	<u>\$40.80</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 3 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, [\$31.37] \$41.75 per carton computed as follows:

Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>
Presumed cost of doing business		
Percentage mark-up (3.875% of [\$30.00] <u>\$40.00</u>).....	[+ 1.1625]	<u>+ 1.55</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)].....	[\$31.37]	<u>\$41.75</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, [\$33.56] \$44.68 per carton. See section 82.5 of this Part.

Section 10. 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, [\$30.47] \$40.55 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, [\$30.47] \$40.55 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 6 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, [\$30.65] \$40.80 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>
Agent's presumed cost of doing business		
Percentage mark-up (.875% of [\$30.00] <u>\$40.00</u>).....	[+ .2625]	+ .35
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Wholesaler's presumed cost of doing business (.625% of [\$30.00] <u>\$40.00</u>).....	[+ .1875]	+ .25
Cost of the CMSA wholesale dealer for sales to chain stores.....	[\$30.65]	<u>\$40.80</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, [\$31.37] \$41.75 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>
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Agent's presumed cost of doing business

Percentage mark-up (.875% of [\$30.00] <u>\$40.00</u>).....	[+ .2625]	<u>+ .35</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Wholesaler's presumed cost of doing business (3% of [\$30.00] <u>\$40.00</u>).....	[+ .90]	<u>+ 1.20</u>
Cost of the CMSA wholesale dealer for sales to CMSA retail dealers		
[(rounded to next higher cent)].....	[\$31.37]	<u>\$41.75</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, [\$33.56] \$44.68 per carton. See section 82.5 of this Part.

Section 11. 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, [\$30.00] \$40.00 or [\$30.65] \$40.80 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, [\$33.56] \$44.68 per carton. See section 82.5 of this Part.

Section 12. 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, [\$31.37] \$41.75 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, [\$33.56] \$44.68 per carton. Such amount is computed as follows:

Basic cost of cigarettes.....	[\$30.00]	<u>\$40.00</u>
Agent's presumed cost of doing business		
Percentage mark-up (3.875% of [\$30.00] <u>\$40.00</u>).....	[+ 1.1625]	<u>+ 1.55</u>
2 cents/package of 20 cigarettes multiplied by 10 packages/carton.....		+ .20
Retailer's presumed cost of doing business		
(7% of: ([\$30.00] <u>\$40.00</u> + (3.875% of [\$30.00] <u>\$40.00</u>) + [20] <u>.20</u>).....	[+ 2.1954]	<u>+ 2.9225</u>
Cost of the CMSA retail dealer (rounded to next higher cent).....	[\$33.56]	<u>\$44.68</u>

Arthur J. Roth
Commissioner of Taxation and Finance

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May 14, 2002