



Iowa Department of Revenue

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To: Cigarillo Manufacturers and Distributors
From: Stuart Vos, Deputy Director
Date: December 16, 2014
RE: Wholesale Sales Price of Cigarillos

DISCLAIMER: Please be advised that this is an informal guidance document. The Department could, in the future, take a position contrary to that stated in this document. Any written advice or opinion rendered to members of the public by Department personnel that is not pursuant to a Petition for Declaratory Order under 701 IAC 7.24 is not binding upon the Department.

ISSUE

How does the Department of Revenue determine the wholesale sales price of a package of cigarillos for purposes of calculating the tobacco excise tax due?

BACKGROUND

Recently, the Department has received several questions regarding the taxation of cigarillos that are sold in multipacks. When a distributor purchases cigarillos from a manufacturer, they are pre-packaged either as a single cigarillo or in a multipack. Multipacks are available for sale to the distributor in a variety of sizes. For example, a manufacturer may offer five-packs and fifty-packs for sale. Some of the packages may be labeled as discounted. For example, some of the five-packs the manufacturer offers may be labeled as “five for the price of three.”

RELEVANT LAW

- **Iowa Code § 453A.43(1):** *a.* A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-two percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.
 - b.* In addition to the tax imposed under paragraph “a”, a tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-eight percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.
- **Iowa Code § 453A.42(17):** “Wholesale sales price” means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

DEPARTMENT POLICY

Historically, the Department has considered a single cigarillo the “tobacco product” for purposes of Iowa Code section 453A.43(1). Under that assumption, to calculate the tobacco excise tax, the Department determined the “wholesale sales price” of a multipack of cigarillos by first determining the unit price of a cigarillo sold individually to a distributor. Then, the department

multiplied that unit price by the number of cigarillos in each pack, regardless of package size. For example, the wholesale sales price of a five-pack was based on the wholesale sales price of five individually-sold cigarillos, and the wholesale sales price of a fifty-pack was based on the wholesale sales price of fifty individually-sold cigarillos. However, recently the Department has reconsidered the meaning of the term “tobacco product” for purposes of Iowa Code section 453A.43(1) in light of the fact that it has become standard for manufacturers to sell multipacks rather than single cigarillos. Based on that industry practice, the Department has determined that the “tobacco product” being sold at wholesale is the multipack and the wholesales sales price depends on the size of the multipack. For example, a five-pack is a different tobacco product than a three-pack or a single cigarillo. Therefore, the wholesale sales price of a multipack of cigarillos should be the full price at which the manufacturer sells a particular number of cigarillos in a pack. For example, the wholesale sales price of a five-pack is the price the manufacturer charges for a full price five-pack.

The wholesales sales price must be determined “exclusive of any discount or other reduction.” *See* Iowa Code § 453A.42(17). Therefore, if a manufacturer offers some cigarillo multipacks for sale that are labeled as discounted, the distributor is obligated to pay tax based on the full price for a package of that size. For example, if a manufacturer sells packs that are labeled as “five for the price of three” at a lower price than five-packs that are not labeled as discounted, those packages that bear discount labeling should be taxed at the same rate as five packs that are not labelled as discounted.

For audit purposes, the Department will use a manufacturer’s price list to determine the wholesale sales price for each type of cigarillo pack sold. If the manufacturer charges the distributor less for a “five for the price of three” pack than a standard five-pack, the “five for the price of three” pack will be taxed at the standard five-pack price. Under this method, whether a product is considered discounted is based on what the manufacturer offers for sale.

If you have any additional questions, please contact Marsha Peterson at (515) 242-0120 or marsha.peterson@iowa.gov.