

Minimum Retail Sales Price of Cigarettes

Notice #15-03

Unfair Retailer's Cigarette Sales Law

January 2015

**Highlights**

- *Retailers cannot sell cigarettes below the minimum selling price.*
- *Calculation of the minimum selling price is derived from legal definitions.*
- *Tobacco buydown payments are deducted from the cost plus 8% amount to determine the minimum selling price.*
- *The minimum selling price is the amount subject sales tax.*

INTRODUCTION

This notice provides guidance on the calculation of the minimum selling price that retailers may legally advertise and sell cigarettes.

DISCUSSION

Generally, retailers may not advertise or sell cigarettes for less than the basic cost of the cigarettes plus an 8% markup for the cost of doing business. The basic cost of cigarettes is defined by law as the invoice cost of the cigarettes to the retailer before any discounts are applied, plus any taxes, fees or stamp values that were not included by the manufacturer or wholesaler in the invoice amount.

For example, if a retailer's invoice cost is \$45 per carton (which already includes the cigarette tax), then invoice cost plus an 8% markup is \$48.60 ($45.00 \times 1.08 = 48.60$).

When a retailer does not participate in any tobacco buydown agreements, then this amount is the lowest price the retailer can sell cigarettes. The retailer may not reduce the amount (i.e., give the consumer a discount) for payments directly awarded to the retailer, like shelf space or other marketing promotions. However, the retailer may reduce the amount by payments received under tobacco buydown agreements.

When a retailer does participate in tobacco buydown agreements, the retailer may take credit for the buydown payments it receives. The retailer must calculate the minimum selling price in the manner illustrated below. Using the previous example, if the tobacco buydown payment is \$7.50 for the carton of cigarettes, then the lowest price for which the retailer can sell the cigarettes, and the amount that is subject to sales tax, is \$41.10.

Example

Retailer's invoice cost (includes cigarette tax)	\$45.00
Plus 8% markup (cost of doing business)	<u>$\times 1.08$</u>
Cost plus 8% markup (cost to the retailer)	\$48.60
Less tobacco buydown payment	<u>$- \\$7.50$</u>
Minimum selling price (subject to sales tax)	\$41.10

In tobacco buydown agreements, a retailer will receive an amount from the cigarette manufacturer. The retailer then must reduce the sales price of the cigarettes without requiring the consumer to show a manufacturer's coupon. Tennessee sales tax law allows cigarette retailers to take a credit for tobacco buydown payments received before calculating the amount of sales tax due. In order to take this credit, the retailer must reduce the above amount (cost plus 8%) by any tobacco buydown payments it receives.

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the Department or your tax professional for further guidance.


References:

T.C.A. § 47-25-302
 T.C.A. § 47-25-303
 T.C.A. § 47-25-310
 T.C.A. § 67-6-102(79)
 T.C.A. § 67-6-357
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