

This notice was revoked by Revenue Notice # 07-04.)

Revenue Notice # 94-05 Minnesota Unfair Cigarette Sales Act--Meeting

Competition

General Information:

Minn. Stat. 325D.32, subdivision 10, provides that wholesalers must sell cigarettes at either a statutorily presumed minimum price or one based on their filed and approved cost of doing business computation. Minn. Stat. 325D.37, subdivision 1, permits a wholesaler to meet the price of a competitor by using the competitor's approved cost of doing business: 'Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler.'

However, according to Minn. Stat. 325D.37, subdivision 3, 'Before selling the cigarettes at a price set in good faith to meet competition, a wholesaler shall notify the commissioner in writing that it intends to meet a competitor's legal price. A wholesaler filing the notice shall be allowed to meet the competitor's price unless within seven days of receipt of the notice, the commissioner informs the wholesaler that the competitor's price is an illegal price.'

The Department of Revenue takes the following position on the above statutory provisions:

'Competitor.'

All distributors licensed to distribute cigarettes in the State Minnesota are competitors with one another.

'Meeting competition.'

Cigarette wholesalers may use a price lower than the statutorily presumed minimum only to meet the legal price of a competitor whose cost of doing business has been approved by the Department of Revenue. 'Meeting' the legal price of a competitor means that one cigarette wholesaler may sell or offer to sell cigarettes at a price based on another wholesaler's filed and approved cost of doing business.

'Good Faith'

Cigarette wholesalers must operate in 'Good Faith' when they offer or sell at a price to meet competition. Cigarette wholesalers operate in good faith when they sell or offer to sell at or above a price that is either the statutorily presumed minimum price or one based on a filed and approved cost of doing business computation. A cigarette wholesaler who wants to sell or offer to sell at a price based on a filed and approved cost of doing business shows good faith by first contacting the Department of Revenue to ascertain that the cost of doing business has been approved.

Notice of Intent.

A cigarette wholesaler must notify the Department of Revenue in writing of its intent to sell cigarettes at a price to meet the legal price of that competitor. While the Department must notify the wholesaler within 7 days if the price is illegal, the wholesaler may offer a lower legal price immediately following notification. [Notifications may be sent by facsimile to the Department of Revenue, Special Taxes Division, at (612) 297-1939.]

Debra L. Mc Martin

Assistant Commissioner for Tax Policy

Dated : March 14, 1994