

This notice was revoked on July 7, 1997 by Revenue Notice # 97-08.

Minnesota revenue notice number 96-04

Unfair Cigarette Sales Act -Unlawful for Wholesaler to give Rebates, Concessions or Discounts; Revocation of Revenue Notice 92-11

New Policy

Law: Minnesota Statutes § 325D.33, subd. 3 provides that "It is unlawful for a wholesaler to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind in connection with the sale of cigarettes. For purposes of this chapter, the term "discount" is included in the definition of a rebate."

"Wholesaler" is defined in Minn. Stat. § 325D.32, subd. 4 to include any person who sells cigarettes to another party for resale. The wholesaler definition includes, but is not limited to, cigarette manufacturers, distributors, and subjobbers.

The department's policy as reflected in Revenue Notice # 92-11 was that if an offer is made equally to all buyers, the offer is not a rebate or concession prohibited by Minnesota Statute section 325D.33, subd. 3. Recent court decisions have not supported this position but have held that Minnesota Statute section 325D.33, subd. 3 prohibits wholesalers from giving or offering any rebates or concessions for cigarette sales. No rebates are allowed. This will now be the position of the revenue department.

The following items, among others, are considered by the revenue department to be rebates, concessions or discounts of cigarettes prohibited under the Unfair Cigarette Sales Act: 1) rack or counter allowances; 2) coupons or stickers; 3) buy downs; 4) payments to retailers for cigarette display space; or 5) payments from manufacturers to distributors or retailers of any incentive bonus based upon quantities of cigarettes purchased or sold during any given period of time.

Revenue Notice # 92-11, "Unfair Cigarette Sales Act - Price Discounts," is hereby revoked.

Dated: April 29, 1996

Patricia A. Lien
Assistant Commissioner for Tax Policy