

This notice was revoked on April 16, 2007 by Revenue Notice # 07-04.

Minnesota revenue notice number 99-10

Special Taxes - Unfair Cigarette Sales Act

Issue

What is meant by "same article" and "ordinary channels of business or trade" in relation to the sale of re-imported cigarettes?

Re-imported cigarettes generally are domestic brand cigarettes manufactured in the United States and intended to be sold in international commerce. They may be offered for sale in domestic commerce if their re-importation satisfies federal requirements. In response to the increasing number of re-imported cigarettes on the domestic market in Minnesota, the Department of Revenue issues the following policy statement:

The Minnesota Unfair Cigarette Sales Act allows wholesalers and retailers to meet the lawful price of a competitor selling the same article. Wholesalers and retailers may not match a competitor's lawful price on an article that is not the same as the article they offer for sale. "Same article" means an identical item. Gray-market or re-imported cigarette brands may not be identical to the same brand offered for sale in domestic commerce. It is permissible to use the invoice cost or the actual cost of re-imported cigarettes purchased to determine their basic cost if the manufacturer has attested in writing that the products intended for domestic consumption differ from the products intended for export.

Until January 1, 2000, cigarettes intended for sale in international commerce may be re-imported into the United States and offered for sale if federal requirements are satisfied. The Department of Revenue will consider a distributor's acquisition of those cigarettes to be within the ordinary channels of trade, as that term is used in the Unfair Cigarette Sales Act, if the distributor does not also acquire cigarettes directly from the manufacturer. That position applies regardless of whether the manufacturer has stated that its export cigarettes differ from those intended for the domestic market. As of January 1, 2000, federal law will require that re-imported cigarettes either be sent to an export warehouse or returned to the manufacturer. Re-imported cigarettes offered for sale in Minnesota after December 31, 1999, contrary to federal law and applicable regulations, will be considered to be outside the ordinary channels of business or trade.

Dated: August 30, 1999

Jennifer L. Engh
Assistant Commissioner for Tax Policy