

**This Notice was revoked on April 29, 1996 by Revenue Notice # 96-04.**

## **Revenue Notice # 92-11 Unfair Cigarette Sales Act - Price Discounts**

**Issue:** What constitutes an illegal rebate, concession or discount of cigarettes under the Unfair Cigarette Sales Act?

**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.

**Conclusion:** If an offer is made equally to all buyers, the offer is not a rebate or concession prohibited by § 325D.33, subd. 3. An offer is not made equally to all buyers if it would not be feasible for some to take advantage of the offer. An offer is not feasible if it would require a significant expenditure of money or a significant change in the purchaser's methods of doing business.

**Example #1.** A cigarette manufacturer wants to introduce a new product at a temporarily reduced price to the consumer. This introductory low price will be indicated on special product packaging. The product will be offered to all wholesalers at a reduced net invoice price that will be passed on to the retailer.

This is not a rebate as long as it is offered on all sales.

**Example #2.** A cigarette manufacturer offers to retailers with computerized cash registers the ability to generate coupons for its product when a consumer purchases a competing brand.

Competing retailers without computerized cash registers would be unable to participate in this promotion. Therefore, it is a rebate unless a feasible alternative plan is available to all of these retailers.

**Example #3.** A wholesaler invoices sales discounting the basic cost of cigarettes by passing on a promotional allowance or basic distributor allowance received from a manufacturer.

This is a rebate unless all distributors are given the same price reduction.

**Example #4.** A wholesaler offers a discount for volume purchase of cigarettes.

This is a rebate because it is an offer to sell cigarettes at a lower price only to buyers who are able to purchase in volume.

**Example #5.** A manufacturer's sales representative goes to a distributor's warehouse and places stickers on boxes allowing a \$2.00 reduction in price per carton. The representative gives a check to the distributor for the total of the stickers attached to the cartons. The distributor then allows \$2.00 off per carton on the invoice to the retailer. If the distributor will not allow a representative to affix the sticker, the representative goes to retailers and places the stickers on the cartons and gives the retailer a check for the total of the stickers attached to the cartons.

This offer will be presumed to be a rebate, unless the manufacturer can prove to the Department that it offered the same price reduction to all distributors or retailers.

**Example #6.** A cigarette manufacturer has a coupon attached or printed on every carton of cigarettes sold to all distributors in Minnesota.

This is not a rebate since it is offered equally to all distributors.

**Example #7.** A cigarette manufacturer has a coupon printed in a magazine or newspaper offering a price reduction to consumers on the price of a carton of cigarettes.

This is not a rebate since it is offered equally to all consumers.

Michael E. Boekhaus

Director, Appeals and Legal Services

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PJF