

Minimum Wholesale and Retail Cigarette Prices

As a result of a \$12.50 per-carton state excise tax increase (from \$15.00 to \$27.50), the minimum wholesale and retail prices for the sale of all brands of cigarettes in New York State have changed.

Minimum wholesale and retail cigarette prices must be determined by referencing manufacturers' list prices. Common list prices for certain standard brands are listed below. When a minimum price change occurs because of a manufacturer's price increase or decrease, the enforcement date of the change is the second Monday after the price change is announced. If a price change is announced on a Monday, that day is considered to be the first Monday. The enforcement date is in effect whether or not a manufacturer notifies the Tax Department of the price change.

After one manufacturer announces a price change, if other manufacturers also change their prices **before the second Monday after the initial price change is announced**, then those subsequent price changes will also be effective for enforcement purposes on the same second Monday.

When a minimum price change occurs because of an excise tax rate change, the enforcement date of the change is the date the rate change takes effect. The minimum price enforcement date for this notice is June 3, 2008.

To determine the minimum wholesale or retail prices for any cigarette brand, you must refer to the manufacturer's price list. If

you are unable to obtain the price list, please ask your supplier for assistance. In addition, Publication 508, *Minimum Price List for Cigarettes*, can help you determine the minimum prices of standard and nonstandard brands of cigarettes in cartons of 200 cigarettes, 10 packs per carton. You can obtain this publication from our Web site, or order it by phone. (It is not available by fax because it is over 100 pages.) See *Need help?* on the back.

The New York State minimum prices relating to each of the four currently applicable manufacturers' list prices for standard brands are printed in the tables below.

You must charge your customers the minimum price or any price in excess of the minimum price.

You may not offer merchandise for sale as a tie-in with cigarettes if the total price of the items sold is less than the minimum price of cigarettes plus your cost for the other merchandise.

Furthermore, it is illegal for any cigarette agent, wholesale dealer, or retail dealer to induce, or attempt to induce, or to procure the purchase of cigarettes at a price less than the minimum price set by law. The Tax Department will issue this publication as notification for changes in the minimum prices each time a manufacturer's price change occurs or a state or city excise tax changes.

New York State (sales outside New York City)

Minimum sales prices for standard brands*

Manufacturer's list price ** (per carton)	Agent's basic cost (per carton)	Type of sale				
		Wholesale (per carton)			Retail sales to the consumer	
		Agent to wholesale dealers	Agent to chain stores	Agent to retail dealers	Retail (per carton)	Retail (per pack)
\$27.64	\$55.14	\$55.83	\$56.17	\$57.48	\$61.51	\$6.16
\$29.14	\$56.64	\$57.34	\$57.69	\$59.04	\$63.17	\$6.32
\$30.14	\$57.64	\$58.35	\$58.71	\$60.08	\$64.28	\$6.43
\$31.14	\$58.64	\$59.36	\$59.72	\$61.12	\$65.40	\$6.54
\$32.13	\$59.63	\$60.36	\$60.73	\$62.15	\$66.50	\$6.65
\$32.63	\$60.13	\$60.86	\$61.24	\$62.67	\$67.05	\$6.71

New York City (sales within New York City)

Minimum sales prices for standard brands*

Manufacturer's list price ** (per carton)	Agent's basic cost (per carton)	Type of sale				
		Wholesale (per carton)			Retail sales to the consumer	
		Agent to wholesale dealers	Agent to chain stores	Agent to retail dealers	Retail (per carton)	Retail (per pack)
\$27.64	\$70.14	\$70.96	\$71.40	\$73.06	\$78.18	\$7.82
\$29.14	\$71.64	\$72.47	\$72.92	\$74.62	\$79.84	\$7.99
\$30.14	\$72.64	\$73.48	\$73.93	\$75.66	\$80.96	\$8.10
\$31.14	\$73.64	\$74.49	\$74.95	\$76.70	\$82.07	\$8.21
\$32.13	\$74.63	\$75.49	\$75.95	\$77.73	\$83.17	\$8.32
\$32.63	\$75.13	\$75.99	\$76.46	\$78.25	\$83.72	\$8.38

* Minimum prices listed are for standard brands and standard packages (20 cigarettes per pack, 10 packs per carton). See *Computing the minimum wholesale cigarette prices* on the back for the markups for each type of sale listed.

** Consult manufacturer's price list to verify the price for each specific brand.

Publication 509 (6/08) (back)

Prepaid sales tax — The prices below do not include any prepaid sales tax. The prepaid sales tax is paid by the agent at the time the cigarette tax stamps are purchased. The prepaid sales tax is passed along in each subsequent sale down to and including the retail dealer (but is not passed down to the consumer). At the time of delivery, the seller must give the purchaser either Form ST-133, *Certificate of Prepayment of Sales Tax on Cigarettes*, or have the required information included on the invoice.

State and local sales taxes — State and local sales taxes must be collected from the consumer at the time of the retail sale. Sales tax must be collected upon the total retail sale price, including sales in New York City (effective September 1, 2003). For more information, see Important Notice N-03-22, *Computation of Sales Tax on Cigarettes Sold Within the City of New York*.

Computing the minimum wholesale cigarette prices

Publication 508, *Minimum Price List for Cigarettes*, lists the minimum prices for standard and nonstandard brands of cigarettes by the carton (20 cigarettes per pack, 10 packs per carton).

The *basic cost of cigarettes* means the invoice cost of cigarettes to the agent who purchases from the manufacturer, or the replacement cost of cigarettes to the agent, in the quantity last purchased (whichever is lower), less all trade discounts (except discounts for cash), to which is added the full face value of any stamps (excise tax only) that are required by law. (The federal excise tax placed on the manufacturer would be included in the invoice cost of cigarettes from the manufacturer.)

The basic cost of cigarettes **does not** include any sales tax prepaid by the agent at the time the cigarette tax stamps were purchased.

The *cost of the agent* means the basic cost of cigarettes (as defined above) plus the cost of doing business by the agent. Unless otherwise substantiated, the cost of doing business by the agent is presumed to be as shown in the table below:

Percentage (plus 20 cents) of the basic cost of cigarettes per carton (20 cigarettes per pack, 10 packs per carton)	
Agent to wholesale dealers	7/8% plus 20 cents
Agent to chain stores	1 1/2% plus 20 cents
Agent to retail dealers	3 3/8% plus 20 cents

In determining the prices for nonstandard brands, remember that an agent may not sell cigarettes to wholesale dealers (as defined in the Cigarette Marketing Standards Act (CMSA)) below the basic cost of cigarettes plus 7/8% and 20 cents per carton (20 cigarettes per pack, 10 packs per carton). An agent or wholesale dealer may not sell cigarettes to a registered chain store below the basic cost of cigarettes plus 1 1/2% and 20 cents per carton (20 cigarettes per pack, 10 packs per carton). An agent or wholesale dealer may not sell cigarettes to a retail dealer below the basic cost of cigarettes plus 3 3/8% and 20 cents per carton (20 cigarettes per pack, 10 packs per carton).

Anyone selling at a price less than the *cost of the CMSA retail dealer* minimum sales price must have proof on file that the customer was eligible for the lower purchase price. The *cost of the CMSA retail dealer* is presumed to be a 7% markup of the *agent-to-retail-dealers* price.

The selling price of cigarettes sold by one licensed cigarette agent to another, when the cigarettes are either picked up at the seller's warehouse or delivered to the purchaser's warehouse, is not required to include the cost of doing business by the agent, but it may not be less than the basic cost of the cigarettes.

If an agent sells cigarettes to a chain store with 15 or more outlets (excluding vending machine operators), the cigarettes are delivered to a central warehouse owned and operated by the chain store, and the chain store delivers the cigarettes to its outlets, the agent's selling price is not required to include the cost of doing business by the agent (that is, the agent's presumptive 1 1/2% plus 20 cents minimum markup is not required). However, the price may not be less than the basic cost of cigarettes.

Custom stamping is the affixing of cigarette tax stamps by one agent for, or on behalf of, any other agent. It also includes the sale of stamped cigarettes by one agent to another agent. **Custom stamping** is prohibited without the prior written authorization of this department. Send your request to: NYS Tax Department, TTTB-FACCTS-Cigarette Tax Unit, W A Harriman Campus, Albany NY 12227. See also Cigarette Tax Regulations (Title 20 NYCRR section 74.3(a)(3)). Violations of this provision may result in the revocation or suspension of the agent's license under Tax Law Article 20.

A licensed agent who sells cigarettes at retail is considered to be a CMSA retail dealer. The cost of the agent for those retail sales must be the same as the *cost of the CMSA retail dealer*.

Computing the minimum retail cigarette prices

To compute the minimum retail selling price for cigarettes (standard, nonstandard, generic, or subgeneric brands), 20 cigarettes per pack, 10 packs per carton, you may use Publication 508.

Anyone making retail sales of cigarettes must first determine the *agent-to-retail-dealers* minimum selling price and increase that amount by at least 7%.

If a retail dealer does not know the manufacturer's list price for computing the minimum retail cigarette price, the retail dealer should mark up the cartons or packs of cigarettes 7% above its invoice cost (excluding any prepaid sales tax).

If you need help determining the legal minimum wholesale or retail selling price of cigarettes, contact your supplier or call the New York State Business Tax Information Center at the number listed under *Need help?* below.

Civil penalties — Violations of the CMSA may result in the suspension of an **agent's** or **wholesale dealer's** license or the imposition of a fine not to exceed \$20,000, or both, for a first offense. Subsequent violations within three years may result in license revocation, suspension, or suspension plus a fine not to exceed \$50,000.

Criminal penalties — Violations of the CMSA by **wholesale** or **retail dealers** are a Class B misdemeanor and may result in fines of up to \$500 (or double the amount of the gain from the commission of the offense) or up to three months imprisonment, or both.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Business Tax Information Center: 1 800 972-1233

From areas outside the U.S. and outside Canada: (518) 485-6800

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): 1 800 634-2110



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.