

## COMMISSIONER'S DIRECTIVE #43

JULY 2012

(Replaces Tax Policy Directive #11 dated January 2012)

**DISCLAIMER:** Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Other Tobacco Products Tax

**DIGEST OF CHANGES:** This version of the directive changes the definition of wholesale price to include purchase discounts, quantity discounts, and trade discounts.

**EFFECTIVE:** July 1, 2012

**REFERENCE:** IC 6-7-2

### INTRODUCTION

The purpose of this commissioner's directive is to provide an interpretation of the Other Tobacco Products Tax as it applies to the wholesale price of tobacco products and moist snuff taxed by the ounce and an interpretation of who is a tobacco distributor that is liable for the tax. This directive applies to other tobacco products distributors as defined in IC 6-7-2-2.

## **DISCUSSION**

“Tobacco product” means:

- (1) Any product made from tobacco, other than a cigarette, that is made for smoking, chewing, or both; or
- (2) Snuff, including moist snuff.

“Moist snuff” means any finely cut, ground, or powdered tobacco that is not meant to be smoked or placed in the nasal cavity.

The Other Tobacco Products Tax is imposed on tobacco distributors per IC 6-7-2-7, which reads:

A tax is imposed on the distribution of tobacco products in Indiana at the rate of 24% of the wholesale price of the tobacco products other than moist snuff; or for moist snuff, \$.40 per ounce, and a proportionate tax at the same rate on all fractional parts of an ounce. If the tax calculated for the fractional part of an ounce carried to the third decimal place results in the numeral in the third decimal place being greater than 4, the amount of tax shall be rounded to the next additional cent.

The distributor of the tobacco products is liable for the tax. The tax is imposed at the time the distributor:

- (1) Brings or causes tobacco products to be brought into Indiana for distribution;
- (2) Manufactures tobacco products in Indiana for distribution; or
- (3) Transports tobacco products to retail dealers in Indiana for resale by those retail dealers.

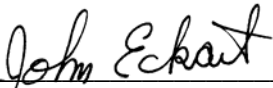
An unlicensed wholesaler/retailer purchasing tobacco products through a catalogue or other media from a person not licensed as an Indiana distributor must register as a distributor and pay the tax on the wholesale price of the other tobacco products or, if purchasing moist snuff, pay the tax based on the number of ounces. A wholesaler/retailer failing to register and comply with the law commits a Class B misdemeanor. However, the offense is a Class D felony if it is committed with intent to evade the tax imposed or to defraud the state.

The term “wholesale price” is defined at IC 6-7-2-6: “As used in this chapter, ‘wholesale price’ means the net price shown on an invoice and at which the manufacturer of the tobacco products sells tobacco products other than moist snuff to distributors, excluding any discount or other reduction that is not shown on the invoice.”

The Department's position is that temporary reduction or discounts for the purpose of promoting certain tobacco products are deductible from the original price in determining the “wholesale price” of tobacco products if the finished tobacco product(s) container is

prepackaged indicating a monetary discount. The "wholesale price" for other tobacco products prepackaged in multiple units is the actual price paid and not an imputed cost based on the manufacturer's price per single unit. Purchase discounts, quantity discounts, trade discounts, or any other reduction are deductible when determining the "wholesale price" of tobacco products for purposes of imposing the Other Tobacco Products Tax if the discount is shown on the invoice.

A manufacturer, an importer, a broker, or a shipper of other tobacco products or moist snuff into Indiana for the purpose of giving such products away for any type of promotional purpose must pay the tax due on all such products. In applying the Other Tobacco Products Tax to samples, the "wholesale price" is the standard price charged for the single unit tobacco product before deduction of any discount, including temporary promotional discounts.

  
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John Eckart  
Commissioner