

CHAPTER 84
UNFAIR CIGARETTE SALES
[Prior to 12/17/86, Revenue Department[730]]

701—84.1(421B) Definitions. For purposes of this chapter “wholesaler” and “retailer” mean a cigarette wholesaler and cigarette retailer as defined in Iowa Code section 421B.2. See opinion of the Attorney General, Griger to Bair, Director, Iowa Department of Revenue, 80-1-15. “Sale” or “sales” shall include an offer for sale.

This rule is intended to implement Iowa Code section 421B.2.

701—84.2(421B) Minimum price. The formula for determining the “cost” to a wholesaler or retailer as defined in Iowa Code section 421B.2 is not conclusive. The retailer, wholesaler or the department may prove that the “cost” is either higher or lower.

Any wholesaler or retailer who desires to prove that the wholesaler’s or retailer’s cost is less than the statutory presumptive cost computed according to the Iowa unfair cigarette sales Act, Iowa Code chapter 421B, shall submit a petition for approval of a lower cost along with actual cost data to the department of revenue. The statutory presumptive cost must be used in determining minimum price until approval has been granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester’s permit or seek an injunction pursuant to Iowa Code section 421B.10 to prevent such action.

Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition. The department shall notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department’s determination, the requester may file a protest within 60 days of the department’s decision in accordance with rule 701—7.41(17A).

Costs of doing business shall include, but are not limited to, freight charges, labor, and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, taxes, insurance, advertising expenses, and any other operational and administrative costs. The requester shall set forth the basis for allocated costs. When the computed cost amounts to any fractional part of a cent, the cost must not be less than the next higher cent. However, sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule. See rule 84.5(421B).

84.2(1) Wholesaler’s cost of cigarettes. The statutory method for determining the wholesaler’s cost of cigarettes is as follows:

- a. “Basic cost of cigarettes” equals the lowest of true invoice cost, or lowest replacement cost, less trade or cash discounts plus one half of the state cigarette tax.
- b. “Cost to wholesaler” equals the basic cost of cigarettes plus 3 percent of the basic cost plus the one half of the state cigarette tax not already included.

84.2(2) Retailer’s cost of cigarettes. The statutory method for determining the retailer’s cost of cigarettes is as follows:

- a. “Basic cost of cigarettes” equals the lower of either true invoice cost exclusive of state cigarette tax or lowest replacement cost exclusive of state cigarette tax, minus trade or cash discounts plus one half of the state cigarette tax.
- b. “Cost to retailers” equals the basic cost plus 3 percent of the basic cost, to the extent the retailer is allowed discounts ordinarily allowed wholesalers, plus 6 percent of the basic cost, plus the one half of the state cigarette tax not already included.

For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.

The following example will demonstrate the application of this rule.

Manufacturer's list price per 1000 cigarettes	\$115.70
Invoice price to wholesaler	\$115.70
Less 2% discount	2.31
Plus ½ of the tax	<u>9.00</u>
Basic cost of cigarettes	\$122.39
Plus 3% of basic cost	<u>3.67</u>
Retailer's basic cost	\$126.06
Plus ½ of the tax	<u>9.00</u>
Minimum cost to wholesaler per 1000 cigarettes	\$135.06
Per carton	\$27.01
Less ½ state tax	<u>1.80</u>
Retailer's basic cost	\$25.21
Plus 6% of basic cost	1.51
Plus ½ of state tax	<u>1.80</u>
Minimum cost to retailer	\$28.52
Per pack	2.86/pack

This rule is intended to implement Iowa Code sections 421B.2, 421B.3, 421B.5, 421B.6 and 421B.9.

701—84.3(421B) Combination sales. Whenever cigarettes and another item are offered for sale at a total combined price, the sales price shall not be lower than the “cost to the wholesaler or retailer” of all articles sold. The “cost to the wholesaler or retailer” of all of the articles sold on a combined basis shall be determined under Iowa Code section 421B.2, subsections (1), (3), and (4).

If a promotional gift is given to the wholesaler or retailer by a cigarette manufacturer at no cost, which gift is to be given to consumers at no cost upon the sale of cigarettes, the minimum sales price will not be affected. The invoice cost of the promotional gift is zero, and therefore, the “cost to the wholesaler” or “cost to the retailer” of the promotional gift is zero. If, however, the wholesaler or retailer were to purchase items to be given away with the purchase of cigarettes by consumers, the minimum sales price would increase. The “cost to the wholesaler” or the “cost to the retailer” of the promotional item would be based upon the lower of invoice cost or replacement cost. (See 1958 O.A.G. 22.)

This rule is intended to implement Iowa Code section 421B.4.

701—84.4(421B) Retail redemption of coupons. The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. (See 1986 O.A.G. 68.) Manufacturer incentives to the consumer in lieu of a coupon which reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.

This rule is intended to implement Iowa Code section 421B.3.

701—84.5(421B) Exempt sales.

84.5(1) Sales between wholesalers. The sale price of cigarettes from one wholesaler to another wholesaler is not required to have included therein the “cost to the wholesaler” as defined in Iowa Code section 421B.2(4). All of the provisions of Iowa Code section 421B.3 shall apply to the subsequent sale by the purchasing wholesaler to any other person except another wholesaler.

84.5(2) Exempt sales. The provisions of Iowa Code chapter 421B do not apply to the following sales transactions:

- a. An isolated sale, or
- b. A bona fide clearance sale for the purpose of discontinuing trade in cigarettes as long as the sale states the reason for the sale and the quantity of cigarettes to be sold, or
- c. The sale of damaged or imperfect cigarettes as long as the sale states the reason for the sale and the quantity of cigarettes to be sold.

84.5(3) Sales to meet lawful competition. A wholesaler or retailer may sell cigarettes below cost in good faith in order to meet the price of a competitor who is selling the same article at the cost to the competitor as defined in chapter 421B. Sales made under the exemptions contained in Iowa Code section 421B.6 and subrules 84.5(1) and 84.5(2) and sales of a bankrupt or forced sale shall not be considered in determining the cost to a competitor.

This rule is intended to implement Iowa Code sections 421B.5 to 421B.7.

701—84.6(421B) Notification of manufacturer’s price increase. For purposes of determining the minimum cost of cigarettes to wholesalers or retailers, all manufacturers dealing with Iowa permittees shall notify the department in writing or by telegram within five working days of the effective date of any change in the manufacturer’s list price for cigarettes.

This rule is intended to implement Iowa Code sections 421B.8 and 421B.11.

701—84.7(421B) Permit revocation. The department may revoke any permit issued under division I of Iowa Code chapter 453A for any violation of Iowa Code chapter 421B. The authority to revoke a retail cigarette permit for a violation of Iowa Code chapter 421B rests in the department even though the permit was issued by a city or county. The revocation shall be effectuated under the provisions of rule 701—81.12(453A).

Once the permit is revoked, the permittee cannot obtain another cigarette permit, nor may a permit be issued for the location covered by the revoked permit regardless of the identity of the applicant, for a period of at least six months.

This rule is intended to implement Iowa Code section 421B.11.

[Filed 3/14/80, Notice 2/6/80—published 4/2/80, effective 5/7/80]

[Filed without Notice 6/5/81—published 6/24/81, effective 7/29/81]

[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed 10/27/00, Notice 5/17/00—published 11/15/00, effective 12/20/00]

[Filed 5/11/01, Notice 2/21/01—published 5/30/01, effective 7/4/01]

[Filed 12/19/01, Notice 11/14/01—published 1/9/02, effective 2/13/02]

[Filed 11/16/05, Notice 10/12/05—published 12/7/05, effective 1/11/06]