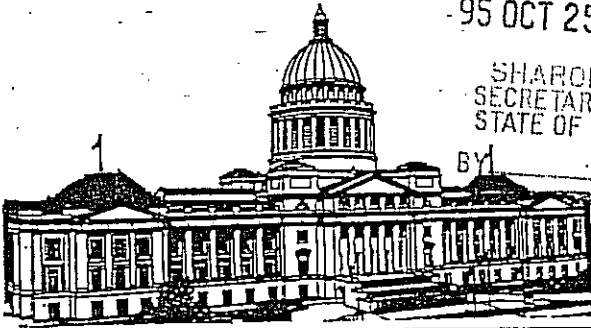


ARKANSAS REGISTER

AR. REGISTER DIV.

-95 OCT 25 - PM 4:08

Transmittal Sheet



SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

Sharon Priest
Secretary of State
State Capitol Rm. 010
Little Rock, Arkansas 72201-1094

For Office
Use Only:

Effective Date 10/25/95 Code Number 006.05.95--A02

Name of Agency Department of Finance and Administration

Department Revenue Division

Contact Person Don Zern, Information Officer

Statutory Authority for Promulgating Rules Act 101 of 1951

		Date
Intended Effective Date		
<input checked="" type="checkbox"/> Emergency	Legal Notice Published	<u>11/12/95</u>
<input type="checkbox"/> 20 Days After Filing	Final Date for Public Comment	<u>12/31/95</u>
<input type="checkbox"/> Other	Filed With Legislative Council	<u>10/26/95</u>
	Reviewed by Legislative Council	
	Adopted by State Agency	

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

Don Zern
Signature

Revenue Taxpayer Information Officer
Title

October 26, 1995
Date

Telephone: 682-7751

EMERGENCY MISCELLANEOUS TAX REGULATION 1995-5

(UNFAIR CIGARETTE SALES)

FILED

AP. REGISTER DIV.

95 OCT 25 PM 4:08

SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

Pursuant to the authority granted by Section 12 of Act 101 of 1951, the Department of Finance and Administration does hereby promulgate the following regulation for the enforcement and administration of Act 101 of 1951.

(a) EFFECTIVE DATE. This Regulation shall be effective November 6, 1995.

(b) DEFINITIONS. For the purpose of this Regulation, the following definitions apply:

- (1) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation, or other political subdivision of this state, receiver, trustee, fiduciary or trade association;
- (2) "Cigarettes" means and includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, except tobacco.
- (3) "Wholesaler" means and includes (i) any person who brings or causes to be brought into Arkansas unstamped cigarettes purchased directly from a manufacturer and who sells at least 75% of such cigarettes to retailers or other wholesalers; (ii) any person who retails cigarettes to consumers and purchasers at least 75% of such cigarettes directly from a manufacturer; (iii) any person who purchases cigarettes, at least 75% of which purchases are for resale to other retailers in Arkansas, from another person who purchases directly from a manufacturer; and (iv) any person who operates at least thirty (30) cigarette vending machines and who acquires cigarettes solely for the purpose of resale in such vending machines.
- (4) "Retailer" means and includes (i) any person or persons engaged in the business of reselling cigarettes in Arkansas, except as otherwise defined in this Regulation; and (ii) any person placing a cigarette vending machine at any location, except as otherwise defined in this Regulation.
- (5) "Sale" or "Sell" means and includes any transfer for consideration, exchange, barter, gift, offer for sale, advertisement for sale, solicitation of any order, and distribution in any manner.
- (6) "Basic cost" means the lower of the invoice cost or replacement cost of cigarettes, less all trade discounts, except cash discounts, plus the face value of tax stamps. Said basic cost will be determined as of a date within thirty

(30) days prior to sale and in accordance with the quantity last purchased by the wholesaler or retailer.

- (7) "Rebate" means and includes the return of any part of a payment or the reduction of any payment.
- (8) "Concession" means and includes any inducement, promise, payment, gift or incentive given or offered.
- (9) "Combination sale" means and includes every sale of two (2) or more items of property at a single price where at least one (1) of such items is cigarettes.

(c) DETERMINATION OF BASIC COST.

- (1) Basic cost of cigarettes to both wholesalers and retailers is the lower of the invoice cost or replacement cost of the cigarettes, less all trade discounts, except cash discounts, plus the full face value of tax stamps required and
- (2) This cost will be determined as of a date within 30 days prior to date of sale, in the quantity last purchased prior to sale, and
- (3) The Commissioner may, in his discretion, perform cost surveys, using recognized statistical and cost accounting practices, including evidence of the normal, customary and prevailing terms and discounts in connection with similar sales to determine the basic costs of cigarettes to either a wholesaler or retailer.

(d) WHOLESALE'S MINIMUM PRICE.

- (1) As a result of information received by the Miscellaneous Tax Section, Revenue Division, Arkansas Department of Finance and Administration, the wholesaler's cost of doing business has been established to be one-half of one percent (0.5%) of the wholesaler's basic cost. Therefore, the minimum price which can be charged by a wholesaler for cigarettes is the sum of the wholesaler's basic cost plus 0.5% of the basic cost, i.e. basic cost plus 0.5% of basic cost = minimum price.
- (2) A wholesaler who can prove to the satisfaction of the Commissioner of Revenues that the wholesaler's cost of doing business is less than one-half of one percent (0.5%) may, upon prior written approval by the Commissioner, charge a lesser price for cigarettes than that established by the formula in the above paragraph. A wholesaler who desires to charge a lesser price must first request in writing permission to do so. Written requests must be delivered to the Miscellaneous Tax Section and must set forth in detail the accounting

standard and methods, computations, and other relevant information which support the wholesaler's claimed cost of doing business. Permission to sell cigarettes at a price less than that established by the formula in the above paragraph can be obtained only by prior written approval from the Commissioner.

- (3) If the Commissioner approves a minimum price for a wholesaler, less than the price set by the formula (cost plus 0.5%), then all wholesalers doing business in the state can sell at that minimum price.

(e) RETAILER'S MINIMUM PRICE.

- (1) The minimum price which can be charged by a retailer for cigarettes is the sum of the retailer's basic cost plus six percent (6%) of the basic cost, i.e. $\text{basic cost} + 6\% \text{ of basic cost} = \text{minimum price}$. A retailer may seek approval of a different minimum price by complying with the same requirements imposed upon wholesalers in the second paragraph of section (d) of this Regulation.
- (2) If the Commissioner of Revenue approves a price less than formula (cost plus 6%), then all retailers can sell at that minimum price.
- (3) In the case of any retail dealer who in connection with the retail dealer's purchase of any cigarettes shall receive not only the discounts ordinarily allowed upon purchases by a retail dealer but also in whole or in part the discounts ordinarily allowed upon purchases by a wholesale dealer, the cost of doing business by the retail dealer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business by the retail dealer, the sum of the cost of doing business by the retail dealer and, to the extent that he shall have received the full discounts ordinarily allowed to a wholesale dealer, the cost of doing business by a wholesale dealer as defined in subdivision (d)(1) of this Regulation.

(f) PROHIBITED ACTS.

- (1) All wholesalers and all retailers are prohibited from selling cigarettes at less than minimum price.
- (2) All wholesalers and all retailers are prohibited from giving or offering rebates or concessions in connection with sales of cigarettes.
- (3) All retailers are prohibited from inducing or procuring, and attempting to induce or procure, the purchase of cigarettes for a price less than the wholesaler's minimum price.

- (4) All retailers are prohibited from inducing or procuring, and attempting to induce or procure, any rebate or concession in connection with the purchase of cigarettes.
- (5) Every retailer and wholesaler, when making any combination sale, is prohibited from selling at a price less than his cost of all items sold. With respect to cigarettes sold, "cost" means minimum price as defined in this Regulation. With respect to items other than cigarettes, "cost" means invoice cost. Therefore, no wholesaler or retailer will be allowed to reduce a price, offer a rebate or offer free property in return for a purchase of cigarettes.
- (6) Any person committing any of the above mentioned acts will be presumed to have acted with the purpose of damage or injure competition.

(g) SALES EXEMPT FROM REGULATION. Conditioned upon prior approval by the Commissioner of Revenues, the provisions of this Regulation will not apply to a sale at wholesale or retail made:

- (1) In an isolated transaction and not in the usual course of business; or
- (2) Where cigarettes are sold in a genuine, good faith clearance sale for the purpose of discontinuing trade in such cigarettes; or
- (3) Where cigarettes are sold as imperfect or damaged; or
- (4) Where cigarettes are sold upon the final liquidation of a business; or
- (5) Where cigarettes are sold by any fiduciary or other officer pursuant to a Court order.

(h) LICENSE REQUIREMENTS. No person shall engage in or conduct the business of wholesaling or retailing cigarettes without having first obtained every license required by the Arkansas Tobacco Products Tax Act [Ark. Code Ann. §§26-57-201 through 26-57-254 (1987)]. A separate license must be obtained for each place of business from which a wholesaler or retailer sells or intends to sell cigarettes. No licensed wholesaler can operate as a retailer until a retailer's license is first secured, and no licensed retailer can operate as a wholesaler until a wholesaler's license is first secured.

(i) CRIMINAL PUNISHMENT. Any wholesaler or retailer who commits any act which is prohibited by section (f)(1) through (f)(4) of this Regulation will be subject to a misdemeanor criminal charge punishable by a fine of up to five hundred dollars (\$500.00) and will be

immediately referred to the appropriate prosecuting attorney for the county where the offense occurred.

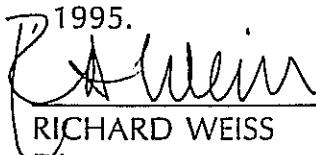
(j) REVOCATION OR SUSPENSION OF LICENSE. Any wholesaler or retailer who fails or refuses to comply with any of the provisions of this Regulation will have his license revoked or suspended by the following procedure:

- (1) The Commissioner will give the person notice, in writing and
- (2) The notice will advise the person as to the specific allegations against him, and
- (3) The notice will provide the time and place of a hearing, and
- (4) The notice will explain that the person must appear at the hearing and show cause why their license should not be suspended or revoked, and
- (5) The notice will explain that failure to appear will result in immediate suspension or revocation of the license.


(k) CIVIL LIABILITY. Any wholesaler or retailer who fails or refuses to comply with any provision of this Regulation will be subject to being sued by the Commissioner of Revenues to prevent, restrain or enjoin any violation or threatened violation by the wholesaler or retailer.

(l) FINDING OF IMMINENT PERIL AND STATEMENT OF REASONS. Pursuant to the authority granted by Act 101 of 1951, the Director has reduced the minimum wholesale price for cigarettes. This change will directly affect all cigarette wholesalers and indirectly affect cigarette retailers and the public. Accordingly, there exists an imminent peril to the welfare of the State of Arkansas. In order to ensure understanding and compliance with Act 101 of 1951, it is necessary that this emergency regulation become effective November 6, 1995.

IN WITNESS WHEREOF, we have hereunto set our hands this 25th day of October 1995.



RICHARD WEISS
Director
Department of Finance
and Administration



TIM LEATHERS
Commissioner of Revenues
Department of Finance
and Administration

EXPLANATION OF
MISCELLANEOUS TAX REGULATION 1995-5

This regulation replaces Miscellaneous Tax Regulation 1988-2. This regulation reduces the wholesalers minimum price for selling cigarettes. Currently the minimum price is four percent (4%) above the basic cost, and after this regulation the minimum price will be reduced to one-half of one percent (0.5%) above the basic cost. This reduction in the minimum price is due to a request and information provided by a licensed wholesaler, pursuant to Regulation 1988-2. The other changes in the regulation were necessary to bring the regulation into conformance with the existing language of the statute.