

---

**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2008-15 ST**  
**December 4, 2008**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**Sales/Use Tax – Tobacco Products**

**Authority:** [IC 6-7-2-2](#), [IC 6-7-2-6](#), [IC 6-7-2-7](#)

Taxpayer requests that the Department rule on the tax base to apply to smokeless tobacco products using various packaging schemes.

**STATEMENT OF FACTS**

Taxpayer is a corporation engaged in sales and marketing of smokeless tobacco products throughout the United States. Taxpayer sells smokeless tobacco products to licensed wholesale distributors, who typically resell the products to retailers and remit the tax on the tobacco products.

Taxpayer routinely offers smokeless tobacco products using various packaging methods for the end user. The items are distributed to Taxpayer's customers by master carton, each containing a fixed number of units. The individual units are labeled in one of the following ways: (1) "Save \$X.XX", (2) "\$X.XX per can", (3) "Buy 2 Save \$X.XX", or (4) "2 Cans For \$X.XX".

**DISCUSSION**

[IC 6-7-2-7](#) imposes a tax on "the distribution of tobacco products in Indiana at the rate of twenty-four percent (24%) of the wholesale price of the tobacco products." The tax, payable by the distributor, is imposed when the distributor brings tobacco products into Indiana for distribution, manufactures tobacco products in Indiana for distribution, or transports tobacco products to retail

- (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.

Wholesale price, defined by [IC 6-7-2-6](#), is the "price at which the manufacturer of the tobacco products sells tobacco products to distributors, excluding any discount or other reduction."

[IC 6-7-2-2](#) provides that a distributor is a person who:

- (1) manufactures, sells, barter, exchanges, or distributes tobacco products in Indiana to retail dealers for the purpose of resale;
- (2) purchases tobacco products directly from a manufacturer of tobacco products; or
- (3) purchases for resale tobacco products from a wholesaler, jobber, or distributor outside of Indiana who is not a distributor holding a license issued under this chapter.

The tobacco products that Taxpayer sells to its customers are sold as a master carton to the wholesale distributors. Retailers can only purchase from wholesale distributors by either a master carton or display unit, not by individual unit. Products wrapping two cans together cannot be sold as individual cans since the individual cans do not have separate UPC numbers.

**RULING**

The Department rules that the unit price charged to Taxpayer's customers is the established wholesale price to which the tobacco tax should be applied. The method of packaging products for marketing and sale to the wholesale distributor does not matter since the determining factor for the tax is the price at which the Taxpayer sells the products to the wholesale distributors.

**CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

*Posted: 12/17/2008 by Legislative Services Agency*  
An [html](#) version of this document.