

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2009-01 TPT
October 19, 2009

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

OTP – Amount Subject to Indiana OTP Tax

A company ("Taxpayer") is seeking an opinion as to whether Indiana Other Tobacco Products ("OTP") tax is applied to the price of tobacco products before or after federal excise tax is imposed.

Authority: [IC 6-7-2-6](#); [IC 6-7-2-7](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which operates a retail tobacco products business, requests guidance on the amount subject to Indiana OTP tax. In pertinent part, Taxpayer provides:

Do Indiana cigar retailers have to pay the Indiana OTP tax on the portion of wholesale cigar invoices that is designated by the manufacturer submitting the invoices as the amount being charged for the Federal Excise Tax (FET), or SCHIP tax?

DISCUSSION

[IC 6-7-2-7](#) provides, in pertinent part:

A tax is imposed on the distribution of tobacco products in Indiana at the rate of twenty-four percent (24%) of the wholesale price of the tobacco products.

[IC 6-7-2-6](#) states:

As used in this chapter, "wholesale price" means the price at which the manufacturer of the tobacco products sells tobacco products to distributors, excluding any discount or other reduction.

While [IC 6-7-2-6](#) excludes "discounts" and "other reductions" from the definition of "wholesale sales," federal excise tax is not excluded. Accordingly, the term "wholesale price" includes federal excise tax. Therefore, the tax imposed by [IC 6-7-2-7](#) applies to the wholesale price of tobacco products, which includes all federal excise taxes that have been imposed.

RULING

Indiana's OTP tax applies to the wholesale price of tobacco products, which includes all federal excise taxes that have been imposed.

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.

