

Just the Facts: New York Cigarette Marketing Standards Act

The Cigarette Marketing Standards Act (CMSA) is New York's minimum cigarette price law.¹ The law sets a minimum markup on cigarettes at each stage of the distribution chain. It is a violation of the law for tax stamping agents, wholesalers or retailers to advertise, offer to sell, or sell cigarettes below the minimum price.² For a variety of reasons, however, this law does *not* maintain cigarette prices at a level high enough to positively impact public health. Complementary policies may be necessary to ensure high prices on tobacco products and achieve a reduction in tobacco use.

How is the minimum price calculated for cigarettes in New York?

There are many players in the cigarette supply chain. The minimum price calculation starts with the manufacturer's list (or invoice) price (as set by the manufacturer). This is the price at which the tax stamping agent purchases the cigarettes. In each subsequent transaction, a minimum "cost of doing business" is added to the purchase price. The seller's cost of doing business is based on the identity of the purchaser. Broken down, it looks like this:

Manufacturer's List Price: The invoice price at which the tax stamping agent purchases the cigarettes from the manufacturer.

Basic Cost: The **manufacturer's list price**, minus any trade discounts, plus the face value of the tax stamps the stamping agent is required to purchase and affix to each pack.³ The basic cost is used to calculate the minimum sale price throughout the remainder of the distribution chain.

Wholesaler Purchase Price: The **basic cost** plus the **cost of the doing business**, which is $\frac{7}{8}\%$ of the basic cost, plus \$0.02 per pack (or \$0.20 per carton of 10 packs) of cigarettes.⁴

Retailer Purchase Price: The **wholesaler's purchase price** plus the **cost of doing business**, which is 3% of the basic cost.⁵

Consumer Purchase Price: The **retailer's purchase price** plus the **cost of doing business**, which is 7% of the retailer's purchase price.⁶

How is the CMSA enforced?

The CMSA is enforced by the New York Department of Taxation and Finance.⁷ Violations of the CMSA incur both civil and criminal penalties. Civil penalties include license suspensions and fines of up to \$20,000 for the first violation (both of which may increase for subsequent violations).⁸ Violations also constitute a class B misdemeanor, if criminally convicted.⁹

The New York CMSA at Work



Figure 1: List price is an example

What are the public health implications of the CMSA?

There is a clear, inverse relationship between tobacco price and tobacco consumption.¹⁰ Studies show that a 10% increase in cigarette price can lead to a 3-5% decrease in purchases by adults (and youth may be more price-sensitive).¹¹ Thus, policies that increase the price of tobacco products at retail may impact public health by reducing usage rates, particularly among youth.

The CMSA has the potential to maintain higher retail prices on cigarettes. Similar to other states' minimum price laws, the CMSA was originally enacted to deter predatory business practices among cigarette dealers rather than for public health reasons.¹² Nevertheless, the CMSA is one of the few minimum price laws to prohibit certain strategies cigarette manufacturers use to circumvent minimum price laws and lower the retail price of cigarettes. Specifically, the CMSA prohibits "buy-downs" and "master-type" retailer incentive programs to factor in to the calculation of—and thereby reduce—the "basic cost" upon which the minimum retail prices are based.¹³

Ultimately, however, the CMSA's formula does not result in a meaningful minimum price. The law allows manufacturers to set the invoice price at which cigarettes are purchased by tax stamp agents (and which serves as the basis for the minimum price calculation). Additionally, the required minimum markup is actually significantly lower than the average free market markup of 18%.¹⁴ Finally, the law permits retail price discounting such as discount coupons and cross-promotions (e.g., discounted smokeless product with purchase of cigarettes). Accordingly, without an amendment to increase the minimum markup (or include a minimum invoice price) and close loopholes that permit discounting of cigarettes, the CMSA does not have much of an effect on public health.

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This work provides education materials and research support for policy initiatives and does not and cannot be relied upon as legal advice.

References

¹ N.Y. TAX LAW §§483-489 (McKinney 2012).

² N.Y. TAX LAW §484(a)(1) (McKinney 2012).

³ N.Y. TAX LAW §483(a)(1) (McKinney 2012). A trade discount is “the difference between a manufacturer’s list price and the price at which the manufacturer actually sells cigarettes.” A trade discount must be separately noted as a trade discount on an invoice.

⁴ The wholesaler is often the next step; however a tax stamping agent can choose to sell directly to a retailer or chain store. See N.Y. TAX LAW §483(a)(2) (McKinney 2012).

⁵ N.Y. TAX LAW §483(b)(2)(A) (McKinney 2012).

⁶ N.Y. TAX LAW §483(b)(3)(A) (McKinney 2012).

⁷ N.Y. TAX LAW §484 (McKinney (2012).

⁸ *Id.*; see also N.Y. DEP’T OF TAX’N & FIN., TSB-M-00(2)M, CIGARETTE MANUFACTURERS’ PROMOTIONAL PROGRAMS AND THE CIGARETTE MARKETING STANDARDS ACT, (2000), available at http://www.tax.ny.gov/pdf/memos/cigarette/m00_2m.pdf [hereinafter referred to as CMSA MEMO].

⁹ N.Y. TAX LAW §484 (McKinney (2012); see also CMSA MEMO, *supra* note 12.

¹⁰ U.S. DEP’T OF HEALTH & HUMAN SERVS., SURGEON GENERAL’S REPORT: REDUCING TOBACCO USE, 322-37 (2000); see also, F.J. Chaloupka et al. Tax, Price and Cigarette Smoking: Evidence from the Tobacco Documents and Implications for Tobacco Company Marketing Strategies, 11 TOBACCO CONTROL i62, i63-i64 (2002); Frank J. Chaloupka et al., Effectiveness of Tax and Price Policies in Tobacco Control, 20 TOBACCO CONTROL 235, 235-36 tbl. 1 (2010). For more information about the relationship between price and tobacco consumption, see CENTER FOR PUBLIC HEALTH & TOBACCO POLICY, TOBACCO PRICE PROMOTION: POLICY Responses TO INDUSTRY PRICE MANIPULATION 2-7.

¹¹ U.S. DEP’T OF HEALTH & HUMAN SERVS., SURGEON GENERAL’S REPORT: REDUCING TOBACCO USE, 337 (2000); U.S. DEP’T OF HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL, 528, 530, 699 (2012); F.J. Chaloupka et al. *Tax, Price and Cigarette Smoking: Evidence from the Tobacco Documents and Implications for Tobacco Company Marketing Strategies*, 11 Tobacco Control i62, i64 (2002) (estimating a 2.5-5 percent decrease).

¹² See An Act to Amend the Tax Law, in Relation to Establishing Cigarette Marketing Standards, ch.897, §1, 1985 N.Y. Laws 3365 (1985).

¹³ CMSA MEMO, *supra* note 12 (explaining that “buy-downs” and “master-type” programs are prohibited under the CMSA.) Buy down programs are agreements between a manufacturer and retailer through which the retailer is paid a rebate for sales of a particular brand of cigarettes. *Id.* A master-type program or wholesale pricing agreement is a program administered by a wholesaler and sponsored by a manufacturer, through which a wholesaler agrees to pay a retailer a rebate for the sale of particular brands of cigarettes (and is later reimbursed by the manufacturer). *Id.*

¹⁴ Michael Tynan et al., *Impact of Cigarette Minimum Price Laws on the Retail Price of Cigarettes in the USA*, TOBACCO CONTROL ONLINE FIRST August 3, 2012, at 6, <http://tobaccocontrol.bmj.com/content/early/2012/08/02/tobaccocontrol-2012-050554.full?sid=b9777b11-00b0-4055-9abb-0cdcbab1b6c>; N.Y. TAX LAW §483 (McKinney 2012) (markups ranging from 5% of basic cost to 7% of basic cost plus cost of agent doing business with retail dealer).

