

Administrative Release

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No. TT-4

June 1, 1995

TO: All Cigarette Manufacturers, Wholesalers and Sub-Wholesalers

SUBJECT: Promotional Allowances and Cigarette "Buydowns"

Section 11-505 of the Commercial Law Article prohibits, with several exceptions, any rebate, allowance or other concession that has the effect of reducing the price a retailer pays for cigarettes to an amount less than the wholesaler's cost. The first exception permits payment or compensation to a retailer by a manufacturer of cigarettes on a uniform and nondiscriminatory basis for promotional services. The second exception, which this Administrative Release addresses, allows coupons to be issued to consumers if redeemed by the manufacturer.

Coupons may be issued by a manufacturer, or a wholesaler acting as an agent of the manufacturer, in one of two forms:

1. A separate coupon not affixed to a pack of cigarettes which, upon satisfactory proof of purchase, is redeemed after the purchase with a direct payment to the consumer by the manufacturer; and
2. An "instant" rebate coupon or allowance having the effect of a price reduction at the time of the consumer's purchase from the retailer. The latter method of couponing is commonly referred to by various segments of the cigarette industry as a "buydown."

To ensure uniformity, accountability and compliance with the Cigarette Sales Below Cost Act, the following guidelines will apply to each optional method of providing future cigarette buydowns:

Buydown Options

Option 1

- Buydowns must be based on existing inventory on the retailer's premises. Allowances based on any future purchases by the retailer are prohibited.
- A retailer must be reimbursed for a buydown simultaneous with, or within a reasonable time following, the affixing of an "instant" rebate sticker to packs of cigarettes on the retailer's premise. The amount of reimbursement to the retailer cannot exceed the full face value of the number of stickers affixed for any given program.
- Manufacturers must assume all costs related to the buydown program, either through direct payment to the retailer or through a wholesaler acting as the manufacturer's agent.
- To ensure there are no excessive payments resulting in a violation of the Cigarette Sales Below Cost Act, if a wholesaler acts as an agent of a manufacturer for a buydown program, the wholesaler must be reimbursed by the manufacturer in a timely fashion.
- Any retailer who wishes to participate in a buydown offered under this option shall be afforded

the opportunity to do so by the manufacturer.

Option 2

- Rebate stickers are affixed by the manufacturer before delivery to the wholesaler or are provided by the manufacturer to the wholesaler who affixes them to packs of cigarettes on the wholesaler's premise before delivery to the retailer.
- The retailer is reimbursed for the buydown by a direct credit on the wholesale-to-retail invoice or by a prompt and timely direct payment from the manufacturer.
- Manufacturers must assume all costs related to the buydown program, including reimbursement of wholesalers' expenses in affixing the rebate stickers.

Option 3

- A manufacturer may provide one or more signs to be placed on retailers' premises. These signs must be conspicuously and prominently displayed for the duration of the program, and at least include the following information:
 - Name of manufacturer
 - Name of brand
 - Period of buydown, i.e. From/To (an additional notation, "while supplies last," may also be included)
 - A space for pricing:
 - Retailer's selling price*
 - Manufacturer's discount (buydown)
 - Final selling price*(*to be completed by retailer)

A signed buydown agreement must be executed between the manufacturer and any retailer who engages in this buydown option. The agreement must include the names of the manufacturer and retailer, name of brand(s) designated for buydown, the specific period of the buydown and the amount of manufacturer's discount (buydown).

Manufacturers must promptly reimburse retailers, either directly or through a wholesaler acting as a manufacturer's agent, for all costs related to the buydown program according to the buydown agreement noted above.

Any retailer who does not display the sign or honor the buydown agreement for the duration of the buydown may be prohibited from participating in further buydowns under this option. Manufacturers or wholesalers acting as agents of manufacturers who act contrary to these guidelines may be prohibited from participating in this option or buydowns in general.

Records and Documentation-All Options

If a manufacturer maintains an office in Maryland, the manufacturer shall maintain a central file, and it shall be available for inspection at that office. If the manufacturer does not maintain an office in Maryland, the central file may be maintained outside the state. However, the manufacturer must agree to make the records available to the Alcohol and Tobacco Tax Unit within 48 hours of a request.

Each file shall contain complete details on each buydown program identified under any of the options above. Documentation should include the name and address of all retailers that were provided a buydown, the amount of payment, and the method of payment pursuant to one of the above options. In the case of Option 3, a copy of each signed buydown agreement shall be maintained in the file.

Records pertaining to each buydown program shall be maintained for at least two years after the conclusion of the particular program.

Each manufacturer that uses buydowns in the Maryland market shall file with the Alcohol and Tobacco Tax Unit a letter designating where the required records will be maintained and the person responsible.

These letters shall be updated as conditions and circumstances warrant.

Any questions pertaining to cigarette promotional allowances or buydown programs should be directed to Assistant Administrator Aaron Stansbury at 410-260-7319.

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