

# Administrative Release

Comptroller of Maryland ■ Alcohol and Tobacco Tax Division ■ Goldstein Treasury Building ■ P.O. Box 2999  
Annapolis, Maryland 21404-2999 ■ Telephone: 410-260-7314 ■ Forms-by-Fax: 410-974-FAXX(3299)

## No. TT-1

November 1, 1994

**TO: All Cigarette Wholesalers and Sub-Wholesalers**

**SUBJECT: Cigarette Sales Below Cost Act Meeting “Cash and Carry” Competition**

Section E(2) of Regulation 03.02.03.07 (Wholesaler’s Cost of Doing Business) provides that in order for a wholesaler to meet the price of a competitor who has been approved for selling at a lower cost of doing business, “the competitor shall have sold, or made a bona-fide offer to sell, cigarettes at a lower lawful price at a specific account”. The provisions of this regulation generally anticipate competition for cigarettes sold and delivered to a specific account.

The Alcohol and Tobacco Tax Bureau has recently been asked for the interpretation of this regulation as it relates to cash and carry sales. Since the impetus for a cash and carry purchase rests with the retail account (i.e. the retailer makes a decision to go to the wholesaler’s place of business to purchase cigarettes), a cash and carry wholesaler may meet and advertise the cash and carry price of another wholesaler providing:

1. the competitor has been approved for a lower cash and carry price;
2. the competitor has publicly posted and is actively selling to retail accounts at the lower approved price; and
3. the cash and carry competitor is in the same general geographic region.

If these requirements are met, the competitor will be deemed to have made a bona-fide offer to sell at the lower price.

The interpretation applies to cash and carry sales only. It does not apply to cigarettes which are delivered to retail accounts. In accordance with Section E(3) of the regulation, a written offer to sell is still considered primary evidence of competition for products sold and delivered to a particular account.

Charles W. Ehart, DPA  
Director, Alcohol and Tobacco Tax Division

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Comptroller of the Treasury Alcohol & Tobacco Tax Bureau  
Goldstein Treasury Building  
P.O. Box 2999, Annapolis MD 21404-2999  
410-260-7314 in Central Maryland or 1-888-784-0145 from elsewhere  
E-mail: [taxhelp@comp.state.md.us](mailto:taxhelp@comp.state.md.us)