

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 DELAWARE AVENUE
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 73-19

August 10, 1973

- Unfair Cigarette Sales Act (House Bill 415, 127th General Assembly)

The Office of Price Stabilization has determined that the Federal law relating to price stabilization takes precedence over the Delaware Fair Trade Law establishing minimum wholesale and retail prices for cigarettes, and therefore that the increase in prices required by House Bill 415 would be in violation of the Federal Price Stabilization Act and regulations thereunder.

The Office of Price Stabilization has also determined that when the new Phase 4 price regulations go into effect on August 13, all small businesses (i.e., those with less than 60 employees) will be exempt from the Federal price freeze, whereas, all larger businesses (those with more than 60 employees) will continue to be subject to the Federal price regulations.

A question has been raised as to whether, when Phase 4 price regulations become effective, a "small business" retailer or wholesaler who is exempt from the Federal law would be in violation of the Unfair Cigarette Sales Act if he were to continue to sell cigarettes at the lower price which a larger business competitor (who was subject to Federal price control) was selling such cigarettes.

Section 2605 (a) (4) of House Bill 415 provides that the provisions of the Act shall not apply to sales at retail or sales at wholesale:

"(4) Where cigarettes are sold by a retailer or wholesaler at a price fixed in good faith to meet the competition of another retailer, or of another wholesaler who is rendering the same type of service (i.e., 'cash or carry' or 'service') as the seller, and provided that the competitor's price which seller desires to meet is itself lawful and not in violation of the provisions of this chapter."

It is held that, under the quoted exception set forth in Section 2605 (a) (4), Title 6, Delaware Code, any retailer or wholesaler who is exempt from Federal regulations (under the so called small business exemption) who fixes his price in good faith to meet the competition of a larger retailer or wholesaler

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will not be in violation of the provisions of the Unfair Cigarette Sales Act. It is believed that a proper application of this ruling will permit a fair and equitable administration of the law, and will result in equal enforcement to all retailers and wholesalers.

for Robert R. Cory
Russell M. Cory
Director of Revenue

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