



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
CARVEL STATE BUILDING  
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**DEPARTMENT OF FINANCE  
DIVISION OF REVENUE**

**TECHNICAL INFORMATION MEMORANDUM 93-7**

**DECEMBER 29, 1993**

**SUBJECT: TOBACCO PRODUCT WHOLESALERS**

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Pursuant to the authority conferred in 30 Del. C. §5329 and §563, the Department of Finance hereby promulgates the following regulation interpreting the statutory requirement, found in 30 Del. C. §5301(14), that a "wholesale dealer" "regularly sell[] tobacco products to others for the purpose of resale."

**I. REGULATION.**

A problem has arisen whereby retail tobacco products dealers have been applying for wholesale dealer licenses in order to circumvent the Delaware Unfair Cigarette Sales Act (6 Del. C. Ch. 26) ("The Act"). Possessing the wholesale license may be thought by applicants to allow retailers to purchase tobacco products, particularly cigarettes, below the established minimum wholesaler-to-retailer price in violation of the Act. Retailers, however, do not meet the definition of "wholesale dealer" as set out in 30 Del. C. §5301(14) because they purchase tobacco products for sale to the ultimate consumer and not for resale, contrary to the statutory definition of a "wholesale dealer."

Therefore, the Division will not license a person as a "wholesale dealer" unless the person regularly sells to others who buy for the purpose of resale. "Regularly selling to others" is interpreted to mean that the person seeking or renewing a wholesale dealer license who has a minimum of five separate retail dealers willing to purchase or currently purchasing tobacco products from the person seeking the wholesale dealer license is presumed to meet the statutory definition; persons who do not meet this minimum are presumed, subject to the Exception described in Section II of this Memorandum, not to be wholesale dealers. For purposes of this Regulation, the separate retail dealers cannot be directly or indirectly owned or controlled by, or affiliated with, the person seeking the wholesale license.

Additionally, wholesale dealers must maintain a place of business either within or without this state for the sale of cigarettes which place includes warehouse facilities for the storage of cigarettes.

Persons who are currently unlicensed but who apply for a wholesale dealer license must supply the Division, along with the application, a list of at least five (5) retail dealer customers, including the retailers' names, business addresses and the retailers' Delaware Cigarette Retail Dealer license numbers.

Persons currently licensed must, as part of the license renewal process, supply the Division with a list of at least five (5) retail dealers by January 31, 1994, for tax year 1994 and by the December 31st preceding each succeeding tax year for which the license is renewed.

A wholesale dealer's license shall be automatically suspended and revoked if and when a wholesale dealer's retail customer base falls below the required number of retail dealers. A licensee shall immediately notify the Division of this occurrence, and the failure to do so shall constitute a violation of 30 Del. C. §§5321 and 5343.

## II. EXCEPTION.

A person with fewer than five (5) retail dealer customers may be issued a wholesale dealers license and a person licensed as a wholesale dealer may continue to be validly licensed, if, in connection with the initial application or renewal or after the license is automatically suspended: (1) The Division is notified as required by the preceding paragraph; and (2) The person demonstrates that: (a) The failure to meet the required number of retail dealers is temporary; or (b) The person in fact regularly sells tobacco products within this state to others who buy for the purpose of resale, notwithstanding the failure to meet the requirements of Section I of this regulation, and the person is not attempting to circumvent the Delaware Unfair Cigarette Sales Act.

Questions concerning this regulation and documentation of exceptions under (II) above should be directed to Ron Armstrong at the above address and telephone number.



William M. Remington  
Director of Revenue