

**§1202. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings. [PL 1979, c. 541, Pt. A, §92 (NEW).]

**1. Cost to the retailer.** "Cost to the retailer" shall mean the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or the replacement cost of the merchandise to the retailer within 30 days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added:

- A. Freight charges not otherwise included in the cost of the merchandise,
- B. Cartage to the retail outlet if performed or paid for by the retailer, which cartage cost shall be deemed to be 3/4 of 1% of the cost of the merchandise to the retailer, unless said retailer claims and proves a lower cartage cost, and
- C. A markup to cover in part the cost of doing business, which markup in the absence of proof of a lesser cost shall be 6% of the total cost at the retail outlet.

**2. Cost to the wholesaler.** "Cost to the wholesaler" shall mean the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler within 30 days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added:

- A. Freight charges not otherwise included in the cost of the merchandise,
- B. Cartage to the retail outlet if performed or paid for by the wholesaler, which cartage cost shall be deemed to be 3/4 of 1% of the cost of the merchandise to the wholesaler, unless said wholesaler claims and proves a lower cartage cost,
- C. A markup to cover in part the cost of doing business, which markup in the absence of proof of a lesser cost shall be 2% of the total cost at the wholesale establishment, and
- D. Sales made by a cigarette distributor to a licensed wholesale dealer or to the operator of 15 or more vending machines shall not be subject to a markup of 2% as stated in paragraph C, but such sales shall be subject to full trade discount only.

**3. Combined price of 2 or more items.** Where 2 or more items are advertised, offered for sale or sold at a combined price, the price of each such item shall be determined in the manner set forth in subsections 1 and 2.

**4. Bona fide costs.** "Cost to the retailer" and "cost to the wholesaler" as defined in said subsections 1 and 2 shall mean bona fide costs. Sales to consumers, retailers and wholesalers at prices which cannot be justified by existing market conditions within this State shall not be used as a basis for computing replacement costs with respect to sales by retailers and wholesalers.

**5. Retail sale; wholesale sale.** "Sell at retail," "sales at retail" and "retail sale" shall mean and include any transfer of title to tangible personal property for a valuable consideration made, in the ordinary course of trade or in the usual prosecution of the seller's business, to the purchaser for consumption or use other than resale or further processing or manufacturing. The terms "sell at wholesale," "sales at wholesale" and "wholesale sale" shall mean and include any such transfer of title to tangible personal property for the purpose of resale or further processing or manufacturing. In this and in subsection 4 the above terms shall include any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

**6. Retailer.** "Retailer" shall mean and include every person, copartnership, corporation or association engaged in the business of making sales at retail within this State. In the case of a retailer engaged in the business of making sales both at retail and at wholesale, such term shall be applied only to the retail portion of such business.

**7. Wholesaler.** "Wholesaler" shall mean and include every person, copartnership, corporation or association engaged in the business of making sales at wholesale within this State. In the case of a wholesaler engaged in the business of making sales both at wholesale and at retail, such term shall be applied only to the wholesale portion of such business.

**8. Costs to be added.** Where a retailer sells at retail any merchandise which is the product of his or its own manufacture or which has been purchased by him or it at the purchase price or prices available to wholesalers, in the absence of proof of a lesser cost, both the wholesale markup of 2% and the retail markup of 6% to cover in part the cost of doing business, as provided in subsections 1 and 2, shall be added in determining the "cost to the retailer" of such merchandise.

**9. Sub-jobber.** "Sub-jobber" shall mean and include a wholesaler who purchases cigarettes at wholesale for the purpose of resale to retail dealers, and who maintains a regularly established place of business where stocks of cigarettes are kept for sale and whose sales are chiefly to other persons for resale.

#### SECTION HISTORY

PL 1979, c. 541, §A92 (AMD).

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