

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Manufacturer's Net Invoiced Price (LAC 61.I.5103)

Under the authority of R.S. 47:841(D) and 1511, and in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Department of Revenue, Policy Services Division, proposes to adopt LAC 61.I.5103 relative to the determination of manufacturer's net invoiced price.

The purpose of this regulation is to provide definitions relative to the calculation of manufacturer's net invoiced price and provide guidance regarding the inclusion and exclusion of certain items such as, trade discounts, cash discounts, federal excise tax and shipping charges routinely reflected on invoices issued to tobacco dealers.

### Title 61

### REVENUE AND TAXATION

### Part I. Taxes Collected and Administered by the Secretary of Revenue

### Chapter 51. Tobacco Tax

#### **§5103. Manufacturer's Net Invoiced Price**

##### A. Definitions

Cash Discounts—reduction to the total invoiced amount based upon a payment method or timing of payment such as payment by electronic funds transfer, automatic withdrawal or full payment within a specified period.

Promotional Incentives—product provided to the Louisiana dealer and listed on the invoice at no cost

Trade Discounts—reduction in list price or unit price given by a manufacturer or other supplier. These discounts are listed in the product line item as either a percentage or specified amount and are reflected in the extended price of the product on the invoice.

B. The tobacco tax is imposed on the invoice price of cigars, smoking tobacco, smokeless tobacco and other tobacco products. R.S. 47:842(6) defines invoice price as the manufacturer's net invoiced price as invoiced to the Louisiana tobacco dealer.

C. Manufacturer's net invoiced price is the product line item price charged to the dealer by the manufacturer, supplier, jobber or other person who sells the tobacco product to the dealer inclusive of any trade discount reflected in the line item price.

D. Federal excise and other taxes, shipping charges, and freight charges separately stated on an invoice are not considered part of the price of the taxable product and are excluded from the determination of manufacturer's net invoiced price.

E. Cash discounts shall not be considered when determining the manufacturer's net invoiced price.

F. R.S. 47:854(B) requires that any tobacco products given away at no cost must be taxed in the same manner as products sold, used, consumed, handled or distributed in this state. The tobacco tax due on promotional incentives listed on an invoice at no cost shall be determined as follows:

1. If the invoice reflects a purchase of the same product, then the tobacco excise tax should be calculated on the invoiced price charged on the invoice for the same product.

2. If the invoice does not show the purchase of the same product, then the tax is calculated on the manufacturer's list price for that product

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:841(D) and 1511.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 48:

#### **Family Impact Statement**

The proposed adoption of this rule should have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule has no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

#### **Poverty Impact Statement**

The proposed rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Impact Analysis**

The proposed rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

### **Provider Impact Statement**

The proposed rule has no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

### **Public Comments**

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Brandea Averett, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., September 27, 2022

### **Public Hearing**

A public hearing will be held on September 28, 2022 at 9AM in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kevin J. Richard, CPA  
Secretary of Revenue

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Manufacturer's Net Invoiced Price**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule clarifies the term 'invoice price' as found in Louisiana Revised Statute 47:842(6) by providing definitions of discounts commonly allowed by manufacturers to customers and an explanation of how the discounts and other items are to be considered in determining the manufacturer's net invoiced price of cigars, smoking tobacco, smokeless tobacco, and other tobacco products other than cigarettes and vapor products for tobacco tax purposes.

The proposed rule will not result in implementation costs or savings to the state. Local governmental units are not affected by this proposal.

### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule clarifies current Department procedures regarding the invoice price of tobacco products other than cigarettes and vapor products for the purpose of tax calculations. The proposed rule will not affect revenue collections.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)**

LDR does not anticipate any additional costs to comply with this change. Any additional costs or economic benefits to affected persons are expected to be minimal.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule should not affect competition or employment.

Kevin J. Richard, CPA  
Secretary of Revenue

Alan Boxberger, Interim Fiscal Officer  
Legislative Fiscal Office