



Office of State Revenue  
NSW TREASURY

ABN: 77 456 270 638

## Revenue Ruling No. BF12

### Assessment of Business Franchise Fees on Tobacco Provided Free of Charge for Promotional Purposes

#### PREAMBLE

Manufacturers and importers of tobacco sometimes provide retailers with tobacco products free of charge for promotional purposes. Depending on the terms under which the tobacco is given, the retailer may either sell the tobacco or give it away. This ruling sets out the liability for licence fees on such tobacco.

#### RULING

##### Liability of Wholesalers

1. Paragraphs (a) and (b) of section 41(1) of the Act provide that the fee for a wholesaler's licence and a group wholesalers' licence includes an amount equal to a percentage of the value of tobacco sold in the course of tobacco wholesaling during the relevant period, other than sales to licensed wholesalers.
2. If a wholesaler gives tobacco to a retailer for promotional purposes, then provided it is a bona fide gift and not a sale for valuable consideration in money or money's worth, the wholesaler is not liable for licence fees in respect of the value of that stock because it was not "sold" by the wholesaler.

##### Liability of Retailers

3. Paragraphs (c) and (d) of section 41(1) of the Act provide that the fees for a retailer's licence and a group retailers' licence include an amount equal to a percentage of the value of tobacco sold in the course of tobacco retailing during the relevant period, other than tobacco purchased from a licensee.
4. A retailer who sells tobacco which was obtained free of charge for promotional purposes from a wholesaler must include its value in the calculation of licence fees because the tobacco was not "purchased" from a licensee.
5. No fees are payable by the retailer if the tobacco was given away to the consumers, because it was not "sold" by the retailer. However, if the tobacco was given away on a conditional basis, such as one free carton for every 3 cartons purchased, that would constitute a sale and fees would be payable on the value of all four cartons.

A. D. CLYNE,  
Chief Commissioner for Business  
Franchise Licences (Tobacco).  
11 March 1988.

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