

(Series 1982)  
Bulletin #535  
February 4, 1982  
(Supersedes Bulletins  
No. 529 dated July 16, 1980  
No. 530 dated July 30, 1980)

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: 1. Liquor Wholesalers - All Zones  
2. Retail Package Store Licensees - Zone I only

SUBJECT: New York City Excise Tax

Pursuant to a decision of the New York Court of Appeals, Bulletin No. 529, dated July 16, 1980, and Bulletin No. 530, dated July 30, 1980, are hereby repealed, effective the close of business April 30, 1982.

This Bulletin shall apply to schedules of liquor prices to retailers to become effective on or after May 1, 1982.

Liquor wholesalers, whether or not located in New York City, may be liable for the payment of the New York City excise tax with respect to all sales of liquor to retail licensees located within New York City. (This is a determination to be made by the State Tax Commission.) Any liquor wholesaler wishing to charge New York City retail licensees for the tax in any given month on any or all items of liquor may do so in accordance with the provisions of this Bulletin.

PLEASE NOTE: ANY WHOLESALER WHO DOES NOT FILE SEPARATE PRICES FOR SALES TO NEW YORK CITY RETAILERS WILL BE REQUIRED TO SELL TO NEW YORK CITY RETAILERS AT THE SAME PRICES CHARGED ALL OTHER LICENSEES. A WHOLESALER IS NOT PERMITTED TO CHARGE OR COLLECT THE NEW YORK CITY EXCISE TAX EXCEPT THROUGH SEPARATE SCHEDULED PRICES TO NEW YORK CITY RETAILERS. WHOLESALERS ARE REMINDED THAT THEY CANNOT LEGALLY REFUSE TO SELL TO NEW YORK CITY RETAILERS MERELY BECAUSE THEY HAVE NOT SCHEDULED SEPARATE NEW YORK CITY PRICES.

1. As used in this Bulletin:

(a) "City tax" shall mean the excise tax levied by the City of New York on a specific case of liquor (varies according to container size and number of containers in the case).

(b) "legal City price" shall mean the maximum case or bottle price, as the case may be, a wholesaler can legally include in a schedule of liquor prices to retailers, to apply to all sales to retail licensees located in the City of New York. The legal City price shall be computed by treating the City tax as a new tax or fee applicable to liquor pursuant to Section 101-b(3)(b) of the A.B.C. Law. As is the case with other changes in taxes under that Section, no prior Authority approval is required.

(c) "post-off City price" shall mean the effective case or bottle price, as the case may be, appearing in a schedule of liquor prices to retailers, to apply to all sales to retail licensees located in the City of New York. Post-off City case and bottle prices should be in the same proportion to the respective legal City prices as the post-off State prices are to the legal State prices (see examples below).

2. A liquor wholesaler may, but is not required to, schedule separate City prices.

3. City prices shall be scheduled by inserting additional lines of prices (including minimum bottle resale), identified by appropriate symbol or otherwise, under the State prices for each item contained in the schedule.

4. If a wholesaler schedules City prices, the effective bottle and case price for each item of liquor thus scheduled become the prices to all New York City retailers for all purposes under the A.B.C. Law.

5. If a wholesaler files a post-off State price, a post-off City price must also be filed. If the wholesaler does not file a post-off State price, no post-off City price may be filed.

6. If a wholesaler chooses not to schedule separate City prices, the effective State prices shall apply to sales to all retail licensees, whether located within or without New York City.

7. A wholesaler filing an amended schedule under Section 101-b(4) may meet the lower State and/or City prices of a single licensee, or the State price of one licensee and the City price of another, subject to the following:

(a) In no event may either a State price or City price be increased.

(b) In no event may a wholesaler's final effective City case or bottle price be lower than the wholesaler's respective final effective State case or bottle price.

(c) In no event may the final difference between the amended City and State prices exceed the differences between the legal State prices and the legal City prices.

8. The quantity and time of payment discounts offered by a wholesaler on a given item must remain uniformly applicable to all retail licensees, wherever located.

9. The Top Sheet filed by each wholesaler shall contain a statement, as appropriate, to the effect that the schedule includes City prices for some or all items of liquor, and that where no City prices appear, the prices filed shall be applicable to all licensees within the state; or that no City prices have been filed, in which event the prices filed shall apply to sales to all retailers in the state.

10. Highlight Sheets need not contain any references to City prices.

The following examples illustrate the proper method of calculating State and City prices to retailers. The examples are based on a scheduled price to wholesalers (quarts - 12 bottles per case) of \$60 per case; a City tax of \$3.00 per case; and a maximum legal markup of 18.00% on each of the specific items.

	<u>State Price</u>	<u>New York City Price</u>
1. (Maximum Legal Price)	Case: 118.00% x \$60.00 = \$70.80	Case: 118.00% x \$63.00 = \$74.34
	Bottle: $\frac{\$70.80 + \$1.92}{12}$ = \$6.06	Bottle: $\frac{\$74.34 + \$1.92}{12}$ = \$6.36
2. (\$1.80 Post Off-High Bottle)	Case: \$69.00	Case: $\frac{\$69.00}{\frac{\$70.80}{12}} = \frac{x}{\$74.34}$ x = \$72.45*
	Bottle: \$6.06	Bottle: \$6.36
3. (\$1.80 Post Off-Low Bottle)	Bottle: $\frac{\$69.00 + \$1.92}{12}$ = \$5.91	Bottle: $\frac{\$72.45 + \$1.92}{12}$ = \$6.20
4. (\$1.80 Post Off-Middle Bottle)	Bottle: \$ 5.99**	Bottle: $\frac{\$5.99}{\frac{\$6.06}{12}} = \frac{x}{\$6.36}$ x = \$6.29

\*Note that dollar amount of the New York City post-off (\$1.89) is greater than dollar amount of the statewide post-off (\$1.80).

\*\*Arbitrarily determined by wholesaler.

STATE LIQUOR AUTHORITY