

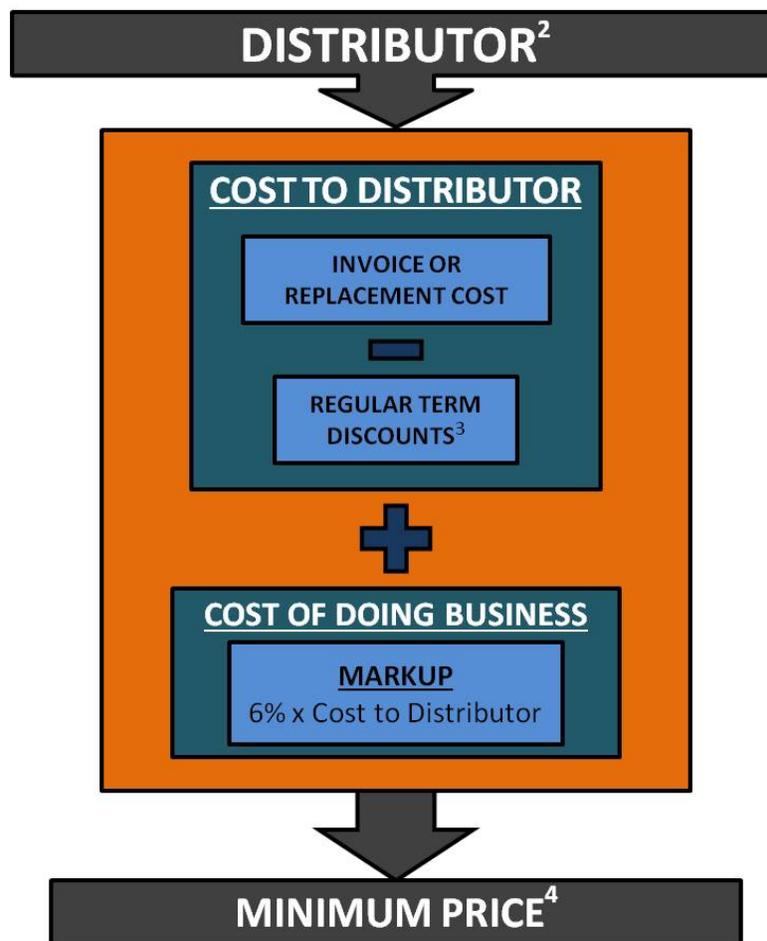
California



Minimum Markup Minimum Pricing

Yes Blank No -- Not Applicable/Addressed

Cigarette Pricing¹ – 2015



Note: This state does not set a minimum price for OTP.

Formulating Price

State Pricing Regulation Strength: Factors that Decrease versus Increase Statutory Price*

Pricing Formula Elements That **DECREASE PRICE**



Number of factors decreasing price: **Above Average**

Pricing Formula Elements That **INCREASE PRICE**



Number of factors increasing price: **Below Average**

Total Decrease Factors (State):	4
Average Decrease Factors (National):	3.2
Below-Cost Combination Sales Explicitly Permitted	
Below-Cost Coupons Permitted	✓
Consumers Can Receive Below-Cost Coupons	✓
Trade Discounts Explicitly Permitted	✓
Trade Discounts Include Discount Programs	
Competitor Price-Matching Permitted	✓

Total Increase Factors (State):	1
Average Increase Factors (National):	3.3
≥ 2 Parties Regulated	
Markup Applied	✓
Taxes	
Cartage	
Other Costs	

**Note: See "How to Read" for an explanation of terms and factors, and "Methods" for detailed methodology.*

Markup Rates Across Standard Distribution Chain

	Stamping Agent	Wholesaler/Distributor	Retailer/Dealer	Total Standard Markup	State vs Nat'l Total Markups
California		6%		6%	--
Nat'l Average Markup of States Where Distribution Level Regulated	1.15% (N=3)	3.668% (N=26)	8.021% (N=24)	12.839%	↓ <i>Below Average</i>
Nat'l Average Markup of All Markup States (N=27)	0.128%	3.532%	7.13%	10.79%	↓ <i>Below Average</i>

Combination Sales

Types of Combination Sales Permitted

Buy-One-Get-One or Multi-Pack	--
Tobacco Product + Coupon	--
Tobacco Product + Non-Tobacco Product	--

Coupons

Who May Distribute Coupons to Consumers?

Manufacturer		Retailer/Dealer	
Wholesaler/Distributor		Distributing Party Not Addressed	✓

Footnotes

California- Cigarette

1. California courts have applied its Unfair Trade Practices laws to cigarettes. While there is no minimum markup law specific **only** to cigarettes, there is a provision within the Unfair Trade Practices laws that addresses the use of cash discounts by cigarette distributors. Cal. Bus. & Prof. Code § 17026.5 (West 2012).
2. The State of California differentiates between a cigarette distributor (one who sells unstamped cigarettes) and a cigarette wholesaler (one who sells stamped cigarettes). Under California law, sales from manufacturers to cigarette distributors are not taxed, but the sales between cigarette distributors and cigarette wholesalers are. Board of Equalization Publication 93, Nov. 2010; Board of Equalization Publication 78, June 2012. While these unfair practice laws do not define “distributors,” California courts have applied the min pricing laws to cigarette wholesalers. *E &H Wholesale, Inc. v. Glaser Bros.*, 204 Cal. Rptr. 838, 842 (Ct. App. 1984). There is no current law, publication, or judicial guidance clarifying whether this pricing scheme is also applied to retailers.
3. “Regular term discounts” **may** be used to reduce the cost when given by cigarette manufacturers to distributors. Cal Bus & Prof Code § 17026.5. This includes discounts given for cash payments, which may be used to reduce the cost to the distributor, Cal Bus & Prof Code § 17026.5. However, “special” or “anticipatory” discounts for cash may not be used to reduce cost. Cal. Bus. & Prof. Code § 17026.5 (West 2012). This section was added to the Unfair Trade laws in 1985 following a 1984 determination by the courts that discounts for timely cash payments could *not* be used to reduce cost under the existing law. *E &H Wholesale, Inc. v. Glaser Bros.*, 204 Cal. Rptr. 838, 842 (Ct. App. 1984). While California allows for uniformly applied term discounts, it prohibits the use of “secret” discounts or rebates “not extended to all purchasers purchasing upon like terms and conditions.” Cal. Bus. & Prof. Code § 17045 (West 2012).
4. In the State of California, both the Cigarette Tax AND the Cigarette and Tobacco Products Surtax must be applied to cigarette sales. ***Unfair Trade Practices laws do not explicitly state that these taxes be included in the minimum price for distributors.*** Distributors **are** obligated to pay these taxes prior to sale, but the law states only that they **may** be reimbursed by the parties to whom they sell, not that they **shall**.