

~~and grain handling taxes under section 428.35, and moneys and credits taxes under chapter 430A.~~

Sec. 6. Chapter 430A, Code 2007, is repealed.

Approved May 24, 2007

CHAPTER 186

TAXES, TAX POLICY, AND ADMINISTRATION

H.F. 923

AN ACT relating to the policy and technical administration of the tax and related laws by the department of revenue, including administration of income, sales, use, cigarette, and tobacco taxes, providing an effective date, and providing retroactive applicability date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I TAX ADMINISTRATION

Section 1. Section 15E.44, subsection 1, Code 2007, is amended to read as follows:

1. In order for an equity investment to qualify for a tax credit, the business in which the equity investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of the names, addresses, ~~taxpayer identification numbers~~, shares issued, consideration paid for the shares, and the amount of any tax credits, of all shareholders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list of shareholders who may qualify for the tax credits shall be amended as new equity investments are sold or as any information on the list shall change.

Sec. 2. Section 15E.45, subsection 3, paragraph a, subparagraph (1), Code 2007, is amended to read as follows:

(1) The names, addresses, ~~taxpayer identification numbers~~, equity interests issued, consideration paid for the interests, and the amount of any tax credits.

Sec. 3. Section 331.434, subsection 1, Code 2007, is amended to read as follows:

1. The budget shall show the amount required for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, the revenues from sources other than property taxation, and the amount to be raised by property taxation, in the detail and form prescribed by the director of the department of management. For each county that has established an urban renewal area, the budget shall include estimated and actual tax increment financing revenues and all estimated and actual expenditures of the revenues, proceeds from debt and all estimated and actual expenditures of the debt proceeds, and identification of any entity receiving a direct payment of taxes funded by tax increment financing revenues and shall include the total amount of loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year, which qualify for payment from the special fund created in section 403.19, including interest negotiated on such loans, advances, indebtedness, or bonds. For purposes

of this subsection, "indebtedness" includes written agreements whereby the county agrees to suspend, abate, exempt, rebate, refund, or reimburse property taxes, provide a grant for property taxes paid, or make a direct payment of taxes, with moneys in the special fund. The amount of loans, advances, indebtedness, or bonds shall be listed in the aggregate for each county reporting. The county finance committee, in consultation with the department of management and the legislative services agency, shall determine reporting criteria and shall prepare a form for reports filed with the department pursuant to this section. The department shall make the information available by electronic means.

Sec. 4. Section 384.16, subsection 1, unnumbered paragraph 2, Code 2007, is amended to read as follows:

A budget must show comparisons between the estimated expenditures in each program in the following year, the latest estimated expenditures in each program in the current year, and the actual expenditures in each program from the annual report as provided in section 384.22, or as corrected by a subsequent audit report. Wherever practicable, as provided in rules of the committee, a budget must show comparisons between the levels of service provided by each program as estimated for the following year, and actual levels of service provided by each program during the two preceding years. For each city that has established an urban renewal area, the budget shall include estimated and actual tax increment financing revenues and all estimated and actual expenditures of the revenues, proceeds from debt and all estimated and actual expenditures of the debt proceeds, and identification of any entity receiving a direct payment of taxes funded by tax increment financing revenues and shall include the total amount of loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year, which qualify for payment from the special fund created in section 403.19, including interest negotiated on such loans, advances, indebtedness, or bonds. For purposes of this subsection, "indebtedness" includes written agreements whereby the city agrees to suspend, abate, exempt, rebate, refund, or reimburse property taxes, provide a grant for property taxes paid, or make a direct payment of taxes, with moneys in the special fund. The amount of loans, advances, indebtedness, or bonds shall be listed in the aggregate for each city reporting. The city finance committee, in consultation with the department of management and the legislative services agency, shall determine reporting criteria and shall prepare a form for reports filed with the department pursuant to this section. The department shall make the information available by electronic means.

Sec. 5. Section 421.26, Code 2007, is amended to read as follows:

421.26 PERSONAL LIABILITY FOR TAX DUE.

If a licensee or other person under section 452A.65, a retailer or purchaser under chapter 423A, ~~or 423B, or 423E,~~ or section 423.31 or 423.33, or a retailer or purchaser under section 423.32, ~~or a user under section 423.34, or permit holder or licensee under section 453A.13, 453A.16, or 453A.44~~ fails to pay a tax under those sections when due, an officer of a corporation or association, notwithstanding sections 490A.601 and 490A.602, a member or manager of a limited liability company, or a partner of a partnership, having control or supervision of or the authority for remitting the tax payments and having a substantial legal or equitable interest in the ownership of the corporation, association, limited liability company, or partnership, who has intentionally failed to pay the tax is personally liable for the payment of the tax, interest, and penalty due and unpaid. However, this section shall not apply to taxes on accounts receivable. The dissolution of a corporation, association, limited liability company, or partnership shall not discharge a person's liability for failure to remit the tax due.

Sec. 6. Section 421.27, subsection 1, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

Sec. 7. Section 421.27, subsection 2, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

Sec. 8. Section 422.7, subsection 32, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. Add the amount resulting from a withdrawal made by a taxpayer from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses to the extent previously deducted as a contribution to the trust.

Sec. 9. Section 422.11S, subsection 1, Code 2007, is amended to read as follows:

1. The taxes imposed under this division less the credits allowed under sections 422.12 and 422.12B shall be reduced by a school tuition organization tax credit equal to sixty-five percent of the amount of the voluntary cash or noncash contributions made by the taxpayer during the tax year to a school tuition organization, subject to the total dollar value of the organization's tax credit certificates as computed in subsection 7. The tax credit shall be claimed by use of a tax credit certificate as provided in subsection 6.

Sec. 10. Section 422.11S, subsection 2, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The value of a noncash contribution shall be appraised pursuant to rules of the director.

Sec. 11. Section 422.11S, subsection 6, paragraph d, Code 2007, is amended to read as follows:

d. Each school that is served by a school tuition organization shall submit a participation form annually to the department by ~~October 15~~ November 1 providing the following information:

(1) Certified enrollment as of ~~the third Friday of September~~ October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

(2) The school tuition organization that represents the school. A school shall only be represented by one school tuition organization.

Sec. 12. Section 422.11S, subsection 7, paragraph b, unnumbered paragraph 1, Code 2007, is amended to read as follows:

Each year by ~~November 15~~ December 1, the department shall authorize school tuition organizations to issue tax credit certificates for the following tax year. However, for the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, shall authorize school tuition organizations to issue tax credit certificates for the 2006 calendar tax year. For the tax year beginning in the 2006 calendar year only, each school served by a school tuition organization shall submit a participation form to the department by August 1, 2006, providing the certified enrollment as of the third Friday of September 2005, along with the school tuition organization that represents the school. Tax credit certificates available for issue by each school tuition organization shall be determined in the following manner:

Sec. 13. Section 422.11S, subsection 8, unnumbered paragraph 1, Code 2007, is amended to read as follows:

A school tuition organization that receives a voluntary cash or noncash contribution pursuant to this section shall report to the department, on a form prescribed by the department, by January 12 of each tax year all of the following information:

Sec. 14. Section 422.12E, unnumbered paragraph 2, Code 2007, is amended to read as follows:

If more checkoffs are enacted in the same session of the general assembly than there is space

for inclusion on the individual tax return form, the earliest enacted checkoffs for which there is space for inclusion on the return form shall be included on the return form, and all other checkoffs enacted during that session of the general assembly are repealed. If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax form and the additional checkoffs are enacted on the same day, the director shall determine which checkoffs shall be included on the return form.

Sec. 15. Section 422.13, subsection 5, Code 2007, is amended to read as follows:

5. Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, a partnership, a limited liability company whose members are taxed on the company's income under provisions of the Internal Revenue Code, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code may, not later than the due date for filing its return for the taxable year, including any extension thereof, elect to file a composite return for the nonresident partners, members, beneficiaries, or shareholders. Nonresident trusts or estates which are partners, members, beneficiaries, or shareholders in partnerships, limited liability companies, trusts, or S corporations may also be included on a composite return. The director may require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, limited liability company, trust, or corporation filing a composite return is liable for tax required to be shown due on the return. All powers of the director and requirements of the director apply to returns filed under this subsection including, but not limited to, the provisions of this division and division VI of this chapter.

Sec. 16. Section 422.16, subsection 12, Code 2007, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding this subsection, withholding agents are not required to withhold state income tax from a partner's pro rata share of income from a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, provided that the publicly traded partnership files with the department an information return that reports the name, address, taxpayer identification number, and any other information requested by the department for each unit holder with an income in this state from the publicly traded partnership in excess of five hundred dollars.

Sec. 17. Section 422.35, subsection 17, Code 2007, is amended to read as follows:

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal ~~ad-~~justed gross taxable income.

Sec. 18. Section 422.73, subsection 3, Code 2007, is amended by striking the subsection.

Sec. 19. Section 422.75, Code 2007, is amended to read as follows:

422.75 STATISTICS — PUBLICATION.

The department shall prepare and publish an annual report which shall include statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The annual report shall also include the reports and information required pursuant to ~~section 421.1, subsection 4, paragraph "e"; section 421.17, subsection 13; section 421.17, subsection 27, paragraph "h"; and section 421.60, subsection 2, paragraphs "i" and "l"; and 1997 Iowa Acts, ch. 211, section 22, subsection 5, paragraph "a".~~

Sec. 20. Section 423.2, subsection 6, unnumbered paragraph 2, Code 2007, is amended to read as follows:

For the purposes of this subsection, "financial institutions" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations

and savings banks organized under chapter 534, and credit unions organized under chapter 533, and all banks, savings banks, credit unions, and savings and loan associations chartered or otherwise created under the laws of any state and doing business in Iowa.

Sec. 21. Section 423.3, subsection 65, Code 2007, is amended to read as follows:

65. The sales price from charges paid to a provider for access to on-line computer services. For purposes of this subsection, "on-line computer service" means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server or other device.

Sec. 22. Section 423.3, subsection 80, paragraph b, Code 2007, is amended to read as follows:

b. If a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer. The sales price of building materials, supplies, or equipment is exempt from tax by this subsection only to the extent the building materials, supplies, or equipment are completely consumed in the performance of the construction contract with the designated exempt entity.

Sec. 23. Section 423.41, Code 2007, is amended to read as follows:

423.41 BOOKS — EXAMINATION.

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, services, or the product of services shall keep records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require, for as long as the director has the authority to examine and determine tax due. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or services or liable for the tax imposed by this chapter, and investigate the character of the business of any person in order to verify the accuracy of any return made, or if a return was not made by the person, ascertain and determine the amount due under this chapter. These books, papers, and records shall be made available within this state for examination upon reasonable notice when the director deems it advisable and so orders. If the taxpayer maintains any records in an electronic format, the taxpayer shall comply with reasonable requests by the director or the director's authorized agents to provide those electronic records in a standard record format. The preceding requirements shall likewise apply to users and persons furnishing services enumerated in section 423.2.

Sec. 24. Section 423A.4, unnumbered paragraph 3, Code 2007, is amended to read as follows:

A local hotel and motel tax shall be imposed on January 1 or July 1, following the notification of the director of revenue. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. A local hotel and motel tax shall terminate only on June 30 or December 31. At least forty-five days prior to the tax being effective or prior to a revision in the tax rate, or prior to the repeal of the tax, a city or county shall provide notice by mail of such action to the director of revenue. The director shall have the authority to waive the notice requirement.

Sec. 25. Section 423B.1, subsection 6, paragraph b, Code 2007, is amended to read as follows:

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue or, in the case of a local vehicle tax, to the direc-

tor of the department of transportation. The appropriate director shall have the authority to waive the notice requirement.

Sec. 26. Section 423E.2, subsection 5, paragraph b, Code 2007, is amended to read as follows:

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, extension, or change in the rate of the tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county. The director shall have the authority to waive the notice requirement.

Sec. 27. Section 427.3, Code 2007, is amended to read as follows:

427.3 ABATEMENT OF TAXES OF CERTAIN EXEMPT ENTITIES.

The board of supervisors may abate the taxes levied against property acquired by gift or purchase by a person or entity if the property acquired by gift or purchase was transferred to the person or entity after the deadline for filing for property tax exemption in the year in which the property was transferred and the property acquired by gift or purchase would have been exempt under section 427.1, subsection 7, 8, or 9, if the person or entity had been able to file for exemption in a timely manner.

Sec. 28. Section 403.23, Code 2007, is repealed.

Sec. 29. REFUND OF PROPERTY TAXES. Notwithstanding the deadline for filing a claim for property tax exemption for property described in section 427.1, subsection 8 or 9, and notwithstanding any other provision to the contrary, the board of supervisors of a county having a population based upon the latest federal decennial census of more than eighty-eight thousand but not more than ninety-five thousand shall refund the property taxes paid, with all interest, penalties, fees, and costs which were due and payable in the fiscal year beginning July 1, 2002, and in the fiscal year beginning July 1, 2005, on the land and buildings of an institution that purchased property and that did not receive a property tax exemption for the property due to the inability or failure to file for the exemption. To receive the refund provided for in this section, the institution shall apply to the county board of supervisors by October 1, 2007, and provide appropriate information establishing that the land and buildings for which the refund is sought were used by the institution for its appropriate objectives during the fiscal year beginning July 1, 2002, and during the fiscal year beginning July 1, 2005. The refund allowed under this section only applies to property taxes, with all interest, penalties, fees, and costs, due and payable in the fiscal year beginning July 1, 2002, and in the fiscal year beginning July 1, 2005.

Sec. 30. IMMEDIATE EFFECTIVE DATE. The section of this division of this Act, amending section 427.3, being deemed of immediate importance, takes effect upon enactment and applies retroactively to property taxes due and payable in the fiscal year beginning July 1, 2002, and in the fiscal year beginning July 1, 2005.

Sec. 31. RETROACTIVE APPLICABILITY DATE. The sections of this division of this Act amending section 422.11S, subsections 1, 2, and 8, apply retroactively to January 1, 2007, for tax years beginning on or after that date.

DIVISION II CIGARETTES AND TOBACCO

Sec. 32. Section 421B.3, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 3. a. The following civil penalties shall be imposed for a violation of this section:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

Each day the violation occurs counts as a new violation for purposes of this subsection.

b. The civil penalty imposed under this subsection is in addition to the penalty imposed under subsection 1. Penalties collected under this subsection shall be deposited into the general fund of the state.

Sec. 33. Section 453A.7, unnumbered paragraph 2, Code 2007, is amended to read as follows:

There is appropriated annually from the ~~general fund of the state the sum of one hundred fifteen thousand dollars~~ state treasury from funds not otherwise appropriated an amount sufficient to carry out the provisions of this section.

Sec. 34. Section 453A.13, subsections 5 and 9, Code 2007, are amended to read as follows:

5. APPLICATION — BOND. ~~Said permits~~ Permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 453A.14, and upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the ~~same forms~~ unless absolute refusal is shown. ~~Said The~~ forms shall set forth all of the following:

a. The manner under which ~~such the~~ distributor, wholesaler, or retailer, transacts or intends to transact such business as a distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business, ~~for which where~~ the permit is to apply.

c. If the applicant is not an individual, the principal officers or members ~~thereof, not to exceed three,~~ and their addresses.

d. ~~Such~~ Any other information as the director shall by rules prescribe.

9. PERMIT — FORM AND CONTENTS. Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department or on forms made available or approved by the department.

Sec. 35. Section 453A.13, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 10. PERMIT DISPLAYED. The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business. The proprietor or keeper of any building or place where cigarettes and other tobacco products are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit the permit. A refusal or failure to exhibit the permit is prima facie evidence that the cigarettes or other tobacco products are kept for sale or with intent to sell in violation of this division.

Sec. 36. Section 453A.15, subsection 2, Code 2007, is amended to read as follows:

2. Where a state permit holder sells cigarettes at retail, the holder shall be required to ~~issue an invoice to the holder's retail department for~~ maintain detailed records for sales of cigarettes to be sold at retail and ~~such the~~ cigarette invoices sales records shall be kept separate and apart.

Sec. 37. Section 453A.15, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 7. The director may require by rule that reports required to be made under this division be filed by electronic transmission.

Sec. 38. Section 453A.18, Code 2007, is amended to read as follows:

453A.18 FORMS FOR RECORDS AND REPORTS.

The department shall furnish or make available in electronic form, without charge, to holders of the various permits, forms in sufficient quantities to enable permit holders to make the reports required to be made under this division. The permit holders shall furnish at their own expense the books, records, and invoices, required to be used and kept, but the books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director. However, the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed. The authorization may be revoked at any time.

Sec. 39. Section 453A.24, Code 2007, is amended to read as follows:

453A.24 CARRIER TO PERMIT ACCESS TO RECORDS.

1. Every common carrier or person in this state having custody of books or records showing the transportation of cigarettes both interstate and intrastate shall give and allow the department free access to ~~such~~ those books and records.

2. The director may require by rule that common carriers or the appropriate persons provide monthly reports to the department detailing all information the department deems necessary on shipments into and out of Iowa of cigarettes and tobacco products as set forth in divisions I and II of this chapter. The director may require by rule that the reports be filed by electronic transmission.

Sec. 40. Section 453A.25, subsection 3, Code 2007, is amended to read as follows:

3. ~~The director is hereby authorized to appoint an assistant, whose sole duty it shall be~~ may designate employees to administer and enforce the provisions of this chapter, including the collection of all taxes provided for ~~herein in this chapter~~. ~~In such the enforcement,~~ the director may request aid from the attorney general, the special agents of the state, any county attorney, or any peace officer. ~~The director is authorized to~~ may appoint ~~such~~ clerks and additional help as may be needed to ~~carry out the provisions of~~ administer this chapter.

Sec. 41. Section 453A.30, Code 2007, is amended to read as follows:

453A.30 ASSESSMENT OF COST OF AUDIT.

The department may employ auditors or other persons to audit and examine the books and records of any permit holder or other person dealing in cigarettes to ascertain whether ~~such the~~ permit holder or other person has paid the amount of the taxes required to be paid by the holder or person or filed all reports containing all required information as specified by the department under the provisions of this chapter. If such taxes have not been paid or such reports not filed, as required, the department shall assess against ~~such the~~ permit holder or other person, as additional penalty, the reasonable expenses and costs of ~~such the~~ investigation and audit.

Sec. 42. Section 453A.31, Code 2007, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a cigarette distributor fails to file a return or to report timely, stamps shall not be provided to that cigarette distributor until all returns and reports are filed properly and all tax, penalties, and interest are paid.

Sec. 43. Section 453A.32, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 6. The provisions of this section applying to cigarettes shall also apply to tobacco products taxed under division II of this chapter.

Sec. 44. Section 453A.36, subsection 6, Code 2007, is amended to read as follows:

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine

are subject to rules and penalties relative to retail sales of cigarettes and tobacco products provided for in this chapter. ~~No cigarettes shall~~ Cigarettes shall not be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be ~~canceled~~ revoked. Payment of the ~~license~~ permit fee as provided in section 453A.13 authorizes a cigarette vendor to sell cigarettes or tobacco products through vending machines. However, cigarettes or tobacco products shall not be sold through a vending machine unless the vending machine is located in a place where the retailer ensures that no person younger than eighteen years of age is present or permitted to enter at any time. Cigarettes or tobacco products shall not be sold through any cigarette vending machine if such products are placed together with any nontobacco product, other than matches, in the cigarette vending machine. This section does not require a retail licensee ~~permit holder~~ to buy a cigarette vendor's permit if the retail licensee ~~permit holder~~ is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

Sec. 45. Section 453A.36, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 7A. It shall be unlawful for a holder of a retail permit to sell or distribute any cigarettes or tobacco products, including but not limited to a single or loose cigarette, that are not contained within a sealed carton, pack, or package as provided by the manufacturer, which carton, pack, or package bears the health warning that is required by federal law.

Sec. 46. Section 453A.43, subsections 1 and 2, Code 2007, as amended by 2007 Iowa Acts, Senate File 128,¹ are amended to read as follows:

1. a. A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-two percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

b. In addition to the tax imposed under paragraph "a", a tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-eight percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42, ~~with the limitation that if the tobacco product is a cigar, the additional tax shall not exceed fifty cents per cigar.~~

c. Notwithstanding the rate of tax imposed pursuant to paragraphs "a" and "b", if the tobacco product is a cigar, the total amount of the tax imposed pursuant to paragraphs "a" and "b" combined shall not exceed fifty cents per cigar.

~~e.~~ d. Little cigars shall be subject to the same rate of tax imposed upon cigarettes in section 453A.6, payable at the time and in the manner provided in section 453A.6; and stamps shall be affixed as provided in division I of this chapter. Snuff shall be subject to the tax as provided in subsections 3 and 4.

~~d.~~ e. The taxes on tobacco products, excluding little cigars and snuff, shall be imposed at the time the distributor does any of the following:

(1) Brings, or causes to be brought, into this state from outside the state tobacco products for sale.

(2) Makes, manufactures, or fabricates tobacco products in this state for sale in this state.

(3) Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. a. A tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at the rate of twenty-two percent of the cost of the tobacco products.

b. In addition to the tax imposed in paragraph "a", a tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at a rate of twenty-eight percent of the cost of the tobacco products, ~~with the limitation that if the tobacco product is a cigar, the additional tax shall not exceed fifty cents per cigar.~~

c. Notwithstanding the rate of tax imposed pursuant to paragraphs "a" and "b", if the tobac-

¹ Chapter 17, §10 herein

co product is a cigar, the total amount of the tax imposed pursuant to paragraphs "a" and "b" combined shall not exceed fifty cents per cigar.

e. d. The taxes imposed by this subsection shall not apply if the taxes imposed by subsection 1 on the tobacco products have been paid.

d. e. The taxes imposed under this subsection shall not apply to the use or storage of tobacco products in quantities of:

(1) Less than twenty-five cigars.

(2) Less than one pound smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

Sec. 47. Section 453A.45, subsection 5, unnumbered paragraphs 2 and 4, Code 2007, are amended to read as follows:

Such The report shall be made on forms provided by the director or the director may require by rule that the report be filed by electronic transmission.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a simple serious misdemeanor.

Sec. 48. Section 453A.46, subsections 1 and 3, Code 2007, are amended to read as follows:

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; and made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month; and any other information the director may require. Every licensed distributor outside this state shall in like manner file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month and any other information the director may require. Returns shall be made upon forms furnished or made available in electronic form and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The three-year period of limitation period may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension period and the tax period to which the extension applies. The agreement must also provide stipulate that a claim for refund may be filed by the taxpayer at any time during the period of extension period.

3. In addition to the tax or additional tax, the taxpayer shall also pay a penalty as provided in section 421.27 and be subject to the civil penalties set forth in sections 421.27; 453A.31, subsection 2; and 453A.50, subsection 3, as applicable.

Sec. 49. Section 453A.46, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 7. The director may require by rule that reports be filed by electronic transmission.

Sec. 50. Section 453A.50, subsection 2, Code 2007, is amended to read as follows:

2. Any Except as otherwise provided, any person who otherwise violates any provisions of this division shall be guilty of a simple misdemeanor.

Sec. 51. Section 453A.50, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 3. The following civil penalties shall be imposed for a violation of this division:

- a. A two hundred dollar penalty for the first violation.
- b. A five hundred dollar penalty for a second violation within three years of the first violation.
- c. A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

The penalty imposed in this subsection is in addition to the tax, penalty, and interest imposed in other sections of this division. Each day a violation occurs counts as a new violation for purposes of this subsection.

Sec. 52. NEW SECTION. 453A.51 ASSESSMENT OF COST OF AUDIT.

The department may employ auditors or other persons to audit and examine the books and records of a permit holder or other person dealing in tobacco products to ascertain whether the permit holder or other person has paid the amount of the taxes required to be paid by the permit holder or other person under the provisions of this chapter. If the taxes have not been paid, as required, the department shall assess against the permit holder or other person, as additional penalty, the reasonable expenses and costs of the investigation and audit.

Sec. 53. Section 453C.1, subsection 10, Code 2007, is amended to read as follows:

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs bearing the excise stamp of the state or on roll-your-own tobacco containers. The department of revenue shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Sec. 54. REFUNDS. Refunds of taxes which result from the amendment to section 453A.43, in this division of this Act, relating to the limitation on the taxes imposed on cigars occurring between March 15, 2007, and the effective date of the amendment to section 453A.43 in this division of this Act, shall not be allowed unless refund claims are filed prior to October 1, 2007, notwithstanding any other provision of law. Claimants shall not be entitled to interest on any refunds.

Sec. 55. EFFECTIVE DATE AND APPLICABILITY. The provision in this division of this Act amending section 453A.43, and the section of this division of this Act providing refunds resulting from the amendment of section 453A.43, being deemed of immediate importance, take effect upon enactment and are retroactively applicable to March 15, 2007.

Approved May 24, 2007