

## CIGARETTE AND TOBACCO TAXES

### Footnotes

This chapter not enacted as a part of this title;  
transferred from chapter 98 in Code 1993

#### 453A.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "*Attorney general*" shall mean the attorney general of the state or the attorney general's duly authorized assistants and employees.
2. "*Carton*" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
3. "*Cigarette*" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.
4. "*Cigarette vending machine*" means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes or tobacco products without the necessity of replenishing the device between each vending operation.
5. "*Cigarette vendor*" means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.
6. "*Counterfeit stamp*" shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the director as hereinafter provided, and issued, sold or circulated by the department.
7. "*Department*" means the department of revenue.
8. "*Director*" means the director of revenue or the director's duly authorized assistants and employees.
9. "*Distributing agent*" shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.
10. "*Distributing agent's permit*" shall mean and include permits issued by the department to distributing agents.
11. "*Distributor*" shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a "first sale" of the same within the state.
12. "*Drop shipment*" shall mean and include any delivery of cigarettes received by any person within this

state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

13. *"First sale"* shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

14. *"Individual packages of cigarettes"* shall mean and include every package of cigarettes ordinarily sold at retail.

15. *"Manufacturer"* shall mean and include every person who ships cigarettes into this state from outside the state.

16. *"Manufacturer's permit"* shall mean and include permits issued by the department to a manufacturer.

17. *"Package"* or *"pack"* means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

18. *"Person"* shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency or receiver, or respective legal representative.

19. *"Place of business"* is construed to mean and include any place where cigarettes are sold or where cigarettes are stored within or without the state of Iowa by the holder of an Iowa permit or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business.

20. *"Previously used stamp"* shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

21. *"Retailer"* shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes irrespective of quantity or amount or the number of sales.

22. *"Retail permit"* shall mean and include permits issued to retailers.

23. *"Self-service display"* means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.

24. *"Stamps"* means the stamp or stamps printed, manufactured or made by authority of the director and issued, sold or circulated by the department and by the use of which the tax levied is paid. It also means any impression, indicium, or character fixed upon packages of cigarettes by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers' permits and by the use of which the tax levied is paid.

25. *"State permit"* shall mean and include permits issued by the department to distributors, wholesalers, and retailers.

26. *"Tobacco products"* means cigars; little cigars as defined in section 453A.42, subsection 5; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner

as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not mean cigarettes.

27. "*Wholesaler*" shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

[C24, 27, 31, 35, 39, § 1552; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.1]

86 Acts, ch 1245, § 401; 91 Acts, ch 240, §1, 2

C93, § 453A.1

98 Acts, ch 1129, § 2; 2003 Acts, ch 145, §286

### **453A.2 Persons under legal age.**

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.
2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.
3. Possession of cigarettes or tobacco products by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the cigarettes or tobacco products as part of the individual's employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.
4. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.
5. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.
6. If a county health department, a city health department, or a city has not assessed a penalty pursuant to section 453A.22, subsection 2, for a violation of subsection 1, within sixty days of the adjudication of the violation, the matter shall be transferred to and be the exclusive responsibility of the Iowa department of public health. Following transfer of the matter, if the violation is contested, the Iowa department of public health shall request an administrative hearing before an administrative law judge, assigned by the division of administrative hearings of the department of inspections and appeals in accordance with the provisions of section 10A.801, to adjudicate the matter pursuant to chapter 17A.
7. A tobacco compliance employee training fund is created in the office of the treasurer of state. The fund shall consist of civil penalties assessed by the Iowa department of public health under section 453A.22 for violations of this section. Moneys in the fund are appropriated to the alcoholic beverages division of the department of commerce and shall be used to develop and administer the tobacco compliance employee training program under section 453A.5. Moneys deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. Notwithstanding section 8.33, any unexpended balance in the fund at the end of the fiscal year shall be retained in the fund.
8. A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with cigarette and tobacco products laws if any of the following applies:

a. The compliance effort is conducted by or under the supervision of law enforcement officers.

b. The compliance effort is conducted with the advance knowledge of law enforcement officers and reasonable measures are adopted by those conducting the effort to ensure that use of cigarettes or tobacco products by individuals under eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

For the purposes of this subsection, "*law enforcement officer*" means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

[C97, § 5005, 5006; C24, 27, 31, 35, 39, § 1553; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.2]

87 Acts, ch 83, § 1; 91 Acts, ch 240, §3

C93, § 453A.2

94 Acts, ch 1172, §37; 2000 Acts, ch 1105, §2; 2001 Acts, ch 116, §25; 2003 Acts, ch 26, §1, 5, 7; 2003 Acts, ch 179, §130, 159; 2003 Acts, 1st Ex, ch 2, §29, 33

### **Footnotes**

For scheduled fines applicable to violations of subsections 1 and 2, see §805.8C, subsection 3, paragraphs b and c

Subsection 6 applies to violations pending on April 11, 2003, for which a penalty has not been assessed under §453A.22, subsection 2; cities and city and county health departments deemed to have jurisdiction to assess valid penalties on and after April 11, 2003, but before June 30, 2003, for violations pending on April 11, 2003; 2003 Acts, ch 26, §5, 7; 2003 Acts, 1st Ex, ch 2, §29, 33

### **453A.3 Penalty.**

1. a. A person, other than a retailer as defined in section 453A.1 or 453A.42, who violates section 453A.2, subsection 1, is guilty of a simple misdemeanor.

b. An employee of a retailer as defined in section 453A.1 or 453A.42, who violates section 453A.2, subsection 1, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 3, paragraph "b".

2. A person who violates section 453A.2, subsection 2, is subject to the following, as applicable:

a. A civil penalty pursuant to section 805.8C, subsection 3, paragraph "c". Notwithstanding section 602.8106 or any other provision to the contrary, any civil penalty paid under this subsection shall be retained by the city or county enforcing the violation.

b. For a first offense, performance of eight hours of community work requirements, unless waived by the court.

c. For a second offense, performance of twelve hours of community work requirements.

d. For a third or subsequent offense, performance of sixteen hours of community work requirements.

[C97, § 5005, 5006; C24, 27, 31, 35, 39, § 1554; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.3]

91 Acts, ch 240, §4

C93, § 453A.3

94 Acts, ch 1172, §38; 97 Acts, ch 74, §3; 98 Acts, ch 1100, §63; 2000 Acts, ch 1105, §3; 2000 Acts, ch 1232, §70, 95; 2001 Acts, ch 137, §5; 2004 Acts, ch 1101, §59; 2005 Acts, ch 93, §1

#### **453A.4 Seizure of false or altered driver's license or nonoperator's identification card.**

1. If a person holding a permit under this chapter or an employee of such a permittee has a reasonable belief based on factual evidence that a driver's license as defined in section 321.1, subsection 20A, or nonoperator's identification card issued pursuant to section 321.190 offered by a person who wishes to purchase cigarettes or tobacco products is altered or falsified or belongs to another person, the permittee or employee may retain the driver's license or nonoperator's identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the permittee's premises are located, and the permittee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. If an investigation is not initiated or probable cause is not established by the local law enforcement agency, the driver's license or nonoperator's identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the state department of transportation for investigation, in which case, the state department of transportation may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. The state department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or probable cause is not established.

2. Upon taking possession of an identification card as provided in subsection 1, a receipt for the card with the date and hour of seizure noted shall be provided to the person from whom the card is seized.

3. A person holding a permit under this chapter or an employee of such a permittee is not subject to criminal prosecution for, or to civil liability for damages alleged to have resulted from, the retention and delivery of a driver's license or a nonoperator's identification card which is taken pursuant to subsections 1 and 2. This section shall not be construed to relieve a permittee or an employee of such a permittee from civil liability for damages resulting from the use of unreasonable force in obtaining the alleged altered or falsified driver's license or identification card or the driver's license or identification card believed to belong to another person.

2000 Acts, ch 1105, §4

#### **453A.5 Tobacco compliance employee training program.**

1. The alcoholic beverages division of the department of commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of retailers, as defined in sections 453A.1 and 453A.42, to inform the employees about state and federal laws and regulations regarding the sale of cigarettes and tobacco products to persons under eighteen years of age and compliance with and the importance of laws regarding the sale of cigarettes and tobacco products to persons under eighteen years of age.

2. The tobacco compliance employee training program shall be made available to employees and prospective employees of retailers, as defined in sections 453A.1 and 453A.42, at no cost to the employee, the prospective employee, or the retailer, and in a manner which is as convenient and accessible to the extent

practicable throughout the state so as to encourage attendance. Contingent upon the availability of specified funds for provision of the program, the division shall schedule the program on at least a monthly basis and the program shall be available at a location in at least a majority of counties.

3. Upon completion of the tobacco compliance employee training program, an employee or prospective employee shall receive a certificate of completion, which shall be valid for a period of two years, unless the employee or prospective employee is convicted of a violation of section 453A.2, subsection 1, in which case the certificate shall be void.

4. The tobacco compliance employee training program shall also offer periodic continuing employee training and recertification for employees who have completed initial training and received certificates of completion.

2003 Acts, ch 26, §2, 7; 2005 Acts, ch 93, §2

#### **453A.6 Tax imposed.**

1. There is imposed, and shall be collected and paid to the department, the following taxes on all cigarettes used or otherwise disposed of in this state for any purpose whatsoever:

*Class A.* On cigarettes weighing not more than three pounds per thousand, eighteen mills on each such cigarette.

*Class B.* On cigarettes weighing more than three pounds per thousand, eighteen mills on each such cigarette.

2. The said tax shall be paid only once by the person making the "first sale" in this state, and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a "first sale" of same. If the person making the "first sale" did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about the person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of the tax shall be evidenced by stamps purchased from the department by a distributor or manufacturer and securely affixed to each individual package of cigarettes in amounts equal to the tax as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

4. Any other person who purchases or is in possession of unstamped cigarettes shall pay the tax directly to the department.

5. The per cigarette amount of the tax shall be added to the selling price of every package of cigarettes sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

6. All excise taxes collected under this division by a distributor, manufacturer, or any individual are deemed to be held in trust for the state of Iowa.

[C24, 27, 31, 35, § 1570; C39, § **1556.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.6]

83 Acts, ch 165, § 1; 85 Acts, ch 32, § 1; 88 Acts, ch 1005, § 1; 88 Acts, ch 1153, §1; 91 Acts, ch 267, §509, 510

C93, § 453A.6

## Footnotes

Inventory tax, § 453A.40

### **453A.7 Printing and custody of stamps.**

The director of the department of administrative services shall have printed or manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and the director shall keep accurate records of all cigarette and little cigar tax stamps.

There is appropriated annually from the general fund of the state the sum of one hundred fifteen thousand dollars to carry out the provisions of this section.

[C24, 27, 31, 35, § 1574; C39, § **1556.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.7]

C93, § 453A.7

93 Acts, ch 180, §13; 2003 Acts, ch 145, §286

## Footnotes

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying the funding provided under this section

### **453A.8 Sale and exchange of stamps.**

1. Stamps shall be sold by and purchased from the department. The department shall sell stamps to the holder of a state distributor's or manufacturer's permit which has not been revoked and to no other person. Stamps shall be sold to the permit holders at a discount of two percent of the face value. Stamps shall be sold in unbroken rolls of thirty thousand stamps or unbroken lots of any other form authorized by the director.

2. Orders for cigarette tax stamps, including the payment for such stamps, shall be sent direct to the department on a form to be prescribed by the director, except as provided in subsection 6.

3. The department may make refunds on unused stamps to the person who purchased the stamps at a price equal to the amount paid for the stamps when proof satisfactory to the department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting the refund. In making the refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and shall authorize the department of administrative services to issue a warrant upon order of the director to pay the refund out of any funds in the state treasury not otherwise appropriated.

The director may promulgate rules providing for refunds of the face value of stamps, less any discount, affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made in the same manner as provided for unused stamps.

4. The department may in the enforcement of this division recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of stamps shall surrender any unused stamps for refund upon demand of the department.

5. The department shall keep a record of all stamps sold by the department and of all refunds made by the department.

6. The director may authorize a bank as defined by section 524.103, subsection 8, to sell stamps. A bank authorized to sell stamps shall comply with all of the requirements governing the sale of stamps by the department. Section 453A.12 shall apply to any bank authorized to sell stamps.

[C24, §1574, 1575; C27, 31, 35, §1574-al, 1575; C39, §1556.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.8; 81 Acts, ch 43, §2]

83 Acts, ch 165, § 2; 92 Acts, ch 1163, § 22

C93, § 453A.8

99 Acts, ch 151, §76, 89; 2004 Acts, ch 1101, §60

#### **Footnotes**

Inventory tax, §453A.40

#### **453A.9 Change of design.**

The design of the stamps used may be changed as often as the director deems necessary for the best enforcement of the provisions of this division.

[C39, § 1556.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.9]

C93, § 453A.9

#### **453A.10 Affixing of stamps by distributors.**

Except as provided in section 453A.17, every distributor holding an Iowa permit shall cause to be affixed, within or without the state of Iowa, upon every individual package of cigarettes received by the distributor in this state or for distribution in this state, upon which no sufficient tax stamp is already affixed, a stamp or stamps of an amount equal to the tax due thereon. Such stamps shall be affixed within forty-eight hours, exclusive of Sundays and legal holidays, from the hour the cigarettes were received, and shall be affixed before such distributor sells, offers for sale, consumes, or otherwise distributes or transports the same. It shall be unlawful for any person, other than a distributing agent or distributor, bonded pursuant to section 453A.14, or common carrier to receive or accept delivery of any cigarettes without stamps affixed to evidence the payment of the tax, or without having in possession the requisite amount or number of stamps necessary to stamp such cigarettes, and the possession of any unstamped cigarettes, without the possession of the requisite amount or number of stamps, shall be prima facie evidence of the violation of this provision.

[C24, 27, 31, 35, § 1571; C39, § 1556.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.10]

C93, § 453A.10

#### **453A.11 Cancellation of stamps.**

Stamps affixed to a package of cigarettes shall not be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of the stamp. However, the director may require such cancellation of the tax stamps affixed to packages of cigarettes which is necessary to carry out properly the provisions of this division. A person who cancels or causes the cancellation of stamps in violation of this section shall be considered in possession of unstamped cigarettes and is subject to the penalty provided in section 453A.31, subsection 1.

[C39, § 1556.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.11]

C93, § 453A.11

2004 Acts, ch 1073, §37

#### **453A.12 Use of stamping machines.**

The department may purchase and supply suitable machines or devices to the holders of a state or manufacturer's permit, or authorize the leasing by the permit holder of such machines or the metering device or both, and provide under proper regulation and direction for the impression of a distinctive imprint, indicium or character upon individual packages of cigarettes, as evidence of the payment of the tax imposed by this division, in lieu of the purchase and affixation of stamps.

If the director decides to purchase the machines they shall be paid for upon order of the director out of any funds in the general fund of the state not otherwise appropriated.

The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the department.

All of the provisions of this division relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund.

[C39, § 1556.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.12]

C93, § 453A.12

#### **Footnotes**

Inventory tax, § 453A.40

#### **453A.13 Distributor's, wholesaler's, and retailer's permits.**

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, shall obtain a state or retail cigarette permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

2. *Issuance or denial.*

a. The department shall issue state permits to distributors, wholesalers, and cigarette vendors subject to the conditions provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities.

b. The department may deny the issuance of a permit to a distributor, wholesaler, vendor or retailer who is

substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent on any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

c. The department, or a city or county, shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this subsection to the Iowa department of public health within thirty days of the issuance.

3. *Fees expiration.* All permits provided for in this division shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid for the period ending June 30 next, to the department or the city or county granting the permit, the fees provided for in this division. The annual state permit fee for a distributor, cigarette vendor, and wholesaler is one hundred dollars when the permit is granted during the months of July, August, or September. However, whenever a state permit holder operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each duplicate state permit, but refunds as provided in this division do not apply to any duplicate permit issued.

The fee for retail permits is as follows when the permit is granted during the months of July, August, or September:

a. In places outside any city, fifty dollars.

b. In cities of less than fifteen thousand population, seventy-five dollars.

c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of the maximum schedule, and if granted during the months of April, May, or June, one-fourth of the maximum schedule.

#### 4. *Refunds.*

a. An unrevoked permit for which the holder has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the department, or the city or county granting the permit shall make refunds to the said holder as follows:

Three-fourths of the annual fee if the surrender is made during July, August, or September.

One-half of the annual fee if the surrender is made during October, November, or December.

One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the said department, city or county shall make refunds to the holder as follows:

A sum equal to one-half of an annual fee if the surrender is made during October, November or December.

A sum equal to one-fourth of an annual fee if the surrender is made during January, February or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be so surrendered during the first three months of the period covered by said payment, and the department, city or county, shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application bond.* Said 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 unless absolute refusal is shown. Said forms shall set forth:

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

b. The principal office, residence, and place of business, for which 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 other information as the director shall by rules prescribe.

6. *No sales without permit.* No distributor, wholesaler, cigarette vendor, or retailer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the director may by regulation require that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

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.

[S13, § 5007-a; C24, 27, § 1557, 1558, 1560, 1563, 1564, 1584; C31, 35, § 1557, 1558, 1560, 1563, 1563-d1, 1564, 1584; C39, § **1556.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.13]

86 Acts, ch 1007, § 5; 86 Acts, ch 1241, § 1

C93, § 453A.13

94 Acts, ch 1165, §38; 2000 Acts, ch 1105, §5

#### **453A.14 Bonds.**

1. No state or manufacturer's permit shall be issued until the applicant files a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the

payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this division.

The bonds shall be on forms prescribed by the director and in the following amounts:

a. State permit, not less than five hundred dollars.

b. Manufacturer's permit, not less than five thousand dollars.

2. A person shall not engage in interstate business unless the person files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of the person shall be fixed by the director, subject to the minimum limitation provided in this section. The bond is subject to approval by the director and shall be payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the person for violation of any of the requirements of this division affecting the person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for the person. If the bond is canceled the person shall within forty-eight hours after receiving cigarettes or forty-eight hours after the cancellation, excluding Sundays and legal holidays, cause any cigarettes in the person's possession to have the requisite amount of stamps affixed to represent the tax.

[C24, 27, 31, 35, § 1561, 1562; C39, § **1556.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.14]

C93, § 453A.14

#### **453A.15 Records and reports of permit holders.**

1. The director may prescribe the forms necessary for the efficient administration of this division and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of three years from the date of each transaction, for the inspection at all times by the department.

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 cigarettes to be sold at retail and such cigarette invoices shall be kept separate and apart.

3. The director may by regulation require every holder of a manufacturer's or state permit or other person to make and deliver to the department on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the director, and may require that the reports shall be properly sworn to and executed by the permit holder or the holder's duly authorized representative or other person.

4. Every permit holder or other person shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the permit holder or other person involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by

furnishing the bond required in section 453A.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the department as are required by the department.

6. If any distributor, manufacturer, or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the director by the distributor, manufacturer, or other person, or the distributor's, manufacturer's, or other person's representative, or a copy thereof, certified to by the director, showing the number of cigarettes sold by the distributor, the distributor's representative, the manufacturer, or the other person, upon which a tax, penalty, or cost of audit has not been paid, or any audit made by the department from the books or records of the distributor, manufacturer, or other person when signed and sworn to by the agent of the department making the audit as being made from the records of the distributor, manufacturer, or other person from or to whom the distributor, manufacturer, or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof. However, the incorrectness of the report or audit may be shown.

[C27, 31, 35, § 1570-b1, -b2; C39, § **1556.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.15]

C93, § 453A.15

99 Acts, ch 151, §77, 89; 2004 Acts, ch 1073, §38

#### **453A.16 Manufacturer's permit.**

The department may, upon application of any manufacturer, issue without charge to the manufacturer a manufacturer's permit. The application shall contain information as the director shall prescribe. The holder of a manufacturer's permit is authorized to purchase stamps from the department, and must affix stamps to individual packages of cigarettes outside of this state, prior to their shipment into the state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

[C39, § **1556.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.16]

C93, § 453A.16

99 Acts, ch 151, §78, 89

#### **453A.17 Distributing agent's permit.**

1. Every distributing agent in the state, now engaged, or who desires to become engaged, in the business of storing unstamped cigarettes which are received in interstate commerce for distribution or delivery only upon order received from without the state or to be sold outside the state, shall file with the department, an application for a distributing agent's permit, on a form prescribed by the director, to be furnished upon written request. The failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Iowa to which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The director may require any other information in said application. No distributing agent shall engage in such business until such application has been filed and fee in the sum of one hundred dollars paid for the permit and until the permit has been obtained. Such permit shall expire on June 30 following the date of issuance. All of the provisions of the last two paragraphs of section 453A.14, relative to bonds, are incorporated herein and by this reference made applicable to distributing agents. Upon failure to furnish

adequate bond as required, the permit shall be revoked without hearing. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

2. Upon receipt of the application, bond and permit fee, the department may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when the distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in the agent's own conveyances to the state boundary for distribution outside the state, and any nonresident customer of the distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. The nonresident purchaser shall have in possession an invoice evidencing the purchase of the unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this division.

3. Cigarettes set aside for interstate business must be kept separate from intrastate stock and those not so kept shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "*first sale*".

4. It is unlawful for any distributing agent to sell at retail cigarettes from automobiles, trucks, or any similar conveyances.

[C39, § 1556.12; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.17]

C93, § 453A.17

#### **453A.18 Forms for records and reports.**

The department shall furnish, 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.

[C39, § 1556.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.18]

C93, § 453A.18

#### **453A.19 Examination of records and premises.**

1. For the purpose of enabling the department to determine the tax liability of permit holders or any other person dealing in cigarettes or to determine whether a tax liability has been incurred, the department shall have the right to inspect any premises of the holder of an Iowa permit located within or without the state of Iowa where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required to be kept or any other records that may be kept incident to the conduct of the cigarette business of said permit holder or any other person dealing in cigarettes.

2. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

3. It shall be unlawful for any of the foregoing permit holders to fail to produce upon demand of the

department any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

4. In the case of any departmental inspection conducted under this section requiring department personnel to travel outside the state of Iowa, any additional costs incurred by the department for out-of-state travel expenses shall be borne by the permittee. These additional costs shall be those costs in excess of the costs of a similar inspection conducted at the geographical point located within the state of Iowa nearest to the out-of-state inspection point. In lieu of conducting an on premises out-of-state inspection, the department shall have the authority to direct the permittee to assemble and transport all records described in subsection 1, to the nearest practical and convenient geographical location in Iowa for inspection by the department.

[C39, § 1556.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.19]

C93, § 453A.19

#### **453A.20 Subpoena for witnesses and papers.**

For the purpose of enforcing the provisions of this chapter and of detecting violations thereof, the director shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all relevant books, papers, and records. Such attendance and production may be required at the statehouse at Des Moines, or at any place convenient for such investigation. In case any person fails or refuses to obey a subpoena so issued, the director may procure an order from the district court in the county where such person resides, or where such person is found, requiring such person to appear for examination and/or to produce such books, papers, and records as are required in the subpoena. Failure to obey such order shall be punished by such court as contempt thereof.

[C39, § 1556.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.20]

C93, § 453A.20

#### **453A.21 Cigarettes retailer may not sell.**

Unless a retail permit holder shall also hold a state permit, it shall be unlawful for a retailer to sell or have in the retailer's possession cigarettes upon which the stamp tax has not been affixed.

[C39, § 1556.16; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.21]

C93, § 453A.21

#### **453A.22 Revocation suspension civil penalty.**

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 453A.2, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice

shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the Iowa department of public health following transfer of the matter to the Iowa department of public health pursuant to section 453A.2, subsection 6, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars or the retailer's permit shall be suspended for a period of thirty days. The retailer may select its preference in the penalty to be applied under this paragraph.

c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of thirty days.

d. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of sixty days.

e. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

3. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the employee holds a valid certificate of completion of the tobacco compliance employee training program pursuant to section 453A.5 at the time of the violation. A retailer may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

4. Reserved.

5. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

6. Notwithstanding subsection 5, if a retail permit is suspended or revoked under this section, the suspension or revocation shall only apply to the place of business at which the violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur.

7. The department or local authority shall report the suspension or revocation of a retail permit under this section to the Iowa department of public health within thirty days of the suspension or revocation of the retail permit.

8. For the purposes of this section, "*retailer*" means retailer as defined in sections 453A.1 and 453A.42 and "*retail permit*" includes permits issued to retailers under division I or division II of this chapter.

[C24, 27, 31, 35, § 1559; C39, § **1556.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.22]

86 Acts, ch 1007, § 6; 86 Acts, ch 1241, § 2; 89 Acts, ch 251, §1; 91 Acts, ch 240, §5

C93, § 453A.22

2000 Acts, ch 1105, §6, 7; 2000 Acts, ch 1232, §71, 95; 2003 Acts, ch 26, §37; 2005 Acts, ch 93, §3; 2006 Acts, ch 1030, §41

2003 amendments to subsection 2 apply to violations of §453A.2, subsection 1, by retailers or retailers' employees which are pending on April 11, 2003, and for which a penalty has not been assessed under §453A.22, subsection 2, Code 2003; 2003 Acts, ch 26, §5, 7

#### **453A.23 Retailer's permit for railway car.**

1. Subject to this division, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. The permit shall authorize the holder to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by the applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this division. The application for the permit shall be in the form and contain the information required by the director. Each permit is good throughout the state. Only one permit is required for all cars operated in this state by the applicant, but a duplicate of the permit shall be posted in each car in which cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in the cars. No cigarettes shall be sold in the cars without having affixed thereto stamps evidencing the payment of the tax as provided in this division.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this division.

3. The annual fee for a retailer's permit for railway cars shall be twenty-five dollars and two dollars for each duplicate thereof, which fee shall be paid to the department. The department shall issue duplicates of such permits from time to time as applied for by such companies.

4. The provisions of subsections 1 and 5 of section 453A.22 shall apply to the revocation of such permit and the issuance of a new one.

[C39, § **1556.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.23]

C93, § 453A.23

#### **453A.24 Carrier to permit access to records.**

Every common carrier 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 books and records.

[C39, § **1556.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.24]

C93, § 453A.24

#### **453A.25 Administration.**

1. The director shall administer the provisions of this chapter, and shall collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.
2. The director may make and publish rules, not inconsistent with this chapter, necessary and advisable for its detailed administration, enforce the provisions thereof, and collect the taxes and fees herein imposed. The director may promulgate rules hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.
3. The director is hereby authorized to appoint an assistant, whose sole duty it shall be to administer and enforce the provisions of this chapter, including the collection of all taxes provided for herein. In such 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 appoint such clerks and additional help as may be needed to carry out the provisions of this chapter.

[C24, 27, 31, 35, § 1576; C39, § **1556.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.25]

C93, § 453A.25

#### **453A.26 Liens and actions.**

All of the provisions for the lien of the tax, its collection, and all actions as provided in the uniform sales and use tax administration Act, chapter 423, shall apply to the tax imposed by this chapter, except that where the sales tax and the cigarette tax may become conflicting liens, they shall be of equal priority.

[C24, 27, 31, 35, § 1565; C39, § **1556.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.26]

C93, § 453A.26

2005 Acts, ch 3, §74

#### **453A.27 Venue of actions to collect.**

Venue of any civil proceedings filed under the provisions of this chapter to collect the taxes, fees, and penalties levied herein shall be in a court of competent jurisdiction in Polk county, or in any court having jurisdiction.

[C39, § **1556.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.27]

C93, § 453A.27

#### **453A.28 Assessment of tax by department interest penalty.**

If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed or that any person responsible for paying the tax has not done so as required by this division, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed. Within three years after the report is filed or within three years after the report became due, whichever is later, the department shall examine the report and determine the correct amount of tax. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report made with the intent to evade

tax, or in the case of a failure to file a report, or if a person purchases or is in possession of unstamped cigarettes.

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

[C24, 27, 31, 35, § 1568; C39, § **1556.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.28]

84 Acts, ch 1173, § 1; 86 Acts, ch 1007, § 7; 90 Acts, ch 1172, § 1

C93, § 453A.28

99 Acts, ch 151, §79, 89; 2004 Acts, ch 1073, §39

#### **453A.29 Notice and appeal.**

The department shall notify any person assessed pursuant to section 453A.28 by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with the Iowa administrative procedure Act, chapter 17A, and section 422.29.

[C39, § **1556.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.29]

86 Acts, ch 1007, § 8; 86 Acts, ch 1241, § 3, 4

C93, § 453A.29

94 Acts, ch 1133, §13, 16; 99 Acts, ch 151, §80, 89; 2003 Acts, ch 44, §114

#### **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 permit holder or other person has paid the amount of the taxes required to be paid by the holder or person under the provisions of this chapter. If such taxes have not been paid, as required, the department shall assess against such permit holder or other person, as additional penalty, the reasonable expenses and costs of such investigation and audit.

[C39, § **1556.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.30]

C93, § 453A.30

#### **453A.31 Civil penalty for certain violations.**

If a permit holder fails to keep any of the records required to be kept by the provisions of this division, or

sells cigarettes upon which a tax is required to be paid by this division without at the time having a valid permit, or if a distributor, wholesaler, manufacturer, or distributing agent fails to make reports to the department as required, or makes a false or incomplete report to the department, or if a distributing agent stores unstamped cigarettes in the state or distributes or delivers unstamped cigarettes within this state without at the time of storage or delivery having a valid permit, or if a person purchases or is in possession of unstamped cigarettes, or if a person affected by this division fails or refuses to abide by any of its provisions or the rules adopted under this division, the person is civilly liable to the state for a penalty as follows:

1. For possession of unstamped cigarettes:

*a.* A two hundred dollar penalty for the first violation if a person is in possession of more than forty but not more than four hundred unstamped cigarettes.

*b.* A five hundred dollar penalty for the first violation if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes.

*c.* A twenty-five dollar per pack penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.

*d.* For a second violation within three years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and thirty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

*e.* For a third or subsequent violation within three years of the first violation, the penalty is six hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and forty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

2. For all other violations of this section:

*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 under this section shall be assessed and collected pursuant to section 453A.28 and is in addition to the tax, penalty, and interest imposed in that section.

[C24, 27, 31, 35, § 1572; C39, § **1556.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.31]

C93, § 453A.31

99 Acts, ch 151, §81, 89; 2004 Acts, ch 1073, §40, 41

#### **453A.32 Seizure and forfeiture procedure.**

1. All cigarettes on which taxes are imposed or required to be imposed by this division, which are found in the possession or custody, or within the control of any person, for the purpose of being sold, distributed, or removed by the person in violation of this division, and all cigarettes which are removed, stored, transported,

deposited, or concealed in any place without the proper taxes paid, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal, storage, deposit, concealment, or transportation of cigarettes for the purpose of avoiding the payment of the proper tax, and all equipment or other tangible personal property incident to and used for the purpose of avoiding the payment of the proper tax, found in the place, building, or vehicle where cigarettes are found, and all counterfeit cigarettes may be seized by the department, with or without process and shall be from the time of the seizure forfeited to the state of Iowa. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain the seizure and declare and perfect the forfeiture. All cigarettes, counterfeit cigarettes, vehicles, and property seized, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, are not subject to replevin.

2. The department, when taking the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisal thereof at the reasonable value of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the director and shall be open to public inspection.

3. The county attorney of the county of seizure, shall, at the request of the director, file in the county and court aforesaid forfeiture proceeding in the name of the state as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the state or the defendant's residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the director to this effect, notice shall be given as ordered by the court.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale of the seized property, other than the counterfeit cigarettes, to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury. Counterfeit cigarettes shall be destroyed or disposed of in a manner determined by the director.

5. In the event the cigarettes seized and sought to be sold upon forfeiture are unstamped, the cigarettes shall be sold by the director or the director's designee to the highest bidder among the permitted distributors in this state after written notice has been mailed to all distributors. If there is no bidder, or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds from the sales shall be paid into the state treasury.

[C39, § 1556.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.32]

C93, § 453A.32

2004 Acts, ch 1073, §42

## Footnotes

Counterfeit cigarettes, see §453A.36(9)

### **453A.33 Seizure not to affect criminal prosecution.**

The seizure, forfeiture, and sale of cigarettes, tobacco products, and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of the property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter.

[C39, § 1556.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.33]

C93, § 453A.33

### **453A.34 Restrictions on injunction.**

Any person who shall invoke the power and remedies of injunction against the department to restrain or enjoin the department from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued shall file such proceedings in a court of competent jurisdiction in Polk county, and venue for such injunction is hereby declared to be in Polk county.

[C39, § 1556.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.34]

C93, § 453A.34

### **453A.35 Tax and fees paid to general fund.**

The proceeds derived from the sale of stamps and the payment of taxes, fees and penalties provided for under this chapter, and the permit fees received from all permits issued by the department, shall be credited to the general fund of the state. All permit fees provided for in this chapter and collected by cities in the issuance of permits granted by the cities shall be paid to the treasurer of the city where the permit is effective, or to another city officer as designated by the council, and credited to the general fund of the city. Permit fees so collected by counties shall be paid to the county treasurer.

[C24, 27, 31, 35, § 1569; C39, § 1556.30; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.35]

83 Acts, ch 123, § 51, 209

C93, § 453A.35

### **453A.36 Unlawful acts.**

1. Except as otherwise provided in this division, it is unlawful for any person to have in the person's possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this division, without having affixed to each individual package of cigarettes, the proper stamp evidencing the payment of the tax and the absence of the stamp on the individual package of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.
2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.
3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any

previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless the person be the holder of a permit, or the holder's representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermit holder for the sale of cigarettes to any state permit holder.

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 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. Payment of the license 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. This section does not require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

7. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

8. It is unlawful for a person to ship or import into the state, or to offer for sale, sell, distribute, transport, or possess within this state, cigarettes or tobacco products previously exported from or manufactured for use outside the United States.

9. *a.* It is unlawful for a person to ship or import into this state or to offer for sale, sell, distribute, transport, or possess counterfeit cigarettes, knowing such cigarettes are counterfeit cigarettes or having reasonable cause to believe that such cigarettes are counterfeit cigarettes.

*b.* For purposes of this subsection and section 453A.32, "*counterfeit cigarettes*" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

Violation of this section by the holder of a distributor's, wholesaler's or manufacturer's permit shall be grounds for the revocation of such permit.

[C24, § 1573; C27, 31, 35, § 1573, 1575-a2; C39, § **1556.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.36]

91 Acts, ch 240, §6

C93, § 453A.36

97 Acts, ch 136, §1; 2000 Acts, ch 1104, §1, 2; 2004 Acts, ch 1073, §43

#### **453A.36A Self-service sales prohibited.**

1. Beginning January 1, 1999, except as provided in section 453A.36, subsection 6, a retailer shall not sell or offer for sale cigarettes or tobacco products, in a quantity of less than a carton, through the use of a self-service display.
2. Violation of this section by a holder of a retail permit is grounds for revocation of such permit.

98 Acts, ch 1129, §3

#### **Footnotes**

Legislative intent to restrict access of minors to cigarettes and tobacco products; 98 Acts, ch 1129, § 1

#### **453A.37 Violation as fraudulent practice.**

A person who violates a provision of this division is guilty of a fraudulent practice unless otherwise provided in this division.

[C39, § **1556.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.37]

89 Acts, ch 251, §2

C93, § 453A.37

#### **453A.38 Counterfeiting and previously used stamps.**

Any person who shall print, engrave, make, issue, sell, or circulate, or shall possess or have in the person's possession with intent to use, sell, circulate, or pass, any counterfeit stamp or previously used stamp, or who shall use, or consent to the use of, any counterfeit stamp or previously used stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp or previously used stamp, shall be guilty of an aggravated misdemeanor.

[C24, 27, 31, 35, § 1573; C39, § **1556.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.38]

C93, § 453A.38

#### **453A.39 Tobacco product and cigarette samples restrictions administration.**

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent, or agent thereof, shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. *a.* All cigarette samples shall be shipped only to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. All cigarette samples must have a cigarette stamp. The manufacturer shipping samples under this section shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at the time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco products to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

c. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

2004 Acts, ch 1073, §44

## **Footnotes**

See also §142A.6

### **453A.40 Inventory tax.**

1. All persons required to be licensed under section 453A.13 as distributors having in their possession and held for resale on the effective date of an increase in the tax rate cigarettes or little cigars upon which the tax under section 453A.6 or 453A.43 has been paid, unused cigarette tax stamps which have been paid for under section 453A.8, or unused metered imprints which have been paid for under section 453A.12 shall be subject to an inventory tax on the items as provided in this section.

2. Persons subject to the inventory tax imposed under this section shall take an inventory as of the close of the business day next preceding the effective date of the increased tax rate of those items subject to the inventory tax for the purpose of determining the tax due. These persons shall report the tax on forms provided by the department of revenue and remit the tax due within thirty days of the prescribed inventory date. The department of revenue shall adopt rules as are necessary to carry out this section.

3. The rate of the inventory tax on each item subject to the tax as specified in subsection 1 is equal to the difference between the amount paid on each item under section 453A.6, 453A.8, 453A.12, or 453A.43 prior to the tax increase and the amount that is to be paid on each similar item under section 453A.6, 453A.8, 453A.12, or 453A.43 after the tax increase except that in computing the rate of the inventory tax any discount allowed or allowable under section 453A.8 shall not be considered.

88 Acts, ch 1005, § 2

C89, § 98.40

C93, § 453A.40

2003 Acts, ch 145, §286

**453A.41** Reserved.

### **453A.42 Definitions.**

When used in this division, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

1. "*Business*" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

2. "*Consumer*" means any person who has title to or possession of tobacco products in storage, for use or

other consumption in this state.

3. "*Director*" means the director of the department of revenue.

4. "*Distributor*" means any and each of the following:

a. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

b. Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

c. Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

5. "*Little cigar*" means any roll for smoking which:

a. Is made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient;

b. Is not a cigarette as defined in section 453A.1, subsection 3; and

c. Either weighs not more than three pounds per thousand, irrespective of retail price, or weighs more than three pounds per thousand and has a retail price of not more than two and one-half cents per little cigar. For purposes of this subsection, the retail price is the ordinary retail price in this state, not including retail sales tax, use tax, or the tax on little cigars imposed by section 453A.43.

6. "*Manufacturer*" means a person who manufactures and sells tobacco products.

7. "*Person*" means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

8. "*Place of business*" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

9. "*Retail outlet*" means each place of business from which tobacco products are sold to consumers.

10. "*Retailer*" means any person engaged in the business of selling tobacco products to ultimate consumers.

11. "*Sale*" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this division, or for any other purposes whatsoever.

12. "*Storage*" means any keeping or retention of tobacco products for use or consumption in this state.

13. "*Subjobber*" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

14. "*Tobacco products*" means cigars; little cigars as defined herein; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or

smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 453A.1, subsection 3.

15. *"Use"* means the exercise of any right or power incidental to the ownership of tobacco products.

16. *"Wholesale sales price"* means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

[C71, 73, 75, 77, 79, 81, § 98.42]

86 Acts, ch 1245, § 402

C93, § 453A.42

2002 Acts, ch 1119, §59; 2003 Acts, ch 145, §286

### **453A.43 Tax on tobacco products.**

1. 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 as defined in section 453A.42. 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. The tax on tobacco products, excluding little cigars, shall be imposed at the time the distributor does any of the following:

- a. Brings, or causes to be brought, into this state from without the state tobacco products for sale.
- b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state.
- c. Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. 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.

The tax imposed by this subsection shall not apply if the tax imposed by subsection 1 on the tobacco products has been paid.

This tax shall not apply to the use or storage of tobacco products in quantities of:

- a. Less than 25 cigars.
- b. Less than 10 oz. snuff or snuff powder.
- c. Less than 1 lb. smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

3. Any tobacco product with respect to which a tax has once been imposed under this division shall not again be subject to tax under said division.

4. The tax imposed by this section shall not apply with respect to any tobacco product which under the Constitution and laws of the United States may not be made the subject of taxation by this state.

5. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees

now or hereafter imposed by any city or county.

6. All excise taxes collected under this chapter by a distributor or any individual are deemed to be held in trust for the state of Iowa.

[C71, 73, 75, 77, 79, 81, § 98.43]

85 Acts, ch 32, § 2; 88 Acts, ch 1005, § 3; 91 Acts, ch 267, §511, 512

C93, § 453A.43

2004 Acts, ch 1073, §45

### **Footnotes**

Inventory tax, § 453A.40

### **453A.44 Licenses distributors, subjobbers.**

1. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the director to engage in that business at that place of business.
2. Every application for such a license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this division.
3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for a license as a distributor, be granted a license by the director, and thereafter be subject to all the provisions of this division and entitled to act as a licensed distributor.
4. Each application for a distributor's license shall be accompanied by a fee of one hundred dollars, except that an applicant holding a permit pursuant to division I of this chapter shall not be required to pay an additional fee. The application shall be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of one thousand dollars, conditioned upon the true and faithful compliance by the distributor with all the provisions of this division and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Iowa. This bond shall be in a form to be fixed by the director and approved by the attorney general. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, the director shall require either an increase in the amount of said bond or additional bond, in such amount as the director deems sufficient. Any bond required by this division, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

A separate application for license shall be made for each place of business where a distributor proposes to engage in business as such under this division.

5. Each application for a subjobber's license shall be accompanied by a fee of ten dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee.
6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be

required to pay only one-half of the license fee provided for herein.

7. The director, upon receipt of the application (and bond, in the case of the distributor) in proper form, and payment of the license fee required by subsection 4 or subsection 5, shall unless otherwise provided by this division, issue the applicant a license in form as prescribed by the director, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in the application. The director shall assign a permit number to each person licensed as a distributor at the time of issuance of the person's first license, which shall be inscribed upon all licenses issued to that distributor.

8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the director or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director.

9. No license shall be transferable to any other person.

10. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this division, or any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in furtherance of this division. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 453A.48.

11. No license shall be issued under this division to any person within one year of the date of final determination of a revocation of any previous license held by the person.

12. When the surety upon any bond issued pursuant to the provisions of this division shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under this division, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred.

[C71, 73, 75, 77, 79, 81, § 98.44]

89 Acts, ch 251, §3; 90 Acts, ch 1232, § 1

C93, § 453A.44

94 Acts, ch 1165, §39

#### **453A.45 Licensees, duties.**

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least three years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept

under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all these invoices for three years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each invoice for three years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for three years from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

*a.* The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

*b.* Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 453A.44, or tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the director.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

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 misdemeanor.

[C71, 73, 75, 77, 79, 81, § 98.45]

87 Acts, ch 199, §1

C93, § 453A.45

99 Acts, ch 151, §82, 89; 2004 Acts, ch 1073, §46, 47

#### **453A.46 Distributors, monthly returns interest, penalties.**

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 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. Every licensed distributor outside this state shall in like manner file a return showing 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. Returns shall be made upon forms furnished 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 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 and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. 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.

[C71, 73, 75, 77, 79, 81, § 98.46]

84 Acts, ch 1173, § 2; 86 Acts, ch 1007, § 9; 87 Acts, ch 199, § 2, 3; 90 Acts, ch 1172, § 2

C93, § 453A.46

94 Acts, ch 1133, §14, 16; 99 Acts, ch 151, §83, 89; 2004 Acts, ch 1073, §48

#### **453A.47 Refunds, credits.**

Where tobacco products upon which the tax imposed by this division has been reported and paid, are shipped or transported by the distributor to consumers, to be consumed without the state, or to retailers or subjobbers without the state, to be sold by those retailers, or subjobbers without the state, or are returned to the manufacturer by the distributor or destroyed by the distributor, refund of such tax or credit may be made to the distributor in accordance with regulations prescribed by the director. Any overpayment of the tax imposed under section 453A.43 may be made to the taxpayer in accordance with regulations prescribed by the director. The director shall cause any such refund of tax to be paid out of the general revenue fund, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[C71, 73, 75, 77, 79, 81, § 98.47]

C93, § 453A.47

#### **453A.47A Retailers permits fees penalties.**

1. *Permits required.* A person shall not engage in the business of a retailer of tobacco products at any place of business without first having received a permit as a tobacco products retailer.

2. *No sales without permit.* A retailer shall not sell any tobacco products until an application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is not suspended, unrevoked, or unexpired.

3. *Number of permits.* An application shall be filed and a permit obtained for each place of business owned or operated by a retailer.

4. *Retailer cigarettes and tobacco products.* A retailer, as defined in section 453A.1, who holds a permit under division I of this chapter is not required to also obtain a retail permit under this division. However, if a retailer, as defined in section 453A.1, only holds a permit under division I of this chapter and that permit is suspended, revoked, or expired, the retailer shall not sell any cigarettes or tobacco products during the time which the permit is suspended, revoked, or expired.

5. *Separate permit.* A separate retail permit shall be required of a distributor or subjobber if the distributor or subjobber sells tobacco products at retail.

6. *Issuance.* Cities shall issue retail permits to retailers within their respective limits. County boards of supervisors shall issue retail permits to retailers in their respective counties, outside of the corporate limits of cities. The city or county shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this section to the Iowa department of public health within thirty days of issuance.

7. *Fees expiration.*

a. All permits provided for in this division shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid the fees provided for in this section for the period ending June 30 next, to the city or county granting the permit. The fee for retail permits is as follows when the permit is granted during the month of July, August, or September:

- (1) In places outside any city, fifty dollars.
- (2) In cities of less than fifteen thousand population, seventy-five dollars.
- (3) In cities of fifteen thousand or more population, one hundred dollars.

b. If any permit is granted during the month of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the month of January, February, or March, one-half of the maximum schedule, and if granted during the month of April, May, or June, one-fourth of the maximum schedule.

#### 8. *Refunds.*

a. An unrevoked permit for which the retailer paid the full annual fee may be surrendered during the first nine months of the year to the officer issuing it, and the city or county granting the permit shall make refunds to the retailer as follows:

- (1) Three-fourths of the annual fee if the surrender is made during July, August, or September.
- (2) One-half of the annual fee if the surrender is made during October, November, or December.
- (3) One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the retailer has paid three-fourths of a full annual fee may be surrendered during the first six months of the period covered by the payment, and the city or county shall make refunds to the retailer as follows:

- (1) A sum equal to one-half of an annual fee if the surrender is made during October, November, or December.
- (2) A sum equal to one-fourth of an annual fee if the surrender is made during January, February, or March.

c. An unrevoked permit for which the retailer has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by the payment, and the city or county shall refund to the retailer a sum equal to one-fourth of an annual fee.

9. *Application.* Retail permits shall be issued only upon applications, accompanied by the fee indicated above, made 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 form unless absolute refusal is shown. The forms shall specify:

- a. The manner under which the retailer transacts or intends to transact business as a retailer.
- b. The principal office, residence, and place of business, for which the permit is to apply.
- c. If the applicant is not an individual, the principal officers or members of the applicant, not to exceed three, and their addresses.
- d. Such other information as the director shall by rules prescribe.

## 10. *Records and reports of retailers.*

a. The director shall prescribe the forms necessary for the efficient administration of this section and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary.

b. Every retailer shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the retailer involving the purchase or sale or use of tobacco products.

11. *Penalties.* The permit suspension and revocation provisions and the civil penalties established in section 453A.22 shall apply to retailers under this division, in addition to any other penalties imposed under this division.

2005 Acts, ch 93, §4; 2005 Acts, ch 179, §131

### **453A.48 Investigations and hearings, testimonial powers.**

1. The director, or the director's duly authorized agents, may conduct investigations, inquiries, and hearings for the purpose of enforcing the provisions of this division, and, in connection with such investigations, inquiries, and hearings, the director and the director's duly authorized agents shall have all the powers conferred upon the director and the director's examiners by Iowa statutes, and the provisions of such shall apply to all such investigations, inquiries and hearings.

2. A hearing conducted under this division shall be preceded by ten days' notice in writing of the subject of the hearing, including, in the case of suspension or revocation of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by mail to the last known address of the licensee or other person involved in the hearing, and the service shall be complete upon mailing. After every hearing the director shall make the director's findings and order in writing. The findings and order shall be filed in the office of the director, and a copy sent by mail or otherwise to the person to whom the notice was directed.

3. The director may exchange information with the officers and agencies of other states administering laws relating to the taxation of tobacco products.

4. No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which the person may testify or produce evidence, documentary or otherwise, before the director or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

5. Any person aggrieved by an order of the director fixing a tax, penalty or interest under section 453A.43 may, within sixty days from the date of notice of the order, appeal to the board of review in the manner provided by law or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. Judicial review of any other action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, § 98.48]

86 Acts, ch 1241, § 5

C93, § 453A.48

94 Acts, ch 1133, §15, 16; 2003 Acts, ch 44, §114

**453A.49 Enforcement.**

The director shall enforce the provisions of this division. The director may prescribe rules not inconsistent with the provisions of this division for its detailed and efficient administration. In the enforcement of this division the director may call upon any county attorney or the attorney general for assistance. The director may bring injunction proceedings to restrain any person from acting as a distributor or subjobber without complying with the provisions of this division.

[C71, 73, 75, 77, 79, 81, § 98.49]

C93, § 453A.49

**453A.50 Violations, penalties.**

1. Any person who in any manner knowingly attempts to evade the tax imposed by this division or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 453A.44, subsection 1, of this division, shall be guilty of a serious misdemeanor.

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

[C71, 73, 75, 77, 79, 81, § 98.50]

C93, § 453A.50

**453A.51 through 453A.55** Reserved.

**453A.56 Uniform application.**

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

91 Acts, ch 240, §8

CS91, § 98.56

C93, § 453A.56