CHAPTER 453B

EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

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453B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Controlled substance"* means controlled substance as defined in section 124.101.

2. *"Counterfeit substance"* means a counterfeit substance as defined in section 124.101.

3. *a.* *"Dealer"* means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:

(1) Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.

(2) Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.

(3) One or more unprocessed marijuana plants.

(4) Ten or more dosage units of a taxable substance which is not sold by weight.

b. However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.

4. *"Department"* means the department of revenue.

5. *"Director"* means the director of revenue.

6. *"Dosage unit"* means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.

7. *"Marijuana"* means marijuana as defined in section 124.101.

8. *"Processed marijuana"* means all marijuana except unprocessed marijuana plants.

9. *"Simulated controlled substance"* means a simulated controlled substance as defined in section 124.101.

10. *"Taxable substance"* means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.

11. *"Unprocessed marijuana plant"* means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

90 Acts, ch 1251, §37
C91, §421A.1
C93, §453B.1
95 Acts, ch 83, §29 – 31; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143
Referred to in **§453B.4**

453B.2 Administration — rules.

The director shall administer this chapter. The director shall collect all taxes, interest, and civil penalties imposed under this chapter and deposit them in the general fund of the state.

The director may adopt rules under chapter 17A that are necessary to enforce this chapter.

The director shall adopt a uniform system of providing, affixing, and displaying official stamps, labels, or other official indicia for taxable substances.

90 Acts, ch 1251, §38
C91, §421A.2
C93, §453B.2

453B.3 Tax payment required for possession — payment due.

A dealer shall not possess, distribute, or offer to sell a taxable substance unless the tax imposed under this chapter has been paid as evidenced by a stamp, label, or other official indicia permanently affixed to the taxable substance.

Taxes imposed on taxable substances by this chapter are due and payable immediately upon manufacture, production, acquisition, purchase, or possession by a dealer.

If the indicia evidencing the payment of the tax imposed on taxable substances under this chapter have not been affixed, the dealer shall have the indicia permanently affixed on the taxable substance immediately after receiving the taxable substance. A stamp, label, or other official indicia shall be used only once and shall not be used after the date of expiration.

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

90 Acts, ch 1251, §39
C91, §421A.3
C93, §453B.3
2004 Acts, ch 1073, §49

453B.4 Measurements.

For purposes of measurements under this chapter, the weight of a taxable substance shall be measured by its weight in metric grams in the dealer's possession. If a taxable substance consists of a mixture containing both marijuana and another substance or combination of substances listed in the definition of taxable substance in section 453B.1, the taxable substance shall be taxed under section 453B.7, subsection 2.

90 Acts, ch 1251, §40
C91, §421A.4
C93, §453B.4

453B.5 Defense or immunity.

This chapter does not provide in any manner a defense or affirmative defense to or immunity for a dealer from criminal prosecution pursuant to Iowa law.

90 Acts, ch 1251, §41
C91, §421A.5
C93, §453B.5

453B.6 Chapter not applicable to lawful possession.

This chapter does not require persons lawfully in possession of a taxable substance to pay the tax required under this chapter or to purchase, acquire, or affix the stamps, labels, or other official indicia otherwise required by this chapter.

90 Acts, ch 1251, §42
C91, §421A.6
C93, §453B.6
Section not amended; editorial change applied

453B.7 Tax imposed — rate of tax.

An excise tax is imposed on dealers at the following rates:

1. On each gram of processed marijuana, or each portion of a gram, five dollars.
2. On each gram or portion of a gram of any taxable substance, other than marijuana, sold by weight, two hundred fifty dollars.
3. On each unprocessed marijuana plant, seven hundred fifty dollars.

4. On each ten dosage units of any taxable substance, other than unprocessed marijuana plants, that is not sold by weight, or portion thereof, four hundred dollars.

90 Acts, ch 1251, §43
C91, §421A.7
C93, §453B.7
95 Acts, ch 83, §32; 2013 Acts, ch 90, §108
Referred to in §453B.4, §453B.8, §453B.12

453B.8 Price of stamps, labels, or other indicia.

Stamps, labels, or other official indicia to be affixed to a taxable substance indicating the payment of the excise tax shall be obtained and purchased from the department. The dealer shall pay the entire excise tax listed in section 453B.7 at the time of purchase, except as provided in section 453B.13, and receive stamps, labels, or other official indicia for the amount paid. However, the minimum purchase price to be paid for any stamps, labels, or indicia shall be two hundred fifteen dollars.

90 Acts, ch 1251, §44
C91, §421A.8
C93, §453B.8

453B.9 Assessments are jeopardy assessments.

All assessments of taxes made pursuant to this chapter shall be considered jeopardy assessments or collections as provided in section 422.30. The director shall assess a tax, interest, and applicable penalties based on knowledge or information available to the director; serve the taxpayer by regular mail at the taxpayer's last known address or in person, a written notice of the amount of tax, interest, and penalty due, which notice may include a demand for immediate payment; and immediately proceed to collect the tax, interest, and penalty by any method prescribed in section 422.30. The period for examination, determination of amount of tax owed, and assessment is unlimited. Service of the notice by regular mail is complete upon mailing.

A person shall not bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by this chapter.

The tax, interest, and penalties assessed by the director are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show any incorrectness or invalidity of an assessment. The burden is upon the taxpayer to prove that the shipment, transportation, importation, acquisition, purchase, possession, manufacture, or production of a taxable substance was lawful if a taxpayer's status as a dealer is disputed. Any statement filed by the director with the clerk of the district court, or any other certificate by the director of the amount of tax, interest, and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts contained in the statement.

90 Acts, ch 1251, §45
C91, §421A.9
C93, §453B.9
94 Acts, ch 1165, §40

453B.10 Confidential nature of information.

Notwithstanding any law to the contrary, the director or an employee of the department shall not reveal any information obtained from a dealer; nor shall information obtained from a dealer be used against the dealer in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes due under this chapter from the dealer against whom the tax was assessed.

A person who violates this section is guilty of a simple misdemeanor.

This section does not prohibit the director from publishing statistics that do not disclose the identity of the dealers.

A stamp, label, or other official indicia denoting payment of the tax imposed under this chapter shall not be used against a taxpayer in a criminal proceeding, except that such information may be used against the taxpayer in connection with the administration or civil

or criminal enforcement of the tax imposed under this chapter or any similar tax imposed by another state or local unit of government.

90 Acts, ch 1251, §46
C91, §421A.10
C93, §453B.10

453B.11 Examination of records by director — subpoenas.

For the purpose of determining whether or not the dealer should have paid taxes, determining the amount of tax that should have been paid, or collecting any taxes under this chapter, the director may examine, or cause to be examined, any books, papers, records, or memoranda that may be relevant to making such determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the dealer or another person. The director may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the director or an examiner or investigator, the court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, or memoranda. The director may also issue subpoenas. Disobedience of subpoenas issued under this chapter is punishable by the district court of the county in which the subpoena is issued, or if the subpoena is issued by the director, by the district court of the county in which the party served with the subpoena is located, in the same manner as a contempt of court.

The director may petition the district court or a magistrate for an administrative search warrant as authorized by section 808.14 to execute a distress warrant authorized by section 422.26.

90 Acts, ch 1251, §47
C91, §421A.11
C93, §453B.11

453B.12 Civil and criminal penalties for violation of chapter — interest.

A dealer who violates this chapter is subject to a penalty equal to the amount of the tax imposed by section 453B.7, in addition to the tax imposed by that section. The dealer shall pay interest on the tax and penalty at the rate in effect under section 421.7, counting each fraction of a month as an entire month, computed from the date of assessment through the date of payment. The penalty and interest shall be collected as part of the tax.

In addition to the civil tax penalty and interest imposed by this section, a dealer distributing, offering to sell, or possessing taxable substances without affixing the appropriate stamps, labels, or other official indicia is guilty of a class "D" felony.

A person who possesses, prints, engraves, makes, issues, sells, or circulates a counterfeit taxable substance tax stamp, label, or other official indicia, or places or causes to be placed a counterfeit taxable substance tax stamp, label, or other official indicia on a taxable substance, is guilty of a class "D" felony.

A person who uses, sells, offers for sale, or possesses for use or sale a previously used or expired taxable substance tax stamp, label, or other official indicia, or attaches or causes to be attached a previously used or expired taxable substance tax stamp, label, or other official indicia to a taxable substance, is guilty of a class "D" felony.

Notwithstanding section 802.3, an indictment may be found or information filed upon any criminal offense specified in this chapter, in the proper court, within six years after the commission of the offense.

90 Acts, ch 1251, §48
C91, §421A.12
C93, §453B.12

453B.13 Credit for previously paid taxes.

If another state or local unit of government has previously assessed an excise tax on a taxable substance, the taxpayer shall pay the difference between the tax imposed under this

chapter and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax imposed under this chapter, no tax is due. The burden is on the taxpayer to show that an excise tax on the taxable substances has been paid to another state or local unit of government.

90 Acts, ch 1251, §49
C91, §421A.13
C93, §453B.13
Referred to in **§453B.8**

453B.14 Revision of tax — refunds.

Sections 421.5, 422.26, 422.28, 422.29, 422.73, and 422.74 shall apply to this chapter, except that a refund claim filed later than thirty days from the expiration date of the stamps for which the refund is requested shall not be allowed by the director.

90 Acts, ch 1251, §50
C91, §421A.14
C93, §453B.14

453B.15 Availability of records and information.

The director may request from state, county, and local agencies, information and assistance deemed necessary to administer this chapter. State, county, and local agencies, officers, and employees shall cooperate with the director in identifying dealers and shall, on request, supply the department with available information and assistance which the director deems necessary to administer this chapter, notwithstanding any provisions of law making such information confidential.

90 Acts, ch 1251, §51
C91, §421A.15
C93, §453B.15

453B.16 Notice of conviction.

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §12
Referred to in **§901.5**