453A.32 Seizure and forfeiture — procedure.

1. All cigarettes on which taxes are imposed or required to be imposed by this subchapter, 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 subchapter, 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 appraisement 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.

6. The provisions of this section applying to cigarettes shall also apply to tobacco products taxed under subchapter II of this chapter.

[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; 2007 Acts, ch 186, §43; 2018 Acts, ch 1041, §127
Referred to in §331.653, 331.756(19), 453A.33, 453A.36, 453D.6
Inventory tax, §453A.40