

CHAPTER 256
TOBACCO TAX

[Ch 83, Selling Cigarette Revenue in Banks, rescinded, see IAC 4/2/80]

[Prior to 12/17/86, Revenue Department[730]]

[Prior to 9/7/22, see Revenue Department[701] Ch 83]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

701—256.1(453A) Licenses. Before any person engages in the business of a distributor or subjobber of tobacco products, that person must obtain a tobacco distributor's or tobacco subjobber's license. If the person holds a valid cigarette permit of any kind, the license will be issued without cost if all other requirements for the license are met, but the license must still be obtained. A tobacco retailer is required to obtain a retail cigarette/tobacco permit.

256.1(1) Distributor license. Every person operating as a tobacco distributor, as defined in Iowa Code section 453A.42, must obtain a tobacco distributor's license. A tobacco distributor is any person:

- a. Engaging in selling tobacco products in this state who brings tobacco products or causes tobacco products to be brought into this state for the purpose of selling them in this state; or
- b. Making, manufacturing, or fabricating tobacco products in this state for sale in this state; or
- c. Selling tobacco products without this state who ships or transports tobacco products directly to retailers in this state to be sold by those retailers. In any distribution scheme whereby tobacco products are imported into this state for sale, there must be at least one distributor. The following examples shall illustrate the application of this rule:

EXAMPLE 1: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. manufacturer's plant, both are performing the functions of a distributor; Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state, and Retailer, Inc. is causing tobacco products to be brought into this state from without the state for the purpose of sale. If either the out-of-state manufacturer or the in-state retailer has a distributor's license, the other need not, but may, have a distributor's license.

EXAMPLE 2: Manufacturer, Inc. is in the business of processing tobacco products in the state of North Carolina. Retailer, Inc. is in the business of selling tobacco products at retail in the state of Iowa. If Manufacturer, Inc. ships tobacco products directly to Retailer, Inc., f.o.b. Retailer's place of business, Manufacturer, Inc. is acting as a distributor and Retailer, Inc. is not. Manufacturer, Inc. is selling tobacco products without this state and shipping them directly to a retailer in this state. Retailer, Inc. is not causing tobacco products to be brought into this state from without the state.

The license is issued by the department at an annual cost of \$100 unless the distributor possesses any valid cigarette permit in which case the license shall be issued without cost. A separate application and fee payment, if applicable, must be submitted for each place of business from which distributor activities are carried on. The license expires on June 30 of each year, and there are no provisions for partial year license fee refunds if the license is voluntarily surrendered. If a license is issued between January 1 and June 30 of any year, the license fee is one-half of the normal fee.

256.1(2) Subjobber's license. Every person, other than persons licensed as tobacco distributors, operating as a tobacco subjobber, as defined in Iowa Code section 453A.42, must obtain a tobacco subjobber's license. A tobacco subjobber is any person, other than a manufacturer or distributor, who purchases tobacco products from a distributor and sells them to persons other than the ultimate consumer. The license is issued by the department at an annual cost of \$10, unless the subjobber possesses any valid cigarette permit, in which case, the license shall be issued without cost. A single subjobber's license shall be sufficient for the subjobber's entire activities within the state, that is, it is not issued for each place of business. The license expires annually on June 30 of each year, and there are no provisions for partial year license fee refunds if the license is voluntarily surrendered. If a license is issued between January 1 and June 30 of any year, the license fee is one-half of the normal fee.

This rule is intended to implement Iowa Code section 453A.44.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.2(453A) Distributor bond. A bond in the amount of \$1,000 is required to be posted before a distributor's license can be issued, regardless of whether or not the distributor is licensed and bonded as a cigarette permittee. If the distributor has a cigarette permit of any kind and is required to post a bond thereunder, the amount of the cigarette bond(s) and the tobacco bond may be aggregated to reach a single bond requirement, and the distributor may provide a single bond in the aggregate amount provided the bond may be used to discharge either a cigarette tax liability or a tobacco tax liability. See rule 701—254.7(453A) relating to bonds.

This rule is intended to implement Iowa Code section 453A.44.

[ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.3(453A) Tax on tobacco products. The tax on tobacco products is to be paid but once, either upon distribution by a distributor or upon use or storage by a consumer. The tax is in addition to any occupation or privilege tax or license fees imposed by any city or county.

256.3(1) Distributor's tax. When a distributor:

- a. Brings tobacco products or causes tobacco products to be brought into this state for sale;
- b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
- c. Ships or transports tobacco products directly to retailers in this state for sale by the retailer, the tax attaches at the rate specified in Iowa Code section 453A.43(1) of the wholesale price of the tobacco products. The wholesale price of the tobacco products is the manufacturer's gross list price.

256.3(2) Consumer's tax. If the tax has not been paid under Iowa Code section 453A.43(1) and subrule 256.3(1), the consumer is responsible for the tax specified in Iowa Code section 453A.43(2) on the cost to the consumer of the tobacco products used or stored by the consumer. The tax does not apply to the use or storage of tobacco products in quantities of:

1. Less than 25 cigars,
2. Less than ten ounces of snuff or snuff powder, or
3. Less than one pound of other tobacco products in the possession of any one consumer.

These exceptions do not apply to tobacco products subject to the tax imposed upon distributors under the provisions of Iowa Code section 453A.43(1) and subrule 256.3(1).

256.3(3) Discounted tobacco products.

- a. A tobacco product sold by manufacturers to distributors that is discounted shall be taxed at the highest wholesale sales price for that product. A tobacco product is discounted when, compared to an identical product on the price list, it has a lower wholesale sales price. For purposes of this rule, tobacco products are identical if they consist of the same ingredients and are sold as the same package size on the price list, irrespective of the price printed on the box, the manufacturer's suggested retail price provided to the retailer, the stock keeping unit or universal product code or similar codes used by the manufacturer, the type of packaging used, the name of the product as marketed, the geographic distribution, the target customer, or the length of the time of the promotion.

- b. When analyzing whether a tobacco product is discounted for purposes of this rule, the department will consider the manufacturer's characterization of the tobacco product on the price list, but the manufacturer's characterization of the tobacco product will not be controlling in the department's determination. Examples of discounted tobacco products include, but are not limited to, prepriced cigars and reduced-price multipacks of tobacco products where the manufacturer sells an identical product on the price list at a higher wholesale sales price.

EXAMPLE 1: Manufacturer, Inc. sells XYZ Product cigars in 25-count packages as both a prepriced product and a regular-priced product. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for the prepriced product is listed as \$480 and the wholesale sales price for the regular-priced product is listed as \$605. The prepriced XYZ Product is a discounted cigar product and shall be taxed at the higher wholesale sales price of \$605.

EXAMPLE 2: Manufacturer, Inc. sells ABC Product cigars in 25-count packages. ABC Product is prepriced at \$.99 and \$1.19. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for ABC Product at \$.99 is listed as \$346 and the wholesale sales price for ABC Product at \$1.19 is listed as \$360. ABC Product cigars, at both prepriced price points, shall be taxed at the higher wholesale sales price of \$360.

EXAMPLE 3: Manufacturer, Inc. sells H Product cigarillos in two 30-count packages as prepriced products and as “save on two” products. Prepriced H Product includes 2/\$.99 and 2/\$1.49. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for H Product at 2/\$.99 is listed as \$190, the wholesale sales price for H Product at 2/\$1.49 is listed as \$207, and the wholesale sales price for H Product as “save on two” is listed as \$350. H Product cigarillos shall be taxed at the highest wholesale sales price of \$350.

EXAMPLE 4: Manufacturer, Inc. sells multipacks of J Product cigarillos. The J Product multipacks are sold as five-packs, and some of the five-packs are labeled as “five for the price of three.” The wholesale sales price of the five-packs of J Product that are not labeled as discounted have a higher wholesale sales price than the five-packs of J Product that are labeled as “five for the price of three.” The five-packs labeled as “five for the price of three” shall be taxed at the higher wholesale sales price of J Product five-packs that are not labeled as discounted.

This rule is intended to implement Iowa Code sections 453A.42(18) and 453A.43.

[ARC 5917C, IAB 9/22/21, effective 1/1/22; ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.4(453A) Tax on little cigars. “Little cigars” as defined in Iowa Code section 453A.42(5) means any roll for smoking made wholly or in part of tobacco not meeting the definition of cigarette as contained in Iowa Code section 453A.1(3) which either weighs three pounds or less per thousand or weighs more than three pounds per thousand (excluding packaging weight) and has a retail price of two and one-half cents or less per little cigar. All of the provisions applicable to cigarettes concerning the rate, imposition, method of payment and affixing of stamps apply equally to little cigars. The tax on little cigars is to be paid on the purchase of stamps by cigarette distributors or cigarette manufacturers who hold valid permits. The reporting requirements contained in section 453A.15 and rule 701—255.9(453A) shall pertain equally to the distribution of little cigars, and whenever information as to cigarettes is required to be reported, the same is required as to little cigars.

This rule is intended to implement Iowa Code sections 453A.42(5) and 453A.43.

[ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.5(453A) Distributor discount. Licensed tobacco distributors filing returns under Iowa Code section 453A.46 and rule 701—256.6(453A) are entitled to deduct, from the remittance for tax due, a discount equal to 3½ percent.

This rule is intended to implement Iowa Code section 453A.46(1).

[ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.6(453A) Distributor returns. Every distributor licensed under Iowa Code section 453A.44 must file monthly returns. These returns must be filed no later than the twentieth day of the month following the month covered by the return, and must include a remittance for the amount due less the applicable discount.

256.6(1) In-state distributors. Licensed tobacco distributors, with a place of business in Iowa, must file Forms 70-022 and 70-023 as the monthly distributor return. The return shall include, but not be limited to:

- a. The distributor’s name, address and license number;
- b. An accounting of the acquisition of tobacco products subject to tax including as to each acquisition:
 - (1) The date received,
 - (2) The date and number of the invoice,
 - (3) The person from whom purchased, and
 - (4) The manufacturer’s gross list price;
- c. A claim for credit for tobacco products destroyed, returned to manufacturers and exported; and
- d. The certification of the person responsible for making the return.

When claiming credits for tobacco products destroyed, returned to manufacturers and exported, Form 70-024 schedule I, Form 70-024 schedule II, and Form 70-025 schedule III, respectively, must be completed.

256.6(2) *Out-of-state distributors.* Licensed tobacco distributors, with no place of business in Iowa, must file Form 70-026 as the monthly distributor return. The return shall include, but not be limited to:

- a. The distributor's name, address and license number;
- b. An accounting of the sale in Iowa of tobacco products subject to tax including as to each sale:
 - (1) The date of sale,
 - (2) The invoice number,
 - (3) To whom sold,
 - (4) The purchaser's address, and
 - (5) The manufacturer's gross list price; and
- c. The certification of the person responsible for making the return.

This rule is intended to implement Iowa Code sections 453A.46 and 453A.47.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.7(453A) Consumer's return. Every person, other than a licensed tobacco distributor, who is responsible for reporting and paying the tax on tobacco products under Iowa Code section 453A.43(2) and subrule 256.3(2), shall file Form 70-022 (Monthly Distributor Tax Return) for any month that the person is responsible for paying the tax. The return shall be due by the twentieth day of the month following the month during which taxable tobacco products were acquired. The return shall be completed in all respects except the consumer will not have a permit number. The return must be accompanied by a full remittance in the amount of the tax due because the discount provided in Iowa Code section 453A.46(1) applies only to licensed distributors. The penalties provided in Iowa Code section 453A.46(3) apply to any taxpayer required to file any return and, therefore, apply equally to licensed tobacco distributors and any other person accruing a tax liability. See rules 701—10.76(453A) (penalty), 701—10.77(453A) (interest), and 701—10.79(453A) (waiver of penalty).

This rule is intended to implement Iowa Code section 453A.46.

[ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.8(453A) Transporter's report. The transportation of tobacco products into this state must be reported to the director. The report shall include, but not be limited to:

- 1. A description of the products imported,
- 2. The name and address of the seller or consignor,
- 3. The date of importation,
- 4. The name and address of the purchaser or consignee,
- 5. The point of origin, and
- 6. The point of destination.

256.8(1) *Out-of-state distributors.* Persons who are licensed as a tobacco distributor and have a place of business without the state, from which tobacco products are shipped, need not file a separate transportation report. This information is available from the distributor report.

256.8(2) *Common carriers.* Common carriers transporting tobacco products into this state need only report shipments to places other than public warehouses licensed under the provisions of Iowa Code chapter 554. Common carriers must file the transporter's report by the tenth day of the month following the month of importation.

256.8(3) *Others.* All other transportation of tobacco products into this state by persons other than described in subrules 256.8(1) and 256.8(2) must be reported to the department except:

- a. The importation of tobacco products by the consumer in sufficiently small quantities to be exempt from the tax (see subrule 256.3(2)), and
- b. The importation by the consumer of the tobacco products if the consumer is responsible to report and pay the tax under Iowa Code subsections 453A.43(2) and 453A.46(6) and subrule 256.3(2) and rule 701—256.7(453A).

The transportation report must be filed within 30 days of the date of importation.

This rule is intended to implement Iowa Code subsection 453A.45(4).

[ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.9(453A) Free samples. Where samples of tobacco products are distributed in this state, the person responsible for the distribution must pay the tax. The person responsible for the distribution shall file a return and pay the tax on the basis of the usual wholesale price for such products.

This rule is intended to implement Iowa Code sections 453A.43, 453A.46, and 453A.49.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.10(453A) Credits and refunds of taxes. Credits for tobacco products destroyed, returned to manufacturers or exported are provided in subrule 256.6(1). If the credits exceed the average monthly tax liability of the distributor, based upon the prior 12 tax periods, a refund may be issued.

Credits and refunds to a consumer who paid the tax pursuant to Iowa Code section 453A.43(2) shall be made for the same reasons and upon the same basis as credits and refunds to distributors.

This rule is intended to implement Iowa Code section 453A.47.

[ARC 6508C, IAB 9/7/22, effective 10/12/22; Editorial change: IAC Supplement 10/18/23]

701—256.11(453A) Sales exempt from tax. Sales of tobacco products which the state is prohibited from taxing under the Constitution or the laws of the United States or under the Constitution of this state are exempt from the tax.

256.11(1) Sales to the federal government. Military post exchanges or instrumentalities of the federal government are not required to comply with the provisions of Iowa Code chapter 453A or pay the tax imposed thereunder. However, individuals who have purchased or obtained tobacco products from a federal instrumentality and come within the jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50. *U.S. v. Tax Commission of Mississippi*, 421 U.S. 599, 95 S. Ct. 1872, 44 L.Ed.2d 404 (1975).

256.11(2) Sales by or to Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. The Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 453A. The tobacco products must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on tobacco products sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.43(4).

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.12(81GA,HF339) Retail permits required. For administrative purposes, the retail permits will be called "cigarette/tobacco retail permits." A person shall not engage in the business of a retailer of tobacco products without first having received a permit as a cigarette/tobacco retailer. A cigarette/tobacco retail permit shall be obtained for each place of business owned or operated by a retailer. The holder of a cigarette/tobacco retail permit is not required to obtain a tobacco retail permit. The retailer may sell cigarettes only, tobacco products only, or both cigarettes and tobacco products. However, if the cigarette/tobacco permit is suspended, revoked, or expired, the cigarette retailer shall not sell any cigarettes or tobacco products during the time the permit is suspended, revoked, or expired.

This rule is intended to implement 2005 Iowa Acts, House File 339.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.13(81GA,HF339) Permit issuance fee. Retail permits are issued by the following authorities at the following prices:

256.13(1) Outside any city, by the county board of supervisors, at an annual cost of \$50.

256.13(2) In cities of less than 15,000 population, by the city council, at an annual cost of \$75.

256.13(3) In cities of 15,000 or more population, by the city council, at an annual cost of \$100.

256.13(4) 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.

256.13(5) The retail permit expires on June 30 of each year. The city or county must submit a copy of any retail permit issued and the application for the permit to the department of public health within 30 days of issuance.

This rule is intended to implement 2005 Iowa Acts, House File 339.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.14(81GA, HF339) Refunds of permit fee.

256.14(1) 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 office issuing it, and the city or county granting the permit shall make refunds to the retailer as follows:

- a. Three-fourths of the annual fee if the surrender is made during July, August, or September.
- b. One-half of the annual fee if the surrender is made during October, November, or December.
- c. One-fourth of the annual fee if the surrender is made during January, February, or March.

256.14(2) 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:

- a. A sum equal to one-half of the annual fee if the surrender is made during October, November, or December.
- b. A sum equal to one-fourth of the annual fee if the surrender is made during January, February, or March.

256.14(3) 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 the annual fee.

This rule is intended to implement 2005 Iowa Acts, House File 339.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.15(81GA, HF339) Application for permit. Retailer permits shall be issued only upon application, accompanied by the applicable fee, and made upon forms furnished by the department. The forms shall specify:

256.15(1) The manner under which the retailer transacts or intends to transact business as a retailer.

256.15(2) The principal office, residence, and place of business for which the permit is to apply.

256.15(3) If the applicant is not an individual, the principal officers or members of the applicant, not to exceed three, and their addresses.

256.15(4) Such other information as the director shall require.

This rule is intended to implement 2005 Iowa Acts, House File 339.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.16(81GA, HF339) Records and reports.

256.16(1) The director shall prescribe the forms necessary for the efficient administration of 2005 Iowa Acts, House File 339, section 4, and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary for a period of five years.

256.16(2) 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.

This rule is intended to implement 2005 Iowa Acts, House File 339.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

701—256.17(81GA, HF339) Penalties. The permit suspension and revocation provisions and the civil penalties established in Iowa Code section 453A.22 shall apply to tobacco retailers.

This rule is intended to implement 2005 Iowa Acts, House File 339.

[ARC 6508C, IAB 9/7/22, effective 10/12/22]

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