

TITLE X
CIGARETTES AND TOBACCOCHAPTER 81
ADMINISTRATION

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

701—81.1(453A) Definitions. As used in this title the following definitions apply:

“*Bank*” means a bank designated and authorized by the director of revenue to sell cigarette stamps and set cigarette meters.

“*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.

“*Cigarette licensee*” means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division I.

“*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.

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the department, or the director’s authorized representative.

“*License*” and “*permit*” are used interchangeably.

“*Licensee*” means any person holding or required to obtain a permit or license of any kind under Iowa Code chapter 453A.

“*Meter settings*” means Iowa cigarette meters which imprint indicia on cigarette packages.

“*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.

“*Revenue*” means any evidence of tax on cigarettes required by the department to be affixed to individual packages of cigarettes.

“*Stamps*” means Iowa Fusion stamps, 30,000 to a roll and Iowa hand stamps of any quantity authorized by the director to be applied to packages of cigarettes and little cigars.

“*Supplier*” means any person or firm authorized to manufacture or supply cigarette stamps for the department.

“*Tax*” means the tax imposed under Iowa Code chapter 453A on cigarettes or other tobacco products.

“*Taxpayer*” means any person required to collect or remit tax directly to the department or required to be licensed or to file any report or return or keep records under Iowa Code chapter 453A.

“*Tobacco*” means the same as “tobacco products” as defined in Iowa Code section 453A.42.

“*Tobacco licensee*” means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division II.

In addition to these definitions, the definitions contained in Iowa Code sections 421B.2, 453A.1, and 453A.42 apply to these rules.

This rule is intended to implement Iowa Code chapter 453A as amended by 2004 Iowa Acts, Senate File 2296.

701—81.2(453A) Credentials and receipts. Employees of the department have official credentials and the taxpayer should require proof of the identity of any person claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer’s name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for a cash payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

701—81.3(453A) Examination of records. Within three years after a return or report is filed or within three years after the report or return became due, whichever is later, the department shall examine it, determine the amount of cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return or report has been filed, the department may determine the amount of tax due and give notice thereof. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, 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 provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.

Whenever books and records are examined by an employee designated by the director, whether to verify a return, report, or claim for refund or in making an audit, an assessment will be issued for any amount of tax due or a refund made for any amount of tax overpaid.

This rule is intended to implement Iowa Code sections 453A.15, 453A.28, and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

701—81.4(453A) Records. Every taxpayer subject to the provisions of Iowa Code chapter 453A shall keep, preserve, and make available to the department records for a period of three years. The following is a list of records subject to the provisions of this rule. For taxpayers using an electronic data interchange process or technology, also see 701—subrule 11.4(4).

81.4(1) Cigarette manufacturer. Licensed cigarette manufacturers are required to keep the following records.

- a. Records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.
- b. Records evidencing the transportation of cigarettes into Iowa.
- c. Records, including invoices, showing all sales of cigarettes to licensees.
- d. A record of all stamps purchased.
- e. Copies of all reports filed with the department.

Unlicensed cigarette manufacturers shipping cigarettes into Iowa are asked to keep records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

Nothing in this rule shall be construed to affect the provisions of P.L. 95-575 (Contraband Cigarette Act, 18 USC Ch. 114) or P.L. 81-363 (Jenkins Act, 15 USC, Sec. 375).

81.4(2) Cigarette distributing agent.

- a. Records of the receipt of all cigarettes showing the amount of cigarettes received and from whom received.
- b. Records of all distribution of cigarettes showing the amount of cigarettes shipped, to whom and at whose direction the cigarettes were distributed.
- c. Records showing all exports of cigarettes.
- d. Copies of all reports filed with the department.
- e. Detailed inventory records.
- f. Freight receiving and shipping records.

81.4(3) Cigarette distributors.

- a. Records, including invoices, showing the purchase of all cigarettes sold, used or stored in Iowa.
- b. Records, including invoices, showing the sale of cigarettes in Iowa.
- c. Detailed inventory records.
- d. Freight receiving and shipping records.
- e. A record of all stamps purchased.
- f. Copies of all reports filed with the department.

81.4(4) Wholesaler.

- a. Records, including invoices, evidencing the purchase of all cigarettes.
- b. Records, including invoices, evidencing the sale of all cigarettes.

c. Detailed inventory records.

81.4(5) Cigarette vendor.

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records evidencing the sale of cigarettes.

c. Inventory records.

d. Records of all cigarette vending machines owned, furnished, installed, serviced, operated or maintained by the vendor and the location of each.

81.4(6) Cigarette retailer.

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Inventory records.

81.4(7) Tobacco distributor. The same records as a cigarette distributor but with respect to tobacco, excluding records of stamps purchased. (See 81.4(3))

81.4(8) Tobacco subjobber. The same records as a cigarette wholesaler but with respect to tobacco.

81.4(9) Tobacco retailer. The same records as a cigarette retailer but with respect to tobacco.

81.4(10) Common carrier engaged in transporting cigarettes or tobacco products into Iowa.

a. Copies of bills of lading or manifests as to each transportation of cigarettes or tobacco.

b. Log book or trip sheets.

81.4(11) Microfilm and related records system. Microfilm, microfiche, COM (computer on machine) and other related reduction in storage systems will be referred to as “microfilm” in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 302. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of “detail” on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director’s designated representative.

f. A posting reference must be on each invoice.

g. Credit memoranda must carry a reference to the document evidencing the original transaction.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

81.4(12) Automatic data processing records. Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer’s tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director’s designated representative upon request. The system should be so designed that the supporting

documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

- (1) The application being performed;
- (2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and
- (3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

81.4(13) General requirements. If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. 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 (agreements must be in writing).

81.4(14) Other persons. The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

This rule is intended to implement Iowa Code sections 453A.15 and 453A.45 as amended by 2004 Iowa Acts, Senate File 2296, and Iowa Code sections 453A.18, 453A.19, 453A.24, and 453A.49.

701—81.5(453A) Form of invoice. Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453A or these rules, it shall minimally contain the following information:

1. The seller's name, address.
2. The purchaser's name, address and permit number (if any).
3. The date of sale.
4. All prices and discounts stated separately.
5. An indication as to whether cigarettes or tobacco products are being sold with or without tax stamps attached or tax included.
6. The origination and destination points.

This rule is intended to implement Iowa Code sections 453A.15, 453A.25, 453A.45 and 453A.49.

701—81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments. The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return or report filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

When it is determined, upon audit, that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue

involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 453A.30.
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—81.7(453A) Bonds. When bonds are required by Iowa Code chapter 453A or these rules, said bonds shall be in the form of cash, a certificate of deposit or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the state of Iowa and in a form approved by the director. Bonds required by tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, upon approval by the director, a cash bond or a certificate of deposit will be accepted by the department as a substitute for the surety bond. (See Iowa Code section 453A.44(4).)

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

701—81.8(98) Penalties. Renumbered as 701—10.76(98), IAB 1/23/91.

701—81.9(98) Interest. Renumbered as 701—10.77(98), IAB 1/23/91.

701—81.10(98) Waiver of penalty or interest. Renumbered as 701—10.78(98), IAB 1/23/91.

701—81.11(453A) Appeal—practice and procedure before the department.

81.11(1) Procedure. The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7 of the department's rules.

81.11(2) Appeals—time limitations. For notices of assessment or refund denial issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 453A.25, 453A.28, 453A.29, 453A.46, 453A.48, and 453A.49.
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—81.12(453A) Permit—license revocation.

81.12(1) Cigarette permits. Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—84.7(421B).) The revocation shall be subject to the provisions of rule 701—7.23(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

If a retailer or employee of a retailer has violated Iowa Code section 453A.2 or 453A.36(6), the city council, county board of supervisors, or the Iowa department of public health shall assess a penalty as provided in Iowa Code section 453A.22(2) as amended by 2003 Iowa Acts, chapter 26. The penalty procedures are governed by Iowa Code section 453A.22(1) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—84.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer who is an individual if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor

may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority. If a retail permit is suspended or revoked, the suspension or revocation applies only to the place of business where the violation occurred and not to any other place of business covered by the permit.

The department or local authority must report the suspension or revocation of a retail permit to the department of public health within 30 days of the suspension or revocation.

81.12(2) Tobacco licenses. The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and rule 701—7.23(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 453A.22 as amended by 2003 Iowa Acts, chapter 26, and sections 453A.13, 453A.44(11) and 453A.48(2).
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

701—81.13(453A) Permit applications and denials.

81.13(1) Applications for permits. The application forms for all permits issued under Iowa Code chapter 453A are available from the department upon request. The applications shall include, but not be limited to:

- a. The nature of the applicant's business;
- b. The type of permit requested;
- c. The address of the principal office of the applicant;
- d. The place of business for which the permit is to apply;
- e. The names and addresses of principal officers or members, not to exceed three, if the business is not a sole proprietorship;
- f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);
- g. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant;
- h. Whether or not the applicant possesses any other permit issued under Iowa Code chapter 453A; and
- i. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

81.13(2) Denial of application for permit. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The director will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

81.13(3) *Revocation of a permit.* The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will revoke the permit of any permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

81.13(4) *Applications for retail cigarette permits.* Applications for retail cigarette permits are supplied by the department to city councils and county boards of supervisors. The application must be obtained from and filed with the individual council or board. The board of supervisors or the city council is required by 1995 Iowa Acts, chapter 115, to deny a retail permit to any applicant, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the board of supervisors or city council with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.13, 453A.16, 453A.17, 453A.22, 453A.23, and 453A.44, and 1995 Iowa Acts, chapter 115.

701—81.14(453A) Confidential information. The release of information contained in any reports or returns filed under Iowa Code chapter 453A or obtained by the department in the administration of Iowa Code chapter 453A is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 453A. Any requests for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

701—81.15(98) Request for waiver of penalty. Renumbered as 701—10.79(98), IAB 1/23/91.

701—81.16(453A) Inventory tax. All persons required to obtain a permit under Iowa Code section 453A.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale within 30 days of the inventory date. The tax is equal to the difference between the amount paid

for cigarette stamps or metered imprints purchased prior to the tax increase and the amount that is to be paid for cigarette stamps or metered imprints purchased after the tax increase.

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 453A.8 shall not be considered.

The inventory tax is applicable only when there is an increase in the tax rate. See rule 701—82.11(453A) for an explanation of whether a refund is allowable when there is a decrease in the tax rate.

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

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