

701—82.10(453A) Manufacturer's samples.

82.10(1) Iowa Code section 453A.39 provides a method for manufacturers to distribute free sample packages of cigarettes or little cigars. This method is to be followed to the exclusion of all others. (See 1982 O.A.G. #710.)

The cigarettes or little cigars must:

- a. Rescinded IAB 1/22/92, effective 2/26/92.
- b. Be sent to a permitted distributor.
- c. Rescinded IAB 1/22/92, effective 2/26/92.
- d. Have tax paid thereon by a distributor.
- e. Be clearly marked "sample."
- f. Contain acknowledgment of tax being paid on each carton containing free samples.

The manufacturer must notify the department by affidavit of shipment and the distributor must notify the department by affidavit of receipt and separately remit the tax. The tax must be computed on a per cigarette basis rather than a per package basis.

82.10(2) Remittance of tax and acknowledgment of payment. Iowa Code section 453A.39 provides that the tax will be paid by a permitted distributor. The payment of tax should accompany the distributor's affidavit (Form 70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

Permit number

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, the distributor may request that the department acknowledge by telephone and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as for regular cigarettes by the distributor filing the appropriate forms with the department.

82.10(3) Promotions using cigarettes, noncigarettes or coupons. Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale. A sale is defined to "mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever."

Once a sale has occurred, the gift may be any kind whatsoever.

a. *Promotion using cigarettes.* If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped who would then give them to a retailer who gives the cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B, by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE. A manufacturer ships packs of 20, free of charge, to a permitted distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of 421B.4 would not prevent the distribution of cigarettes in this example, since 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes which are sold is controlled by section 421B.2. The cigarettes sold under the "buy one" portion of the

promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the “get one free” portion of the promotion and which were obtained free of charge will have no invoice cost to the retailer.

b. Promotions using noncigarette items. A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item such as cigarette lighters through wholesale channels to retailers which will be delivered to the customer at the time of the sale of the cigarettes does not violate chapter 421B. (See 1958 O.A.G. #22.)

c. Coupons. A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons which are sent to the final consumer to be redeemed by a retailer who is reimbursed by a manufacturer do not violate chapter 421B. (See 1968 O.A.G. #68.) This would be true even though the coupon represented the full price of the cigarettes.

d. Replacement packages. A manufacturer wants to respond to a customer complaint by replacing a package of 20 cigarettes purchased by the customer with another package of 20 cigarettes. The replacement package must be clearly marked with the following information:

COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID.

The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer’s affidavit required under Iowa Code section 453A.39 (manufacturer’s samples).

This rule is intended to implement Iowa Code sections 453A.1, 453A.13, 453A.16, 453A.22, 453A.31, 453A.39 and chapter 421B.