

701—82.4(453A) Cigarette tax—attachment—exemption—exclusivity of tax.

82.4(1) Tax. See Iowa Code section 453A.6 for the rate of tax imposed on cigarettes.

82.4(2) Attachment. The tax is imposed when the cigarettes are received by any person in Iowa for the purpose of making a “first sale” of the cigarettes (as defined in Iowa Code section 453A.1). If the tax is not paid by the person making the first sale, it must be paid by any person into whose possession such cigarettes come until the tax has been paid, the tax to be paid only once. The fact that the tax is eventually paid will not relieve the person’s standing prior in the chain of distribution of the sanctions for distributing untaxed cigarettes if the tax should have been paid sooner by said person.

The tax must be added to the selling price of every package of cigarettes so that the ultimate consumer bears the burden of the tax.

82.4(3) Exemption. If all of the following conditions are met, the Iowa cigarette tax need not be paid:

- a. The cigarettes are imported on or about the person claiming the exemption,
- b. The total quantity of cigarettes so imported is equal to or less than 40,
- c. The seal of the individual cigarette package has been broken, and
- d. The cigarettes are actually used by the person so importing and are not sold or offered for sale.

82.4(4) Exclusivity of tax. No other occupation or excise tax may be imposed by any political subdivision of the state. However, this provision does not apply to occupation or excise taxes imposed by the state.

82.4(5) Sales exempt from tax. Sales of cigarettes 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. If the sale is exempt from the tax, stamps must not be attached. No refund will be issued for stamps which are attached to cigarette packages which are later sold exempt.

a. *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 nor pay the tax imposed thereunder. However, individuals who have purchased or obtained cigarettes from a federal instrumentality and come within the jurisdiction of the state, are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37. *U.S. v. Tax Commission of Mississippi*, 421 U.S. 599, 44 L.Ed. 2d 404, 95 S.Ct. 1872 (1975).

b. *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 cigarettes 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 cigarettes sold to the Indian purchaser.

This rule is intended to implement Iowa Code section 453A.6 as amended by 1999 Iowa Acts, chapter 151.