

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.

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