

**701—232.4(453A) Tax on tobacco products.**

**232.4(1) Generally.** The tax on tobacco products is to be paid 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 permit fees imposed by any city or county.

**232.4(2) Distributor responsibility.** The tax as specified in Iowa Code section 453A.43(1)“a” is imposed when a distributor does any of the activities as listed in Iowa Code section 453A.43(1)“e.”

**232.4(3) Consumer responsibility.**

a. If the tax under Iowa Code section 453A.43(1) is not paid under the circumstances identified in Iowa Code section 453A.43(1)“e,” the consumer is responsible for the tax specified in Iowa Code section 453A.43(2) based upon the cost to the consumer of the tobacco products used or stored by the consumer.

b. The tax does not apply to the use or storage of tobacco products in the circumstances identified in Iowa Code section 453A.43(2)“e.”

c. The exceptions do not apply to tobacco products subject to the tax imposed upon distributors.

**232.4(4) Discounted tobacco products.**

a. *Generally.* A tobacco product sold by manufacturers to distributors that is discounted is taxed at the highest wholesale sales price for that product.

b. *Discounted tobacco products.* A tobacco product is discounted when, compared to an identical product on the price list, the tobacco product has a lower wholesale sales price.

(1) Tobacco products are identical if they are sold as the same package size on the price list, irrespective of whether such tobacco is flavored, adulterated, or mixed with any other ingredients; 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.

(2) The manufacturer’s characterization of the tobacco product on the price list is a consideration to determine if a tobacco product is discounted, but it is not controlling.

(3) 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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