

701—64.2(452A) Time tax attaches—responsible party. The tax on motor fuel attaches when first “received” in this state, within the meaning of “received” as defined in Iowa Code section 452A.2. The tax is due from and payable to the department by the distributor who “received” the motor fuel. The tax is remitted to the department on a monthly basis and the tax is to be added to the price of the motor fuel at each subsequent sale so that the ultimate consumer bears the burden of the tax.

64.2(1) Imported to storage. When motor fuel is imported into the state, for sale or use in this state, and unloaded at storage facilities other than refinery or terminal storage facilities, the tax attaches at the time it is unloaded. The owner of the motor fuel immediately after it is unloaded is responsible for the tax unless (1) the owner is a nonlicensee and (2) the shipper or supplier is a licensee and sells and delivers the motor fuel directly to the nonlicensee in this state, in which case, the shipper or supplier is responsible for the tax at the time of unloading.

The following examples demonstrate the application of this subrule:

1. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is licensed as a distributor in Iowa. XYZ Oil Company sells the motor fuel stored out of state to A, who is an Iowa-licensed distributor, and ships it to A’s nonterminal storage in Iowa. A is responsible for the tax when the motor fuel is unloaded in Iowa.

2. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is licensed as a distributor in Iowa. XYZ Oil Company sells and ships the motor fuel in its own transport and delivers the fuel directly to A, a nonlicensee in Iowa. When the motor fuel is unloaded at A’s nonterminal storage, XYZ Oil Company is responsible for the tax at that time.

3. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is licensed as a distributor in Iowa. XYZ Oil Company sells motor fuel to A and delivers it to A at XYZ’s out-of-state storage. A ships the motor fuel to its nonterminal storage. A is responsible for the tax when it is unloaded in Iowa whether or not A is licensed.

4. XYZ Oil Company owns motor fuel in storage out of state. XYZ Oil Company is not licensed as a distributor in Iowa. XYZ Oil Company sells and ships the motor fuel to A, a nonlicensee in Iowa. When the motor fuel is unloaded at A’s nonterminal storage, A is in violation of Iowa Code sections 452A.4 and 452A.53 because A is deemed to have received the fuel, and to receive fuel, one must hold an uncanceled distributor’s license. A is still responsible for the tax at the time it is unloaded, and must still report and pay the tax pursuant to Iowa Code section 452A.9.

5. XYZ Oil Company owns motor fuel in storage out of state and is a licensed distributor in Iowa. XYZ Oil Company ships the motor fuel to nonterminal storage it owns in Iowa. XYZ Oil Company is responsible for the tax when the motor fuel is unloaded in Iowa.

64.2(2) Imported for use. When the motor fuel is imported into the state and used directly from the transport vehicle, the person using the motor fuel in this state is responsible for the tax and the tax attaches at the time it is brought into the state. The shipper or supplier is responsible for the tax in lieu of the user when (1) the shipper or supplier is a licensed Iowa distributor and sells and delivers the motor fuel directly to the user in this state, and (2) the user is not so licensed. The examples for subrule 64.2(1) above would apply to demonstrate the application of this rule as to the person responsible for the tax.

64.2(3) Produced at other than refinery. When motor fuel is produced, compounded, or blended in this state, other than at a refinery, or at a marine or pipeline terminal, the tax attaches when it is so produced, compounded, or blended and the owner of the motor fuel at the time the processing is completed is responsible for the tax.

64.2(4) Any other method. When motor fuel is acquired in this state in any manner not set out in Iowa Code section 452A.2 or in this rule, which fuel is neither exempt from tax nor had been previously subject to the Iowa excise tax on motor fuel, the person so acquiring the motor fuel is responsible for the tax at the time so acquired.

64.2(5) Received when withdrawn from terminal storage. When motor fuel is withdrawn from terminal storage for sale or use in this state or for transportation to nonterminal storage within this state, the tax attaches at the time of withdrawal. The person responsible for the tax is determined by Iowa Code section 452A.2. The motor fuel is received by the person who was the owner of the motor fuel

immediately prior to withdrawal, unless (1) the motor fuel is withdrawn for shipment or delivery to a licensee, in which case, the motor fuel shall be deemed received by the licensee to whom shipped or delivered or (2) the motor fuel is withdrawn for shipment or delivery to a nonlicensee for the account of a licensee, in which case, the motor fuel shall be deemed received by the licensee for whose account the shipment or delivery to the nonlicensee is made. For purposes of determining to whom the motor fuel is “delivered,” the delivery may be either actual or constructive depending on the circumstances. (*Van Drimmelen v. Converse*, 190 Iowa 1350, 181 N.W.2d 699 (1921); *Cowie v. Local Board of Review of City of Des Moines*, 235 Iowa 318, 16 N.W.2d 592 (1944); *Lakeview Gardens v. State Ex Rel. Schneider*, 557 P.2d 1256 (Kan. 1976).) The department shall look at the entire transaction, both in form and substance, to determine to whom “delivery” was made. In situations where actual delivery to one licensee occurs simultaneously with constructive delivery to another licensee, both licensees have “received” the motor fuel and, therefore, either licensee could be responsible for the tax. In the event the tax is not paid, the department may look to either licensee for payment of the tax.

In addition to the phrase “withdrawal for delivery,” the statute also refers to the concept of “withdrawal for shipment.” Thus, it is also possible to have situations where there is delivery to one licensee and shipment to another licensee where it is known at the time of withdrawal to whom the motor fuel is to be shipped. Again, either licensee could be responsible for the tax.

The provisions of Iowa Code section 452A.2 will not operate to postpone the time when the tax attaches, nor will it operate to create an interdistributor chain of distribution to shift the responsibility for the tax to a licensee not intended by the statute. The tax shall always attach at the time of withdrawal, and the party responsible for the tax will be determined at that time.

The following examples will illustrate the application of this subrule. For purposes of these examples, the following is assumed unless otherwise stated: (1) The motor fuel stored in the terminal is owned by XYZ Oil Company, (2) the motor fuel is withdrawn for sale or use in Iowa, and (3) the points of delivery are within Iowa:

(1) XYZ Oil Company sells motor fuel to A, a licensed distributor. The motor fuel is to be delivered to A’s place of business. Regardless of the transportation arrangements (i.e., transported by XYZ, A, or a common carrier), A is the receiver and is responsible for the tax.

Explanation: If A transports the fuel, A has taken physical delivery (possession) of the fuel at the time of withdrawal. The same would be true if a common carrier under the control of A took delivery at the terminal. Where XYZ or a common carrier under the control of XYZ transports the fuel under an F.O.B. destination contract, the department has determined that this situation is contemplated by the “shipment” element of Iowa Code section 452A.2.

(2) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor. A, in return, sells the motor fuel to B, a nonlicensee. Regardless of the method of transportation, A is responsible for the tax.

Explanation: The licensee is always responsible for the tax. See Iowa Code section 452A.2.

(3) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor who simultaneously sells the fuel to B, also a licensed distributor. If B or a common carrier under B’s control transports the fuel from the terminal, A and B are both “receivers” and either could be responsible for the tax.

Explanation: At the time of withdrawal, there is a simultaneous delivery to A and B, constructive delivery to A by virtue of title passing through A at the time of withdrawal and actual delivery to B by virtue of title and constructive possession passing from A to B. The department has determined not to break the “tie,” and therefore, either could pay the tax, and the department could pursue either in the event the tax was not paid.

(4) An “exchange” would have the same result as Example 3, with A being the exchangee-seller.

(5) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor. A, at the same time, sells the fuel to B, a licensed distributor. If A or a common carrier under A’s control transports the fuel from the terminal, A and B again are “receivers” and either could be responsible for the tax.

Explanation: At the time of a withdrawal, there is a simultaneous “withdrawal for delivery” to A and a “withdrawal for shipment” to B. The motor fuel is withdrawn by A for shipment to B, a licensee. As in Example 3, the department has determined not to break the “tie,” and therefore, either could pay the tax, and the department could pursue either in the event the tax was not paid. As explained in Example

1, transportation arrangements should not affect the determination of the person responsible for the tax. Examples 3 and 5 reach the same results regardless of the mode of transportation.

(6) XYZ Oil Company sells (allots) motor fuel to A, a licensed distributor. Subsequent to the sale, withdrawal and delivery of fuel to A, B, a licensed distributor, then agrees to purchase the fuel from A. Under this situation, A is the receiver and is responsible for tax.

Explanation: At the time of withdrawal from the terminal, A is the only person who could have first received the fuel since the sales contract with B did not exist until after the sale and delivery of the fuel to A. Under these facts, there is no simultaneous “withdrawal for delivery” and there is no simultaneous “withdrawal for shipment.”

(7) XYZ Oil Company sells motor fuel to A, a licensed distributor. At withdrawal, the fuel is placed in A’s transport and the bill of lading indicates an out-of-state destination. XYZ reports the sale as a tax-free sale to a licensed distributor and A is responsible to report the export.

(8) XYZ Oil Company sells motor fuel to A, a nonlicensee. The bill of lading indicates an out-of-state destination. The fuel is to be sold tax-free (see Iowa Code sections 452A.2 and 452A.3). XYZ is responsible for reporting a sale for export.

This rule is intended to implement Iowa Code sections 452A.2 and 452A.3.