e. There is no statutory authority to require an organization or an individual to acquire an exemption letter or special certificate in order to claim an exemption under Iowa Code section 422.45(3). However, the burden of proof that an organization is entitled to an exemption lies with the organization. If an organization or individual wishes to notify the department of revenue and finance of an upcoming event, or if an organization or individual wishes to inquire about the tax status of an activity, the department encourages contact with its main office in Des Moines, Iowa. Inquiries should be made in writing explaining in detail the event and how the proceeds therefrom are going to be used, and the time and place of the event. All inquiries should be made in advance of the event.

Under Iowa Code section 422.54, the department does have statutory authority to verify whether an individual or an organization which is making retail sales is required to file a return. Therefore, organizations or individuals may be asked to provide written information regarding the retail sales in a manner or form required by the department and return it to the nearest department of revenue and finance field office within 30 days from the date the information was requested by the department.

Failure to complete and remit the requested information as required may result in a formal audit of the organization's or individual's records.

Inquiries regarding an individual's or an organization's sales tax exemption status relating to its fund-raising activities should be made to the department's taxpayer services section in Des Moines. Any decisions reached by the department of revenue and finance are conditional pending an audit and verification of how the proceeds from the event were used.

f. Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 422.45(3), it can still be held responsible for sales tax on gross receipts if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

17.1(5) *Specific information.* Listed below are some common situations in which the sales tax exemption provided by section 422.45(3) may or may not be applicable:

a. Gross receipts from the sale of food and tangible personal property by individuals and organizations at bazaars, sporting events, fairs, carnivals, and centennial organizations, where the entire proceeds are expended for educational, religious, or charitable purposes, are exempt.

b. Gross receipts from sales by students where the gross receipts therefrom are expended for educational, religious, or charitable purposes or school-related functions, are exempt.

c. Gross receipts from the sales of food and tangible personal property by the Boy Scouts, Girl Scouts, YMCA, 4-H and their satellite organizations, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, are exempt.

d. Gross receipts from tickets or admissions, except to athletic events of educational institutions, to the extent net proceeds therefrom are expended for educational, religious, or charitable purposes, are exempt.

e. Gross receipts from church-related functions, such as the ladies' auxiliary, except gambling activities, where the entire proceeds are expended for educational, religious, or charitable purposes, are exempt.

f. Gross receipts from activities or events where the entire proceeds therefrom are donated to support governmental or municipal services are considered charitable, and therefore, are exempt. Also, entire proceeds expended for civic projects are exempt. An example would be proceeds from activities of the Junior Chamber of Commerce, Lions Clubs, or Kiwanis which are expended on a civic project.

g. Sales to organization members, primarily for the purpose of the selling organization, are exempt if the selling organization is educational, religious, or charitable. Examples are sales of uniforms, insignias, and equipment by Scout organizations to their members, sales of Bibles by a church to its members, and sales of choir robes by a church to its members.

h. A summer camp or ranch is generally considered a form of amusement which provides recreation to those who attend. If it is operated for profit, it is a form of commercial recreation and the gross receipts therefrom would be subject to sales tax. If it is not operated for profit, but is operated to help underprivileged children, or any child, and educates the child in some manner, the sales tax exemption would apply.

i. Rescinded IAB 11/20/96, effective 12/25/96.

j. Admissions to athletic events of educational institutions (except athletic events of elementary and secondary educational institutions) are taxable under Iowa Code section 422.43 regardless of how the proceeds are expended. Educational institutions having proceeds from athletic events should obtain an Iowa sales tax permit. See 701—subrule 16.26(2).

k. The gross receipts from admissions to and the sale of tangible personal property at centennial events are exempt from sales tax only if the entire proceeds from such sales are used for educational, religious, or charitable purposes. Whether a centennial is educational rather than a commercial amusement depends on the activities and events held at the centennial.

l. A professional golf tournament or any similar event where spectators view professional athletics is not an educational activity.

m. Generally, organizations which produce plays and concerts are not conducting educational activities unless there is evidence that the organization has as its primary objective to give educational instruction to the members of its organization, and the plays and concerts are a means to practice what is learned through the organization. However, each situation is factual and must be evaluated on its own merits.

n. The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious or charitable activity.

o. Where proceeds are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the proceeds are not considered to be expended for educational purposes, and the gross receipts from the car show are subject to tax.

p. Activities to raise funds to send members of educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 422.45(3).

q. Organizations whose function is to promote by advertising the use of a particular product which can be purchased at retail, even though educating the public, do not qualify for the exemption provided by Iowa Code section 422.45(3).

r. Sales of tangible personal property by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt from tax if the entire proceeds are expended for educational, religious, or charitable purposes.

s. Organizations such as the Big Ten Conference, Big Eight Conference, and the Missouri Valley Conference are, themselves, educational institutions since they are made up of member schools which are educational institutions. Any other public body made up of educational institutions could be entitled to the exemptions found in Iowa Code sections 422.45(5) and 422.45(8).

t. All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended except that those games operated by a county or a city are exempt from collecting the sales tax. See rule 701—18.39(422). When organizations operate such games, they are required to have a sales tax permit and a gambling license. See 195—Chapters 20 to 25 of the rules.

This rule is intended to implement Iowa Code sections 422.45(3) 422.45(5), 422.45(8), and 423.1.

701—17.2(422) Fuel used in processing—when exempt. Receipts from the sale of tangible personal property which is to be consumed as fuel in creating power, heat or steam for processing, including grain drying or for generating electric current, shall be exempt from sales tax.

The exemption provided in the case of tangible personal property consumed as fuel in creating heat applies only when such heat is directly applied in the actual processing of tangible personal property intended to be sold ultimately at retail, as distinguished from heat which is used for the purpose of heating buildings, whether such buildings be manufacturing or processing plants, warehouses or offices. *Chicago, B. & Q. R. Co. v. Iowa State Tax Commission,* 259 Iowa 178, 142 N.W.2d 407 (1966).

Fuel used in processing is exempt to creameries, dairies or ice cream factories only to the extent that the fuel is used in the actual processing of the finished product. This does not include combustible fuel used for storage after the manufacturing process is completed. For the treatment of electricity or steam used as a fuel or for any other purposes in processing by creameries, dairies, ice cream factories or other processors before, on or after July 1, 1985, see rule 17.3(422,423).

This rule is intended to implement Iowa Code section 422.42(3).

701—17.3(422,423) Processing exemptions. Carbon dioxide in a liquid, solid or gaseous form, electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.

17.3(1) *Services used in processing.* Electricity, steam, or any other taxable service is used in processing only if the taxable service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam or other taxable services used in processing:

a. The gross receipts from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The gross receipts are to be distinguished from those of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. These latter gross receipts would be taxable.

b. The gross receipts from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax, *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission,* 81 N.W.2d 437 (Iowa 1957).

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be "used in processing" and, therefore, its gross receipts would be subject to tax, Fischer Artificial Ice, supra.

d. Prior to July 1, 1995, electricity or other fuel used by greenhouses and their related facilities for the purposes of growing plants is not under any circumstances fuel which is used in processing, and the gross receipts from its sales would be subject to tax. On and after July 1, 1995, electricity or other fuel used for heating or cooling of a building used in the commercial production of flowering, ornamental, or vegetable plants, is exempt from tax. See 701—subrule 18.57(2) for more information.

17.3(2) *Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services used in processing.* An expanded definition of "processing" is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services. The definition of processing applicable to persons who are not manufacturers of food products but who are using taxable services is found in subrule 17.3(1).

a. "Manufacturer" characterized. A manufacturer is a person or entity different from a merchant, dealer, or retailer. See *Commonwealth v. Thackara Mfg. Co.*, 27 A. 13 (Pa. 1893). In order for a business to be a manufacturer the principal business of that business must be manufacturing. See *Associated General Contractors v. State Tax Commission*, 123 N.W.2d 922 (Iowa 1963). Another distinction is that a merchant or retailer sells in order to earn a profit and a manufacturer sells to take profits already earned from prior activity. See *State v. Coastal Petrol Inc.*, 198 So. 610 (Ala. 1940). A person primarily engaged in selling tangible personal property in order to earn a profit and only incidentally engaged in creating products suitable for use from raw materials is not a manufacturer. A retail grocery store, incidentally and not primarily engaged in manufacturing activities such as meat cutting or production and packaging of baked goods, is not a "manufacturer of food products for human consumption" and not entitled to claim the special processing exemption allowed to those manufacturers. Retail food stores, restaurants, and other persons incidentally engaged in food manufacturing activities can, however, continue to claim on their incidental processing activities the processing exemption allowed to persons who are not manufacturers of food products for human consumption. See subrule 17.3(1).

b. For sales occurring on and after July 1, 1985, the following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

(1) Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. "Special" treatment of the material to change its form, context, or condition is not necessary. Examples of "treatment" which would not be "special" are the following: washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be "special treatment."

(2) Maintenance of quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.

(3) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food product is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

(4) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of a food product. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any other taxable service used to power equipment which cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food samples for testing would be exempt from tax. Finally, electricity used to power "bug lights" or other insect killing equipment used in areas where food products are manufactured or stored would be exempt from tax.

(5) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in the formation of packaging for marketable food products for human consumption is exempt from tax. For example, electricity used by a food manufacturer in plastic bottle forming machines is exempt from tax if the plastic bottles will be used to hold a marketable food product, such as milk. Any electricity, steam or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

(6) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in placement of the food product into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

(7) Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to move material which will become a marketable food product or used to move the marketable food product itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or other taxable service used to move any food products to a loading dock is exempt from tax. If a food product is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

17.3(3) *Measurement of taxable and nontaxable use of electricity and steam.* The exemption provided in the case of electricity or steam applies only upon the gross receipts from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which is consumed for purposes or under conditions where the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. See 701—subrule 15.3(2). The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3) and 423.1.

701—17.4(422,423) Commercial fertilizer and agricultural limestone. Prior to July 1, 1987, sales of all commercial fertilizer and agricultural limestone were exempt from tax. On and subsequent to that date, sales of commercial fertilizer and agricultural limestone are exempt from tax only if the purchaser will utilize the fertilizer or limestone for the health promotion of plants which are produced as part of agricultural production for market. See subrule 17.9(3) for characterizations of "Agricultural production" and "Plants" respectively. Plant hormones are considered to be commercial fertilizer. By way of nonexclusive example, commercial fertilizer sold for application on a lawn, golf course, or cemetery would be taxable.

This rule is intended to implement Iowa Code section 422.42(3).

701—17.5(422,423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

Department of Employment v. United States, 1966, 385 U.S. 355, 87 S.Ct. 464, 17L.Ed.2d 414.

This rule is intended to implement Iowa Code sections 422.45(1), 422.45(5), and 423.4(4).

701—17.6(422,423) Sales of vehicles subject to registration—new and used—by dealers. Receipts derived from the sale at retail in Iowa of new and used vehicles subject to registration under the motor vehicle laws of Iowa shall be exempt from sales tax. When the vehicles are registered at the office of the county treasurer or the motor vehicle registration division, Iowa department of transportation, the tax is collected as use tax. Vehicle dealers selling tangible personal property or taxable services in Iowa, in addition to new or used vehicles, shall be required to hold a permit. Upon filing their quarterly returns, dealers shall show the amount of their gross receipts derived from the sale of new and used vehicles subject to registration and shall take appropriate deductions.

The purchaser of a new or used vehicle subject to registration shall be required to pay use tax when the vehicle is registered in Iowa under the Iowa motor vehicle law; and, the county treasurer or the motor vehicle registration division, department of transportation (whichever issues the registration) shall collect use tax.

This rule is intended to implement Iowa Code sections 422.45(4), 423.7 and 423.8.

701—17.7(422,423) Sales to certain federal corporations. The department holds that the following are some of the federal corporations immune from the imposition of sales and use tax in connection with their purchases:

1. Central Bank for Cooperatives and Banks for Cooperatives
2. Commodity Credit Corporation
3. Farm Credit Banks
4. Farmers Home Administration
5. Federal Credit Unions
6. Federal Crop Insurance Corporation
7. Federal Deposit Insurance Corporation
8. Federal Financing Bank
9. Federal Home Loan Banks
10. Federal Intermediate Credit Banks
11. Federal Land Banks and Federal Land Bank Associations
12. Federal National Mortgage Association
13. Federal Reserve Bank
14. Federal Savings & Loan Insurance Corporation
15. Production Credit Association
16. Student Loan Marketing Association
17. Tennessee Valley Authority

The federal statutes creating the above corporations contain provisions substantially identical with Section 26 of the Federal Farm Loan Act which has been construed as barring the imposition of state and local sales taxes.

This rule is intended to implement Iowa Code sections 422.45(1), 422.45(5), and 423.4(4).

701—17.8(422) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property is sold within the state and it is transported to a point outside the state, or it is transferred to a common carrier, to the mails, or to parcel post for shipment to a point without the state, sales tax shall not apply, provided the property is not returned to a point within the state except solely in the course of interstate commerce or transportation. See 701—subrule 26.2(3) for a description of an exemption applicable to services performed on the above-described property on or after May 22, 1999.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

17.8(1) *Proof of transportation.* The most acceptable proof of transportation outside the state shall be:

a. A waybill or bill of lading made out to the retailer's order calling for transport; or

b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

c. A trip sheet signed by the retailer's transport agency which shows the signature and address of the person outside the state who received the transported goods.

17.8(2) *Certificate of out-of-state delivery.* Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

17.8(3) *Exemption not applicable.* Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 422.45(46).

701—17.9(422,423) Sales of breeding livestock, fowl and certain other property used in agricultural production. The gross receipts from the sales of the following tangible personal property relating to agricultural production is exempt from tax.

17.9(1) Sales of agricultural breeding livestock. *"Livestock"* means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.*, 126 A.2d 865 (Md. 1956) and In the Matter of Simonsen Mill Inc., Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. The term includes cattle, sheep, hogs, and goats. On and after July 1, 1995, ostriches, rheas, and emus are livestock and their sales are also exempt from tax. On and after July 1, 1997, fish and any other animals which are products of aquaculture are considered to be livestock as well. Their sales are exempt from tax. Excluded from the term are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term are mink, fish (prior to July 1, 1997), bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded is any animal raised for racing.

The sale of agricultural livestock is exempt from tax under this subrule only if the purchaser intends to use the livestock primarily for breeding at the time of purchase. The sale of agricultural livestock which is capable of, but will not be used for breeding or primarily for breeding, is not exempt from tax under this subrule. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax.

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale the intent is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax under this subrule. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax under this subrule.

17.9(2) Sales of domesticated fowl. *"Domesticated fowl"* means any domesticated bird raised as a source of food, either eggs or meat. The word includes, but is not limited to, chickens, ducks, turkeys, and pigeons raised for meat rather than for racing or as pets. On and after July 1, 1995, the word includes ostriches, rheas, and emus. Excluded from the meaning of the word are nondomesticated birds, such as pheasants, raised for meat or any other purpose. The purchase of any domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not.

17.9(3) Sales of herbicides, pesticides, insecticides, food, medication, and agricultural drainage tile (including gross receipts from the installation of agricultural drainage tile) which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. On and after April 1, 1990, sales of adjuvants, surfactants, and other products which enhance the effects of herbicides, pesticides, or insecticides used for the reasons listed above are also exempt from tax. As used in this subrule:

a. *"Adjuvant"* is any substance which is added to a herbicide, pesticide, or insecticide to increase its potency.

b. *"Agricultural production"* is limited to what would ordinarily be considered a farming operation undertaken for profit. The term refers to the raising of crops or livestock for market on an acreage. See *Bezdek's Inc. v. Iowa Department of Revenue* (Linn Cty. Dist. Ct., May 14, 1984). Included within the meaning of the phrase "agricultural production" is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot, and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation; operations growing and raising hybrid seed corn or other seed for sale to farmers; and nurseries, ranches, orchards, and dairies. On and after July 1, 1995, "agricultural production" includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouse or elsewhere for sale in the ordinary course of business. On and after July 1, 1997, the phrase also includes any kind of aquaculture. The following are excluded from the meaning of "agricultural production": commercial greenhouses (prior to July 1, 1995); logging; catfish raising (prior to July 1, 1997); production of Christmas trees; beekeeping; and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus). The above list of exclusions and inclusions within the term "agricultural production" is not exhaustive.

c. *"Food"* includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

d. *"Herbicide"* means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, desiccant herbicides and fungicides.

e. *"Insecticide"* means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

f. *"Livestock."* See subrule 17.9(1) for the definition of this term. In addition, for the purposes of this subrule, the word "livestock" includes domesticated fowl.

g. *"Medication"* is not limited to antibiotics or other drugs administered to livestock.

h. *"Plants"* includes fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term are fir trees raised for Christmas trees and any trees raised to be harvested for their wood.

i. *"Pesticide"* means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this subrule, a disinfectant is a pesticide. Excluded from the term "pesticide" is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

j. *"Surfactant"* is a substance which is active on a surface.

The following are examples of taxable and nontaxable sales related to agricultural production for market:

1. The sale of any substance which is not itself an insecticide, herbicide, or pesticide used to make more effective or enhance the function of any insecticide, herbicide, or pesticide is subject to tax prior to April 1, 1990. On and after April 1, 1990, sales of adjuvants, surfactants, and other products which are used to enhance the effectiveness of any insecticide, herbicide, or pesticide used in agricultural production are exempt from tax.

2. The sale of herbicides, pesticides, insecticides, food, medication, drainage tile, and exempt products listed in "1" above to any person not engaged in agricultural production for market is exempt if the property sold will be used for an exempt purpose, e.g., disease control, on behalf of another person engaged in agricultural production for market.

17.9(4) The sale of fuel used to provide heat or cooling for livestock buildings is exempt from tax. For the purposes of this subrule, electricity is considered to be a "fuel," and the term "livestock" includes domesticated fowl. If a building is used partially for housing livestock and partially for a nonexempt purpose, for any portions of the building which are heated or cooled, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the building heated or cooled and used for housing livestock, and the denominator of which is the number of square feet heated or cooled in the entire building.

17.9(5) On and after July 1, 1995, sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subrule 17.9(4) above for the formula for calculating exempt use if a building is only partly used for plant raising.

17.9(6) On and after July 1, 1997, sales of tangible personal property for use as a fuel in the raising of agricultural products by aquaculture are exempt from tax.

17.9(7) Fuel, gas, electricity, water and heat consumed in implements of husbandry.

a. An implement of husbandry is defined to mean any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which that work could not be done. *Reaves v. State*, 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

b. Treatment of fuel used in implements of husbandry prior to July 1, 1985, and subsequent to June 30, 1987. Prior to July 1, 1985, and subsequent to June 30, 1987, the sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if consumed while the implement is engaged in agricultural production. Thus, fuel used not only in tractors or combines but also fuel used in implements which cannot move under their own power is exempt from tax. The sale of fuel used in milk coolers and milking machines, stationary irrigation equipment, implements used to handle feed, grain and hay and to provide water for livestock, is exempt from tax even though these implements of husbandry would not, at least ordinarily, be "self-propelled."

c. Sale of fuel used in implements of husbandry on and after July 1, 1985, to and including June 30, 1987. On and after July 1, 1985, to and including June 30, 1987, only the sale of fuel used in "self-propelled" implements was exempt from tax. A "self-propelled" implement of husbandry is one which is capable of movement from one place to another under its own power. An implement of husbandry is not self-propelled simply because it has moving parts. Tractors, combines, and motor trucks used exclusively for delivery and application of fertilizer would be nonexclusive examples of self-propelled implements of husbandry. An irrigation system, which rotates a shaft that dispenses water and a wheel or wheels which support the shaft in a circle about a wellhead which remains stationary, is not a "self-propelled" implement of husbandry.

d. For the purposes of this subrule, electricity used to power an implement of husbandry engaged in agricultural production or consumed in grain drying is considered to be a "fuel."

e. On and after July 1, 1987, the gross receipts from the sale of gas, electricity, water, or heat used in implements of husbandry engaged in agricultural production which is not otherwise exempt under the previous provisions of this subrule, is exempt from tax. See subrule 17.9(3) for the characterization of "Agricultural production" applicable to this subrule.

17.9(8) Water, when sold to farmers who are purchasing water for both livestock production as well as for household and sanitation use, shall be subject to the imposition of the tax the same as electricity or steam in rule 17.3(422,423).

Water sold to farmers and others and used directly as drinking water for livestock or poultry products for market, shall be exempt from the imposition of tax. Water used for other purposes such as household use, sanitation, or swimming pools shall be subject to tax. When water is used in livestock production, as well as for other purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for livestock purposes from other purposes. When it is impractical to separately meter water which is exempt from that which is taxable, the purchaser may furnish a statement to the seller which will enable the seller to determine the percentage of water subject to the exemption. In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 4,000 gallons of water per month. The first 4,000 gallons of water per month will be considered to be for nonexempt use and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 423.1 as amended by 1997 Iowa Acts, House File 266 and Senate File 30.

701—17.10(422,423) Materials used for seed inoculations. All forms of inoculation, whether for promotion of better growth and healthier plants or for prevention or cure of mildew of plants or disease of seeds and bulbs, are intended for the same general purpose. Sales tax shall not be imposed on any material used for inoculation.

This rule is intended to implement Iowa Code sections 422.42(3) and 423.1(1).

701—17.11(422,423) Purchases for sales by schools—sales tax. Goods, wares or merchandise purchased by any private nonprofit educational institution in the state and used for educational purposes shall be exempt from sales tax. The gross receipts from the sale of textbooks and hot lunches to students shall be exempt from sales tax when the entire proceeds from the sales are used for educational purposes. The sales of the yearbooks to schools which have executed contracts with yearbook companies to purchase yearbooks are considered sales for resale and are exempt from tax. The sales of yearbooks from the school to the students and others, are considered an educational activity, and when the entire proceeds therefrom are expended for educational purposes, they are exempt from tax under Iowa Code section 422.45(3).

When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

When private nonprofit educational institutions contract with food service companies to make sales of food or other sales at the educational institution, certain sales by the food service company are taxable or exempt depending on the circumstances.

Taxable Sales

A. All cash sales of meals or foods that could not be purchased in the same form or quantity in a retail store accepting food coupons (see rule 701—20.1(422,423) to 20.6(422,423)), shall be taxable whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.

B. All vending machine sales without exception.

C. Special event billings to colleges for feeding of guests not connected with the college.

D. Special event billings to colleges for feeding at banquets, parties, or social events not connected with the college.

E. Cash sales of any function where collection is made direct, whether or not to students.

F. Sales to fraternities or sororities for parties, banquets or social events not billed to college.

G. Special event feedings of commercial or social clubs such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, even though billed through the college.

Exempt Sales

A. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.

B. Students and faculty casual board when billed to college.

C. Teas, conferences, and parties when given by faculty for students and billed to the college.

D. Athletic or training table feeding when billed to the college.

E. Special events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.

F. Picnics for students on education field trips and billed to the college.

The above examples are not all-inclusive, only a general guideline.

A private nonprofit educational institution consists of a school, college, or university with students, faculty, and an established curriculum, a group of qualifying organizations acting in concert, or libraries.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(3), 422.45(7), 422.45(8), 423.1, and 423.4.

701—17.12(422) Coat or hat checkrooms. The operation of a checkroom is not a taxable service or an admission to any amusement or athletic event; therefore, the gross receipts from this operation shall not be included in the gross receipts on which sales tax is computed.

This rule is intended to implement Iowa Code section 422.43.

701—17.13(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad property which is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefor shall be exempt from tax. This exemption includes maintenance-of-way equipment which is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 422.45(10).

701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing. Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be exempt from sales and use tax. For the purpose of this rule for periods on or after January 1, 1980, free newspapers or shoppers' guides or both are considered to be retail sales for the purpose of the processing exemption.

17.14(1) *Definitions.*

a. *"Chemical"* is a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

b. *"Solvent"* is a substance (usually liquid) primarily used in dissolving something; as water is the appropriate solvent of most salts, alcohol of resins, and ether of fats.

c. *"Sorbent"* is a substance which takes up and holds either by adsorption or absorption. To be a sorbent for purpose of the exemption, a substance must be primarily used as a sorbent.

d. *"Reagent"* is a substance used for various purposes, (as in detecting, examining, or measuring other substances, in preparing materials, in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction which it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction, and as such is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property which is intended to be ultimately sold at retail.

17.14(2) *Conditions for exemption.* To qualify for this exemption, all of the following conditions must be met:

a. The item must be a chemical, solvent, sorbent, or reagent.

b. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in rule 701—18.29(422,423).

c. The processing must be performed on tangible personal property intended to be sold ultimately at retail.

d. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code sections 422.42(3) and 423.1(1).

701—17.15(422,423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and are exempt from tax.

This rule is intended to implement Iowa Code section 422.43.

701—17.16(422,423) Sale of a draft horse. The gross receipts from the sale of draft horses, when purchased for use and so used as a draft horse, shall not be subject to tax. For the purposes of this rule, horses commonly known as Clydesdale, Belgian, Shire, and Percheron will be considered draft horses. However, upon proper showing, other breeds will be granted the exemption by the director, but the burden of proof lies with the one seeking the exemption. *Jones v. Iowa State Tax Commission*, 74 N.W.2d 563 (Iowa 1956). These breeds are used as a draft horse when they are used to pull a load. It is not required that the load be of a commercial nature. Such horses used to pull loads in shows or for the conveyance of persons or property are being so used as draft horses.

The effective date of this rule is for periods beginning on or after July 1, 1978.

This rule is intended to implement Iowa Code sections 422.45(17) and 423.4(4).

701—17.17(422,423) Beverage container deposits. Tax shall not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—17.18(422,423) Films, video tapes and other media, exempt rental and sale.

17.18(1) *Exempt rental.* The gross receipts from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard or read shall not be taxable if the lessee either:

a. Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or

b. The lessee broadcasts the contents of the media for public viewing or listening.

The gross receipts from lessees who are film exhibitors or who rent video tapes and discs would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of criteria *"a"* or *"b"* above will occur. The rental of films, video tapes and video discs for home viewing is not exempt from tax.

17.18(2) *Exempt sale.* Retroactive to July 1, 1984, gross receipts from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media which can be seen, heard, or read are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code sections 422.45(24) and 422.45(41).

701—17.19(422,423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

17.19(1) On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations are exempt from tax.

a. Community health centers as defined in 42 U.S.C.A. Section 254c.

b. Migrant health centers as defined in 42 U.S.C.A. Section 254b.

17.19(2) After July 1, 1985, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered or furnished to the following nonprofit corporations are exempt from tax.

a. Residential care facilities and intermediate care facilities for the mentally retarded and residential care facilities for the mentally ill licensed by the department of health under Iowa Code chapter 135C.

b. Residential facilities for mentally retarded children licensed by the department of human services under Iowa Code chapter 237 including facilities maintained by "individuals" as defined in section 237.1(7) until and including June 30, 1989. On and after July 1, 1989, all residential facilities for child foster care (not only those for mentally retarded children) licensed by the department of human services under chapter 237, other than those maintained by "individuals" as defined in Iowa Code section 237.1(7) are eligible for the exemption.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for mentally retarded and other developmentally disabled persons and adult day care services approved for reimbursement by the department of human services.

d. Community mental health centers accredited by the department of human services under Iowa Code chapter 225C.

17.19(3) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in subrule 17.19(2). See 1985 O.A.G. 66.

17.19(4) Taxes payable on transactions occurring between July 1, 1980, and July 1, 1985, involving the retail sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit corporation described in subrule 17.19(2) and which have not been paid by the nonprofit corporation are no longer due and payable after July 1, 1985, and these taxes are not to be collected notwithstanding any other provisions of the Code.

This rule is intended to implement Iowa Code section 422.45.

701—17.20(422) Raffles. Gross receipts from the sale of fair raffle tickets pursuant to Iowa Code section 99B.5 are not subject to tax.

This rule is intended to implement Iowa Code section 422.45(32).

701—17.21(422) Exempt sales of prizes. For sales occurring on and after July 1, 1987, the gross receipts from sales of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B are exempt from tax. See Chapters 481—100 through 104 of Inspections and Appeals, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which it is lawful to award. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize at the time the person redeems the gift certificate for merchandise, on and after July 1, 1987, tax remains payable at the time the gift certificate is redeemed. See rule 701—15.16(422).

This rule is intended to implement Iowa Code section 422.45(32).

701—17.22(422,423) Modular homes. On and after July 1, 1988, 40 percent of the gross receipts from the sale of a modular home is exempt from tax. A "modular home" is any structure, built in a factory, made to be used as a place for human habitation which cannot be attached or towed behind a motor vehicle and which does not have permanently attached to its body or frame any wheels or axles.

This rule is intended to implement Iowa Code section 422.45.

701—17.23(422,423) Sales to other states and their political subdivisions. On and after July 1, 1990, gross receipts from the sale of tangible personal property or from the furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state are exempt from tax if that other state provides a similar reciprocal exemption for Iowa and its political subdivisions. The states known to provide a similar reciprocal exemption to Iowa and its subdivisions (as of October 1, 1998) are Illinois, Kentucky, North Dakota, South Dakota, and the District of Columbia.

This rule is intended to implement Iowa Code section 422.45.

701—17.24(422) Nonprofit private museums. For sales occurring on or after July 1, 1990, the gross receipts of all sales of goods, wares, merchandise, or services used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum are exempt from tax. A "museum" is an institution organized for educational, scientific, historical preservation, or aesthetic purposes which is predominately devoted to the care and exhibition of a collection of objects in a room, building, or locale. This collection must be open to the public on a regular basis, and its staff must be available to answer questions regarding the collection. See the example at the end of the rule for a characterization of the phrase "open to the public on a regular basis."

Words contained in exemption statutes are strictly construed; all doubt regarding their meaning is resolved in favor of taxation and against exemption. *Ballstadt v. Iowa Department of Revenue*, 368 N.W.2d 147 (Iowa 1985) and *Iowa Movers and Warehousemen's Association v. Briggs*, 237 N.W.2d 759 (Iowa 1976). Furthermore, an institution is not a "museum" unless it can be included in the "ordinary and usual public concept" of a museum, regardless of the abstract definition of the term within which the institution might fit. See *Sorg v. Department of Revenue*, 269 N.W.2d 129 (Iowa 1978). Using the above principles, the department excludes from its definition of "museum" the following: aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos. Included within the meaning of "museum" are: art galleries, historical museums, museums of natural history, and museums devoted to one particular subject or one person.

EXAMPLE: The Blank County History Museum is open every Tuesday afternoon from 1 p.m. to 4:30 p.m., other than on national holidays. The museum is open periodically or at fixed intervals, so it is open "on a regular basis," even though, each week, it is open only briefly.

This rule is intended to implement Iowa Code section 422.45(43).

701—17.25(422,423) Exempt sales by excursion boat licensees. The following sales by licensees authorized to operate excursion gambling boats are exempt from Iowa sales and use tax: (1) charges for admission to excursion gambling boats, and (2) gross receipts from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

Gross receipts from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and gross receipts from nongambling video games and other types of games which do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10(6).

701—17.26(422,423) Bedding for agricultural livestock or fowl. See subrules 17.9(1) and 17.9(2) and paragraph 17.9(3) *"a"* for definitions applicable to this rule. Between July 1, 1985, and June 30, 1992, inclusive, only the sale of woodchips or sawdust used in the production of agricultural livestock or fowl was exempt from tax. The sale of other materials used as bedding in the production of agricultural livestock or fowl was not exempt from tax. On and after July 1, 1992, the gross receipts from the sale of not only woodchips or sawdust but also of hay, straw, paper or any other materials used for bedding in the production of agricultural livestock or fowl is exempt from tax.

This rule is intended to implement Iowa Code section 422.45(30).

701—17.27(422,423) Statewide notification center service exemption. On and after January 1, 1995, taxable services rendered, furnished or performed by a statewide notification center established under Iowa Code section 480.3 which provides notice to operators of underground facilities who excavate in the area of these facilities are exempt from tax. This exemption is also applicable to taxable services rendered, furnished, or performed by any vendor selected by the board of directors of the statewide notification center to provide notification services.

This rule is intended to implement Iowa Code section 422.45 as amended by 1995 Iowa Acts, House File 550.

701—17.28(422,423) State fair and fair societies. For periods beginning on or after July 1, 1996, the gross receipts from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174. See 701—subrule 16.26(2) for examples of this rule's application.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1124.

701—17.29(422,423) Reciprocal shipment of wines. A winery licensed or permitted pursuant to laws regulating alcoholic beverages in a state which affords this state an equal reciprocal shipping privilege may ship into this state by private common carrier, to a person 21 years or age or older, not more than 18 liters of wine per month, for consumption or use by such person. Such wine shall not be resold. Shipment of wine pursuant to this rule is not subject to sales tax under Iowa Code section 422.43 or use tax under Iowa Code section 423.2.

"Equal reciprocal shipping privilege" means allowing wineries located in this state to ship wine into another state, not for resale, but for consumption or use by a person 21 years of age or older.

This rule is intended to implement Iowa Code section 123.187 as enacted by 1996 Iowa Acts, chapter 1101.

701—17.30(422,423) Nonprofit organ procurement organizations. On and after July 1, 1998, the gross receipts from sales of tangible personal property to, or from services rendered, furnished, or performed for, a statewide, nonprofit organ procurement organization are exempt from tax.

An "organ procurement organization" is an organization which performs or coordinates the activities of retrieving, preserving, or transplanting organs, which maintains a system of locating prospective recipients for available organs, and which is registered with the United Network for Organ Sharing and designated by the United States Secretary of Health and Human Services pursuant to 42 CFR § 485, subpt. D.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, chapter 1156.

701—17.31(422,423) Sale of electricity to water companies. On or after July 1, 1998, the gross receipts from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, which is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, "river" means a natural body of water or waterway that is commonly known as a river. "Well," for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain oil, water, gas, etc.; a shaft or excavation in the earth, in mining, from which run branches...*Pacific Gas and Electric Company v. Hufford,* 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged. Also see rule 701—17.3(422,423) for additional information regarding the processing exemption.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, chapter 1161.

701—17.32(422) Food and beverages sold by certain organizations are exempt. Retroactively to July 1, 1988, the gross receipts from sales of food and beverages for human consumption by certain organizations that promote Iowa products and any other food or beverage sold in conjunction with the promoted Iowa product by the organization.

17.32(1) To claim the exemption, an organization must meet all of the following qualifications:

a. The organization must be nonprofit,

b. The organization must principally promote a food or beverage product for human consumption that is produced, grown, or raised in Iowa, and

c. The organization must be exempt from federal income tax under Section 501(c) of the Internal Revenue Code.

17.32(2) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1988, to June 30, 1998, must be limited to $25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1998. If the amount of the claimed refunds for this period totals more than $25,000, the department must prorate the $25,000 among all claims. In addition, refunds of tax, interest, or penalty paid will only be refunded to the organization that actually paid the tax and did not collect the tax from the customer for the period in which the refund is requested or to an individual that paid the tax during the authorized period and had a receipt of the transaction.

EXAMPLE 1. A nonprofit association that is also exempt from federal income tax under Section 501(c) of the Internal Revenue Code promotes the sale of turkey. In October of 1997, in Winterset, Iowa, the organization sold turkey sandwiches, chips, and beverages to patrons of a festival encouraging the touring and preservation of its historic covered bridges. The association did not separately charge sales tax to the customers for the food purchased. Instead, the association remitted the sales tax on the gross receipts from the event from its own funds. The gross receipts from the sales of the turkey sandwiches would be exempt from sales tax. The association would be entitled to submit a request for refund of the tax paid on the gross receipts from the selling event by October 1, 1998.

EXAMPLE 2. A local nonprofit organization that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code promotes the sale of Iowa corn. On May 8, 1998, during a festival promoting Pella, Iowa's beautiful tulips and heritage, the association sold Iowa sweet corn on an "all you can eat" basis for one price to patrons of the festival. The organization charged its customers tax in addition to the price charged. The organization would not qualify to claim a refund for the sales tax paid on the gross receipts from the festival due to the organization's not paying the sales tax from its own funds for the May 8, 1998, event. Instead, the organization collected the tax from its customers and remitted the tax to the department. However, a customer of the organization would be entitled to a refund if the customer can produce a receipt of the transaction indicating the tax was paid by the customer for the period at issue.

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, chapter 1091.

701—17.33(422,423) Sales of building materials, supplies and equipment to not-for-profit rural water districts. Retroactive to July 1, 1998, sales of building materials, supplies, and equipment to not-for-profit rural water districts (those organized under Iowa Code chapter 504A and as provided by Iowa Code chapter 357A), which are used by the districts for the construction of their facilities, are exempt from tax. See rule 701—19.3(422,423) for definitions of the terms "building materials," "building supplies," and "building equipment" which are applicable to this rule. Additionally, for the purposes of this rule, cranes, underground boring machines, water main pulling equipment, and similar machinery used by a rural water district for the construction of its facilities are "building equipment." This rule does not exempt rentals of building equipment from tax, but a rural water district's rentals of building equipment may be exempt from tax if the rental is on or in connection with new construction, alteration, reconstruction, remodeling, or expansion of real property or a structure. See rule 701—19.13(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 59.

701—17.34(422,423) Sales to hospices. As of July 1, 1999, gross receipts from the sale or rental of tangible personal property to or the performance of services for any freestanding nonprofit hospice facility which operates a hospice program are exempt from tax if the property or service is purchased for use in the hospice's program. A "hospice program" is any program operated by a public agency, a private organization, or a subdivision of either, which is primarily engaged in providing care to terminally ill individuals. A "freestanding hospice facility" is any hospice program housed in a building which is dedicated only to the hospice program and which is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 62.

701—17.35(422,423) Sales of livestock ear tags. On and after July 1, 2000, sales of livestock ear tags by a nonprofit organization, the income of which is exempt from federal taxation under Section 501(c)(6) of the Internal Revenue Code, are exempt from tax if the proceeds of those sales are used in bovine research programs selected or approved by the nonprofit organization. For the purposes of this rule, the definition of "livestock" is found in subrule 17.9(1).

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1169.

701—17.36(422,423) Sale or rental of information services. Effective May 15, 2000, and retroactive to March 15, 1995, the gross receipts from the service of the sale or rental of information services are exempt from tax. This exemption does not repeal by implication the tax on the performance of the services of investment counseling, of all financial institutions, private employment agencies, test laboratories, detective services, or any other services enumerated by statute. They remain taxable; see 701—Chapter 26, generally.

"Information services" means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a particular buyer (or its agent) of the information through any tangible or intangible medium. Information accumulated, prepared, or organized for a particular buyer, its agent, a group of buyers, or their agent, is an information service even though it may incorporate preexisting components of data or other information.

Information services include, but are not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, scouting reports, white and yellow page listings, and other similar items of compiled information prepared for a particular customer. The furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material is not the performance of an "information service"; nor does the term include information prepared for general dissemination to the public in the form of books, magazines, newsletters, video or audio tapes, compact disks, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser.

The following specific examples illustrate the general principles set out above.

EXAMPLE A. John Doe buys a packaged set of preprinted documents and instructions which anyone may purchase and which is entitled "Legal Eagle." Mr. Doe prepares his own will by reading the instructions, making choices and filling in the blanks on the preprinted documents. Mr. Doe has purchased tangible personal property and not an information service. His purchase is taxable.

EXAMPLE B. A taxpayer buys a book entitled "Doing Your Own Iowa Individual Income Tax," which is written by an accountant and is available to any buyer. The taxpayer uses the book to prepare her own IA 1040. Since her purchase contains information prepared for general dissemination to the public in the form of a book, that purchase is a taxable sale of tangible personal property and not an exempt sale of an information service.

EXAMPLE C. The seller provides, for a fee, a weekly bulletin listing information on real estate of use to brokers selling homes in a certain Iowa county. The seller secures the information from a multiple listing service without applying any independent thought during the compiling of that information. The bulletin is useful only to those brokers and not to the general public. Since the bulletin is a "real estate listing" and has been prepared for a particular group of customers and not for the general public, its sale is the sale of an information service rather than the sale of tangible personal property and is thus exempt from tax.

EXAMPLE D. A-1 Corporation sells gourmet meats through the mail. A-1 rents its list of customers to whom it mails its catalog to other retailers who specialize in sales of goods or services to the wealthy. Since the list is a "mailing list" and made available only to a particular group of buyers, its rental is the performance of an exempt information service and not the taxable rental of tangible personal property.

EXAMPLE E. Company E is a tariff bureau which specializes in compiling and preparing tariff schedules. E acquires these schedules from various companies throughout the country. E then provides these schedules to common carriers who subscribe to its service. Its printed tariff schedules are published in bound and loose-leaf form; they may be updated daily. E's providing the schedules is the performance of an exempt information service because the schedules are compiled for a particular group of customers and they are items of compiled information similar to the files, lists, reports, and other information services named above.

EXAMPLE F. Company F compiles and prints telephone directories. F purchases white and yellow page listings from various telephone companies and uses those listings to make up its directories. F's purchases of the white and yellow page listings are purchases of an exempt information service. Any sales on F's part of the directories to the general public would be sales of tangible personal property subject to tax.

EXAMPLE G. Company G purchases the assets of four businesses. The primary asset of each of the businesses is a database containing names, addresses, and other customer information of use to G but not to anyone other than a company similar to G. G transfers the lists to its own computers by way of paper or magnetic tape. G has purchased an exempt information service with its purchases of the four databases.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1195, section 3.

701—17.37(422,423) Temporary exemption from sales tax on certain utilities. Effective February 5, 2001, the sales of specific energy sources are exempt from Iowa sales tax. Specified sales of energy are exempt from local option taxes as well; see rule 701—107.9(422B).

This exemption is not applicable to electricity, regardless of whether the electricity is used for heat. Electricity charges on utility bills will continue to be subject to Iowa sales and local option taxes. This exemption does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

17.37(1) *Definitions.* The following definitions are applicable to this rule:

"Fuel" means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. "Fuel" includes propane, heating fuel, and kerosene. However, "fuel" does not include blended kerosene used as motor fuel or special fuel.

"Heat" means to increase or maintain the temperature of a residential dwelling, apartment unit, or condominium. Due to metered gases and fuels being used for other purposes in the dwelling, such as clothes dryers, gas stoves, and hot water heaters, this temporary exemption for metered gas used for heating purposes will also be extended to metered gases and fuels used for appliances in the residential dwelling, individually metered apartment unit, or individually metered condominium.

"Metered gas" means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individually metered apartment unit, or individually metered condominium.

"Residential dwelling" means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as a detached garage or outbuilding. However, a garage attached to the residential dwelling that is used strictly for residential purposes will fall within the exemption. Also excluded from this exemption are classified commercial facilities. Classified commercial facilities include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

17.37(2) *Metered gas exemption.* Effective February 5, 2001, the gross receipts from the sale, furnishing or service of metered gas for residential customers which is used to provide energy to residential dwellings, individually metered apartment units, and individually metered condominiums, and that has a billing date of March 2001 or April 2001, are exempt from sales tax.

a. Billing date determinative. The determining factor for exemption for metered gas is the billing date for the metered gas. The exemption applies only to bills for metered gas which are dated in March 2001 or April 2001.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for exemption of metered gas. For example, a utility company issues a billing for metered gas on January 8, 2001, and customer A loses the billing. Customer A calls the utility company in late February and requests that a new billing be issued. The utility company issues a replacement billing to customer A and the replacement bill has a date of March 3, 2001. The date of the original billing issued to customer A is determinative for the purpose of qualifying for the exemption. The fact that a previously taxable billing was reissued during an exemption period does not qualify the reissued billing for the exemption.

b. Qualifying usage. All metered gas billed to a residential customer during March 2001 and April 2001, which will be used as energy for a residential dwelling, individually metered apartment unit, or individually metered condominium as defined in this rule, qualifies for exemption. This exemption includes metered gas used to operate heating units, appliances, and hot water heaters.

c. Qualifying structures. Structures that include both residential and commercial usage on the same meter are subject to a proration formula to obtain the qualifying portion eligible for exemption. To qualify for proration, the structure must be used for both commercial and residential purposes. The purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas that is eligible for exemption. See 701—subrule 15.3(2). The exemption certificate must be in writing and detail how the percentages of exempt residential usage and taxable nonresidential usage were developed. For example, a gift shop, Miss Barb's Bangles and Baubles, is located on the town square of Indianola, Iowa. Above the gift shop is an apartment. The gas usage of the apartment and the gift shop are monitored by one gas meter. The metered gas usage for the apartment is exempt, but usage for the gift shop is not. As a result, a proration formula must be established to separately reflect the metered gas usage of the apartment and the gift shop. In addition, the occupant of the apartment must provide an exemption certificate to the metered gas utility company to request the exemption. Approved exemption certificates are available upon request from the department.

It is important to note that the exemption for metered gas is limited to metered gas provided to residential customers. Consequently, a building containing apartment units is not considered to be residential. Instead, if it is classified as commercial property for property tax or any other purpose it is not eligible for exemption unless each apartment has a separate meter to monitor usage.

d. Credit. A utility company that sells, furnishes or services metered gas to residential customers may bill customers sales tax even if the customer qualifies for the exemption from sales tax under this subrule in March and April 2001 if the utility company cannot adjust its billing process in time to accommodate this exemption. Subsequently, the utility company must provide a credit for tax collected from a qualifying utility customer during the exemption period and the credit is to appear on the first possible billing date after March 31, 2001.

17.37(3) *Fuel exemption.* Effective February 5, 2001, through March 31, 2001, the gross receipts from the sale, furnishing, or service of fuel used to heat a residential dwelling, apartment unit, or condominium is exempt from sales tax.

a. Qualifying fuel. Any fuel which is used to provide heat for a residential dwelling, apartment unit, or condominium, as defined for the purposes of this rule, is exempt from tax. The fuel must be used to heat the residential dwelling, apartment unit, or condominium.

b. Delivery date determinative. The determining factor for exemption from sales tax is the delivery date of the fuel. Payment date, billing date, or date of execution of the contract for fuel is not a factor. Prices established by contracts executed to establish a fixed price for fuel are not impacted by this exemption. The exemption for fuel applies to the furnishing of the fuel and the delivery service. Only fuel delivered in the time frame beginning February 5, 2001, through March 31, 2001, is exempt.

Consequently, contracts executed to establish a fixed price for fuel, which may also include total or partial prepayment for the fuel under the contract, are exempt only for the amount of fuel delivered beginning February 5, 2001, through March 31, 2001. For example, in September 2000, customer A executed a contract with a propane retailer for fuel which will be delivered in January, February, March and April of 2001. Customer A pays $1,000 of the contract price to the retailer. Customer A cannot claim exemption for the entire $1,000 previously paid. Instead, customer A may only receive exemption on the $525 in gross receipts in fuel delivered under the contract from February 5, 2001, through March 31, 2001.

This rule is intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House File 1.

701—17.38(422,423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on the gross receipts from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

17.38(1) *Definitions.* The following definitions are applicable to this rule:

"Energy" means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

"Fuel" means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. "Fuel" includes propane, heating fuel, and kerosene. However, "fuel" does not include blended kerosene used as motor fuel or special fuel.

"Metered gas" means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

"Residential dwelling" means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a residential dwelling and that is used strictly for residential purposes will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

17.38(2) *Schedule for phase-out of tax.* State sales tax will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the gross receipts.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the gross receipts.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the gross receipts.

d. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the gross receipts.

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2006, the rate of state tax is 0 percent of the gross receipts.

17.38(3) *Determination of tax rate.* Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. Electricity or metered natural gas. If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. Fuel and heating oil. The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

17.38(4) *Qualifying and nonqualifying usage.* Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. See 701—subrules 15.3(4) and 15.3(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. See 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the gross receipts including the usage of the security lights are not subject to the phase-out of state sales tax and are subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

17.38(5) *Reporting over the phase-out period.* Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire gross receipts from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

Gross receipts for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Gross receipts for a tax period in 2002	$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	20,000
Taxable sales	80,000
State tax at 5% (to compute state sales tax due)	4,000
Gross receipts to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	× 1%
Local option tax due	1,000
Total tax due (local option and state sales tax)	$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	$400
State tax rate	× 4%
State tax due	16
Gross receipts for local option tax	400
Local option tax rate	× 1%
Local option tax due	4
Total tax (local option and state sales tax)	$20

This rule is intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House Files 1 and 705.

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