

### 423.1 Definitions.

As used in this chapter the following words, terms, and phrases have the meanings ascribed to them by this section, except where the context clearly indicates that a different meaning is intended:

1. “*Advertising and promotional direct mail*” means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization or in an attempt to sell, popularize, or secure financial support for a product, person, business, or organization. For purposes of this subsection, “*product*” may include tangible personal property, a service, or an item transferred electronically.

2. “*Affiliate*” means any entity to which any of the following applies:

- a. Directly, indirectly, or constructively controls another entity.
- b. Is directly, indirectly, or constructively controlled by another entity.
- c. Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.

3. “*Agent*” means a person appointed by a seller to represent the seller before the member states.

4. “*Agreement*” means the streamlined sales and use tax agreement authorized by subchapter IV of this chapter to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

5. “*Agricultural production*” includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture. “*Agricultural products*” includes flowering, ornamental, or vegetable plants and those products of aquaculture.

6. “*Business*” includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

7. “*Certificate of title*” means a certificate of title issued for a vehicle or for manufactured housing under chapter 321.

8. “*Certified automated system*” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

9. “*Certified service provider*” means an agent certified under the agreement to perform all of a seller’s sales or use tax functions, other than the seller’s obligation to remit tax on its own purchases.

10. “*Computer*” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

11. “*Computer software*” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

12. “*Delivered electronically*” means delivered to the purchaser by means other than tangible storage media.

13. “*Delivery charges*” means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including but not limited to transportation, shipping, postage, handling, crating, and packing charges.

14. “*Department*” means the department of revenue.

15. a. “*Direct mail*” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “*Direct mail*” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

b. “*Direct mail*” does not include:

- (1) Multiple items of printed material delivered to a single address.
- (2) The development of billing information or the provision of a data processing service that is more than incidental.

16. “*Director*” means the director of revenue.

17. “*Electronic*” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

18. “*Farm deer*” means the same as defined in section 170.1.

19. “*Farm machinery and equipment*” means machinery and equipment used in agricultural production.

20. “*First use of a service*”. A “*first use of a service*” occurs, for the purposes of this chapter, at the location at which the service is received. For purposes of this subsection, the location at which the service is received is the location at which the purchaser or the purchaser’s donee can first make use of the result of the service. For purposes of this subsection, the location at which the seller performs the service is not determinative of the location at which the service is received.

21. “*Goods, wares, or merchandise*” means the same as tangible personal property.

22. “*Governing board*” means the group comprised of representatives of the member states of the agreement which is created by the agreement to be responsible for the agreement’s administration and operation.

23. “*Installed purchase price*” is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. “*Installed purchase price*” includes but is not limited to amounts charged for installing a foundation and electrical and plumbing hookups. “*Installed purchase price*” excludes any amount charged for landscaping in connection with the conversion.

24. “*Lease or rental*”.

a. “*Lease or rental*” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “*lease or rental*” may include future options to purchase or extend.

b. “*Lease or rental*” includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

c. “*Lease or rental*” does not include any of the following:

(1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(2) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of one hundred dollars or one percent of the total required payments.

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

d. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles; the Internal Revenue Code; the uniform commercial code, chapter 554; or other provisions of federal, state, or local law.

25. “*Livestock*” includes but is not limited to an animal classified as an ostrich, rhea, emu, bison, or farm deer.

26. “*Manufactured housing*” means “*manufactured home*” as defined in section 321.1.

27. “*Member state*” is any state which has signed the agreement.

28. “*Mobile home*” means “*manufactured or mobile home*” as defined in section 321.1.

29. “*Model 1 seller*” is a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

30. “*Model 2 seller*” is a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

31. “*Model 3 seller*” is a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance

standard for the seller. As used in this definition, a “seller” includes an affiliated group of sellers using the same proprietary system.

32. “*Model 4 seller*” is a seller registered under the agreement that is not a model 1, model 2, or model 3 seller.

33. “*Nonresidential commercial operations*” means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes, manufactured home communities, or mobile home parks.

34. “*Not registered under the agreement*” means lack of registration by a seller with the member states under the central registration system referenced in section 423.11, subsection 4.

35. “*Other direct mail*” means all direct mail that is not advertising and promotional direct mail even if advertising and promotional direct mail is included in the same mailing. For purposes of this subsection, other direct mail includes but is not limited to:

a. Transactional direct mail that contains personal information specific to the addressee including but not limited to invoices, bills, statements of account, and payroll advices.

b. A legally required mailing including but not limited to privacy notices, tax reports, and stockholder reports.

c. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including but not limited to newsletters and pieces of informational literature.

36. “*Person*” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

37. “*Place of business*” means any warehouse, store, place, office, building, or structure where goods, wares, or merchandise are offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, or electric services are offered for sale at retail. When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer’s place of business.

38. “*Prewritten computer software*” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. “*Prewritten computer software*” also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

39. “*Property purchased for resale in connection with the performance of a service*” means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

a. The provider and user of the service intend that a sale of the property will occur.

b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, or the property is entirely consumed in connection with the performance of an auto body repair service purchased by the ultimate user.

c. The sale is evidenced by a separate charge for the identifiable piece of property unless

the property is entirely consumed in connection with the performance of an auto body repair service purchased by the ultimate user.

40. “Purchase” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

41. “Purchase price” means the same as “sales price” as defined in this section.

42. “Purchaser” is a person to whom a sale of personal property is made or to whom a service is furnished.

43. “Receive” and “receipt” mean any of the following:

a. Taking possession of tangible personal property.

b. Making first use of a service.

c. Taking possession or making first use of digital goods, whichever comes first.

“Receive” and “receipt” do not include possession by a shipping company on behalf of a purchaser.

44. “Registered under the agreement” means registration by a seller under the central registration system referenced in section 423.11, subsection 4.

45. “Relief agency” means the state, any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

46. “Retail sale” or “sale at retail” means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

47. “Retailer” means and includes every person engaged in the business of selling tangible personal property or taxable services at retail, or the furnishing of gas, electricity, water, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this chapter. “Retailer” includes a seller obligated to collect sales or use tax.

48. “Retailer maintaining a place of business in this state” or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

49. “Retailers who are not model sellers” means all retailers other than model 1, model 2, or model 3 sellers.

50. “Sales” or “sale” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

51. “Sales price” applies to the measure subject to sales tax.

a. “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

(1) The seller’s cost of the property sold.

(2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller except as provided in paragraph “b”, subparagraphs (5) and (6), and any other expenses of the seller.

(3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.

(4) Delivery charges.

(5) Installation charges.

(6) Credit for any trade-in authorized by section 423.3, subsection 59.

b. "Sales price" does not include:

(1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.

(2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(4) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

(5) Any state or local tax on a retail sale that is imposed on the seller if the statute, rule, or local ordinance imposing the tax provides that the seller may, but is not required to, collect such tax from the consumer, and if the tax is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(6) Any tribal tax on a retail sale that is imposed on the seller if the tribal law imposing the tax provides that the seller may but is not required to collect such tax from the consumer, and if the tax is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

c. The sales price does not include and the sales tax shall not apply to amounts received for charges included in paragraph "a", subparagraphs (3) through (6), if they are separately contracted for, separately stated on the invoice, billing, or similar document given to the purchaser, and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

d. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

52. "Sales tax" means the tax levied under subchapter II of this chapter.

53. "Seller" means any person making sales, leases, or rentals of personal property or services.

54. "Services" means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when first use of the service is received by the ultimate user of the service.

55. "Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

56. "State" means any state of the United States, the District of Columbia, and Puerto Rico.

57. "State agency" means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.

58. "System" means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.

59. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

60. "Taxpayer" includes any person who is subject to a tax imposed by this chapter, whether acting on the person's own behalf or as a fiduciary.

61. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by chapter

321, which is required to be registered or is subject only to the issuance of a certificate of title under chapter 321.

62. “Use” means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. A retailer’s or building contractor’s sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

63. “Use tax” means the tax levied under subchapter III of this chapter for which the retailer collects and remits tax to the department.

64. “User” means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

65. “Value of services” means the price to the user exclusive of any direct tax imposed by the federal government or by this chapter.

66. “Vehicles subject to registration” means any vehicle subject to registration pursuant to section 321.18.

67. “Voting security” means a security to which any of the following applies:

a. Confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the entity.

b. Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.

c. Is a general partnership interest.

2003 Acts, 1st Ex, ch 2, §94, 205; 2004 Acts, ch 1073, § 22, 23; 2005 Acts, ch 140, §3, 4, 42; 2006 Acts, ch 1030, §39; 2007 Acts, ch 179, §1; 2010 Acts, ch 1145, §2 – 7, 17; 2011 Acts, ch 25, §84; 2011 Acts, ch 92, §1 – 4; 2012 Acts, ch 1066, §1, 2; 2012 Acts, ch 1121, §12, 14

Referred to in §15.106, 321.105A, 418.1, 422.7, 423.2, 423.3, 423.5, 423.45, 423A.2, 423B.6, 423B.10, 423C.2, 423D.1

[T] Subsection 39, paragraphs b and c amended

[T] Subsection 51, paragraph a, subparagraph (2) amended

[T] Subsection 51, paragraph b, NEW subparagraphs (5) and (6)