

CHAPTER 122

SALES AND USE TAXES AND SCHOOL TUITION ORGANIZATION TAX CREDITS

H.F. 625

AN ACT relating to revenue and taxation, including retailers maintaining a place of business in this state for purposes of sales and use taxes, agreements relating to the collection of sales and use taxes, sales of tangible personal property and services to state agencies, modifying the school tuition organization income tax credit, and including effective date and retroactive applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I SALES AND USE TAX

Section 1. Section 423.1, subsection 48, Code 2013, is amended to read as follows:

48. a. "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.

b. (1) A retailer shall be presumed to be maintaining a place of business in this state, as defined in paragraph "a", if any person that has substantial nexus in this state, other than a person acting in its capacity as a common carrier, does any of the following:

(a) Sells a similar line of products as the retailer and does so under the same or similar business name.

(b) Maintains an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery of property or services sold by the retailer to the retailer's customers.

(c) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the retailer.

(d) Delivers, installs, assembles, or performs maintenance services for the retailer's customers.

(e) Facilitates the retailer's delivery of property to customers in this state by allowing the retailer's customers to take delivery of property sold by the retailer at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in this state.

(f) Conducts any other activities in this state that are significantly associated with the retailer's ability to establish and maintain a market in this state for the retailer's sales.

(2) The presumption established in this paragraph may be rebutted by a showing of proof that the person's activities in this state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales.

Sec. 2. **NEW SECTION. 423.13A Administration — effectiveness of agreements with retailers.**

1. Notwithstanding any provision of this chapter to the contrary, any ruling, agreement, or contract, whether written or oral, express or implied, entered into after the effective date of this division of this Act between a retailer and a state agency that provides that a retailer is not required to collect sales and use tax in this state despite the presence in this state of a warehouse, distribution center, or fulfillment center that is owned and operated by the retailer or an affiliate of the retailer shall be null and void unless such ruling, agreement, or contract is approved, by resolution, by a majority vote of each house of the general assembly.

2. For purposes of this section, "state agency" means the executive branch, including any executive department, commission, board, institution, division, bureau, office, agency, or

other entity of state government. “*State agency*” does not mean the general assembly, or the judicial branch as provided in section 602.1102.

Sec. 3. Section 423.36, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. *a.* Notwithstanding subsection 1, if any person will make taxable sales of tangible personal property or furnish services to any state agency, that person shall, prior to the sale, apply for and receive a permit to collect sales or use tax pursuant to this section. A state agency shall not purchase tangible personal property or services from any person unless that person has a valid, unexpired permit issued pursuant to this section and is in compliance with all other requirements in this chapter imposed upon retailers, including but not limited to the requirement to collect and remit sales and use tax and file sales and use tax returns.

b. For purposes of this subsection, “*state agency*” means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

DIVISION II SCHOOL TUITION ORGANIZATION TAX CREDIT

Sec. 4. Section 422.11S, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, estate, or trust.

Sec. 5. Section 422.11S, subsection 7, paragraph a, subparagraph (2), Code 2013, is amended to read as follows:

(2) “*Total approved tax credits*” means for the tax year beginning in the 2006 calendar year, two million five hundred thousand dollars, for the tax year beginning in the 2007 calendar year, five million dollars, and for tax years beginning on or after January 1, 2008, but before January 1, 2012, seven million five hundred thousand dollars.—~~However, for tax years beginning on or after January 1, 2012, “total approved tax credits” means but before January 1, 2014, eight million seven hundred fifty thousand dollars, and for tax years beginning on or after January 1, 2014, twelve million dollars.~~

Sec. 6. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 7. RETROACTIVE APPLICABILITY. The section of this division of this Act enacting section 422.11S, subsection 4A, applies retroactively to January 1, 2013, for tax years beginning on or after that date.

Approved June 11, 2013