

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to adopt new Chapter 223, “Sourcing of Taxable Services,” Iowa Administrative Code.

The subject matter of Chapter 223 is sourcing of taxable services. The proposed new chapter is intended to implement 2011 Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. New Chapter 223 provides detailed rules for sourcing sales of services that are taxable in Iowa under Iowa Code section 423.2. The proposed new chapter defines relevant terms, clarifies, and provides examples of, where a sale of services performed on tangible personal property should be sourced, and also clarifies, and provides examples of, where a sale of personal care services should be sourced.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that the proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than August 13, 2012, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed rules on or before July 31, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by July 31, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement 2011 Iowa Code chapter 423.

The following amendment is proposed.

Adopt the following new 701—Chapter 223:

CHAPTER 223 SOURCING OF TAXABLE SERVICES

701—223.1(423) Definitions.

“*Agreement*” means the streamlined sales and use tax agreement authorized by subchapter IV of Iowa Code chapter 423 to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use tax.

“Department” means, for the purpose of this chapter, the Iowa department of revenue.

“First use of a service” occurs, for the purpose of this chapter, at the location at which the service is received.

“First use of a service performed on tangible personal property” means, for the purpose of this chapter, receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

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

“Receive” or *“receipt,”* with regard to sales of services, means making “first use of services” pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—223.3(423), the location (or locations) where the purchaser (or the purchaser’s donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed “received” where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care services described in rule 701—223.4(423), the location (or locations) where the service is performed on the purchaser (or the purchaser’s donee) is the location where the purchaser receives the service.

“Retailer” means and includes every person engaged in the business of selling taxable services at retail. “Retailer” includes a seller obliged to collect sales or use tax.

“Seller” means a person making sales, leases or rentals of services.

701—223.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services under the general destination sourcing regime described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the service is received, first used, or could potentially be first used, by the purchaser or the purchaser’s donee. With respect to taxable services performed on tangible personal property, the location where the retailer performs the taxable service does not determine the location where the purchaser receives the service. This rule and subsequent rules in chapter 223 clarify the application of the definition of “receive” or “receipt” to various categories of services to assist in applying the sourcing provisions of Iowa Code section 423.15 to sales of services. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

223.2(1) If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa sales or use tax applies. (See Iowa Code section 423.5.)

223.2(2) If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (See Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state’s 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa’s use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state’s sales tax rate

is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

701—223.3(423) First use of services performed on tangible personal property.

223.3(1) *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

223.3(2) *Sourcing of taxable services performed on tangible personal property as applied to local option sales and service tax.* A local option sales and service tax shall be imposed on the same basis as the state sales and service tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and service tax sourcing rules shall be the same as the general destination regime described in Iowa Code section 423.15 and as set forth in rules 701—223.1(423) and 701—223.2(423) and subrule 223.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

223.3(3) *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;
- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle and glass repair;
- f. Dry cleaning, pressing, dyeing, and laundering;
- g. Electrical and electronic repair and installation;
- h. Farm implement repair of all kinds;
- i. Furniture, rug, carpet, and upholstery repair and cleaning;
- j. Gun and camera repair;
- k. Household appliance, television, and radio repair;
- l. Jewelry and watch repair;
- m. Machine repair of all kinds, including office and business machine repair;
- n. Motor repair;
- o. Motorcycle, scooter, and bicycle repair;
- p. Pet grooming;
- q. Wood preparation;
- r. Sewing and stitching;
- s. Shoe repair and shoeshine; and
- t. Taxidermy services.

223.3(4) *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed "received."

EXAMPLE A: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown's subsequent use of the repair services performed on the lawnmower

obliges her to remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois' tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa's entire use tax rate.

EXAMPLE B: Same facts as in subrule 223.3(4), Example A, except that the Illinois repair shop delivers the repaired lawnmower to the owner's residence in Iowa. In this case, the potential first use is at Ms. Brown's residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE C: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho's home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa; Iowa sales tax is due.

EXAMPLE D: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer's location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa; Iowa sales tax is due.

EXAMPLE E: Same facts as in subrule 223.3(4), Example D, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory's location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa's use tax rate exceeds Minnesota's tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE F: Same facts as in subrule 223.3(4), Example D, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer's location in Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer's location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

223.3(5) *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the painting of tangible personal property services are deemed "received."

EXAMPLE A: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter's shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa; Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter's shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter's location in Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois' tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE B: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

223.3(6) *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

223.3(7) *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

223.3(8) *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE A: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE B: Mr. Marx who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois, and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

223.3(9) *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

223.3(10) *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed "received."

EXAMPLE A: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama repair shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards' bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards' potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax is due even though Bike-o-rama is located in Ankeny where there is no local option sales and service tax. Iowa sales tax is also due.

EXAMPLE B: Same facts as in subrule 223.3(10), Example A, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny, and no local option sales and service tax is due on the sales price of the repair. Iowa sales tax is due.

EXAMPLE C: Same facts as in subrule 223.3(10), Example A, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards' bike to his home in Slater, Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater's local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

701—223.4(423) Sourcing rules for personal care services.

223.4(1) Definition. "Personal care services" means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

223.4(2) Sourcing of personal care services. Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of rule 701—211.1(423) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser's donee). The services will be received by the purchaser (or the purchaser's donee) either at the seller's location, pursuant to Iowa Code section 423.15(1)(a), or at the purchaser's (or the purchaser's donee) location, pursuant to Iowa Code section 423.15(1)(b).

223.4(3) Examples of sourcing of personal care services. The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE A: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa; Iowa sales tax is due.

EXAMPLE B: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa's, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE C: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa, and therefore Iowa sales tax is due.

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.