

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby adopts new Chapter 238, “Flood Mitigation Program,” Iowa Administrative Code.

The subject matter of Chapter 238 is the administration of the sales tax increment fund for the Flood Mitigation Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0955C** on August 21, 2013. No comments were received from the public. These rules are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, it is likely that new jobs will be created as a result of the Flood Mitigation Program.

These rules are intended to implement Iowa Code sections 418.11 and 418.12.

These rules will become effective November 20, 2013.

The following amendment is adopted.

Adopt the following **new** 701—Chapter 238:

CHAPTER 238
FLOOD MITIGATION PROGRAM

701—238.1(418) Flood mitigation program. The flood mitigation program is a program administered by the flood mitigation board with the assistance of the Iowa department of homeland security and emergency management to assist governmental entities in undertaking projects approved under Iowa Code chapter 418. This chapter sets forth the revenue department’s administration of the calculation of sales tax increment funding and the remittance of such funding to governmental entities. The administrative rules for other aspects of the flood mitigation program may be found at 605—Chapter 14.

This rule is intended to implement Iowa Code chapter 418 and section 423.2(11).

701—238.2(418) Definitions.

“*Area*” means the area used to determine the sales tax increment as described in subrule 238.3(2).

“*Base year*” means the fiscal year ending during the calendar year in which the governmental entity’s project is approved by the flood mitigation board under Iowa Code section 418.1.

“*Board*” means the flood mitigation board as created in Iowa Code section 418.5.

“*Corresponding quarter*” means the quarter in the base year and the quarter in the year in which the increment is measured that end in the same month. For example, if the base year is fiscal year 2013 and the year in which the increment is first measured is 2014, then the quarter ending in September 2012 of the base year would correspond to the quarter ending in September 2014 of the calendar year.

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

“*Governmental entity*” means any of the following:

1. A county.
2. A city.
3. A joint board or other legal or administrative entity established or designated in an agreement pursuant to Iowa Code chapter 28E between any of the following:
 - Two or more cities located in whole or in part within the same county.
 - A county and one or more cities that are located in whole or in part within the county.
 - A county, one or more cities that are located in whole or in part within the county, and a drainage district formed by mutual agreement under Iowa Code section 468.142 located in whole or in part within the county.

“*Project*” means the construction and reconstruction of levees, embankments, impounding reservoirs, or conduits that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of

watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of Iowa Code section 418.4.

“*Retail establishment*” means a business operated by a retailer as defined in Iowa Code section 423.1.

“*Sales subject to the tax*” means the sales made by retail establishments in the area that are taxable under Iowa Code section 423.2.

“*Sales tax*” means the sales and services tax imposed pursuant to Iowa Code section 423.2.

This rule is intended to implement Iowa Code section 418.1.

701—238.3(418) Sales tax increment calculation.

238.3(1) *Sales tax increment calculation formula.* The department shall calculate quarterly the amount of increased sales tax revenues for each governmental entity approved to use sales tax increment revenues and the amount of such revenues to be transferred to the sales tax increment fund pursuant to Iowa Code section 423.2(11)“*b.*” The department shall calculate the amount of the sales tax increment as follows:

a. Determine the amount of sales subject to the tax under Iowa Code section 423.2 in each applicable area specified in subrule 238.3(2) during the corresponding quarter in the base year from retail establishments in such areas. The base year shall be calculated when the period for processing returns for the final quarter in the base year is complete.

b. Determine the amount of sales subject to the tax under Iowa Code section 423.2 in each applicable area specified in subrule 238.3(2) during the corresponding quarter in each subsequent calendar year from retail establishments in such areas.

c. Subtract the base year quarterly amount determined under paragraph 238.3(1)“*a*” from the subsequent calendar year quarterly amount in paragraph 238.3(1)“*b.*”

d. If the amount determined under paragraph 238.3(1)“*c*” is positive, the product of the amount determined under paragraph 238.3(1)“*c*” multiplied by the tax rate imposed under Iowa Code section 423.2 shall constitute the amount of increased sales tax revenue.

e. Only sales that are made by retail establishments in the area are taken into consideration when the sales subject to tax are determined. Sales otherwise sourced to the area are not considered in the calculation.

238.3(2) *Area used to determine the increment.* The area used to determine the sales tax increment shall include:

a. For projects approved for a governmental entity as defined in Iowa Code section 418.1(4)“*a.*” only the unincorporated areas of the county.

b. For projects approved for a governmental entity as defined in Iowa Code section 418.1(4)“*b.*” only the incorporated areas of the city.

c. For projects approved for a governmental entity as defined in Iowa Code section 418.1(4)“*c.*” the incorporated areas of each city that is participating in the chapter 28E agreement, the unincorporated areas of the participating county, and the area of any participating drainage district not otherwise included in the areas of the participating cities or county, as applicable.

238.3(3) *Identification of retailers.* Each governmental entity shall assist the department of revenue in identifying retail establishments in the governmental entity’s applicable area that are collecting sales tax. This process shall be ongoing until the governmental entity ceases to utilize sales tax revenue under this chapter.

This rule is intended to implement Iowa Code section 418.11.

701—238.4(418) Sales tax increment fund.

238.4(1) *Establishment of the sales tax increment fund.* A sales tax increment fund is established as a separate and distinct fund in the state treasury under the control of the department. The fund consists of the amount of the increased state sales and services tax revenues collected by the department within

each applicable area specified in Iowa Code section 418.11(3) and deposited in the fund pursuant to Iowa Code section 423.2(11) “b.” Moneys deposited in the fund are appropriated to the department for the purposes of this rule. Moneys in the fund shall only be used for the purposes of this rule.

238.4(2) Sales tax increment accounts. An account is created within the fund for each governmental entity that has adopted a resolution under Iowa Code section 418.4(3) “d.”

238.4(3) Deposits into the sales tax increment fund. The department shall deposit in the fund the moneys described in subrule 238.4(1) beginning the first day of the quarter following receipt of a resolution under Iowa Code section 418.4(3) “d.” However, in no case shall a sales tax increment be calculated under Iowa Code section 418.11 or such moneys be deposited in the fund under this rule prior to January 1, 2014. Additionally, moneys will not be deposited in the fund before the period for processing returns for a given quarter is complete.

238.4(4) Requests for remittances; limitations.

a. Upon request of a governmental entity, the department shall remit the moneys in the governmental entity’s account within the fund to the governmental entity for deposit in the governmental entity’s flood project fund. Such requests shall be made not more than quarterly. Requests for remittance shall be submitted on forms prescribed by the department.

b. In lieu of quarterly requests, a governmental entity may submit a certified schedule of principal and interest payments on bonds issued under Iowa Code section 418.4. If such a certified schedule is submitted, the department shall, subject to the remittance limitations of this chapter, remit from the governmental entity’s account to the governmental entity for deposit in the governmental entity’s flood project fund the amounts necessary for such principal and interest payments in accordance with the certified schedule.

c. Requests for remittance shall be made for the amount of moneys in the governmental entity’s account necessary to pay the governmental entity’s costs or obligations related to the project, according to the sales tax revenue funding needs specified in the approved project plan. A governmental entity shall not, however, during any fiscal year receive remittances under this rule exceeding \$15 million or 70 percent of the total yearly amount of increased sales tax increment revenue in the governmental entity’s applicable area and deposited in the governmental entity’s account or the annual maximum amount established by the board pursuant to Iowa Code section 418.9(4), whichever is less.

d. The total amount of remittances during any fiscal year for all governmental entities approved to use sales tax revenues under this chapter shall not exceed, in the aggregate, \$30 million. Remittances from the department of revenue shall be deposited in the governmental entity’s flood project fund under Iowa Code section 418.13.

e. Each quarter, the department will transfer into the sales tax increment fund the full amount of the increased sales tax subject to the limitations stated in this rule. The director of the department may adjust the amount transferred during the year if it becomes apparent that the total amount transferred will exceed the limitations stated in this rule. If, when the total of all the transfers made to a governmental entity during the year is calculated at the end of the fiscal year, it is determined that the governmental entity received more than the maximum amount permissible under this rule, the department may withhold funds in the subsequent fiscal year to recoup the excess payments.

f. If the governmental entity has unused funds from a prior quarter in its account within the sales tax increment fund, subject to paragraphs 238.4(4) “a” to “e,” those funds will be available in subsequent quarters so long as the amount is necessary for the purposes of this chapter.

238.4(5) Remittance of funds to the general fund. If the department determines that the revenue accruing to the fund or accounts within the fund exceeds \$30 million, or exceeds the amount necessary for the purposes of this chapter if the amount necessary is less than \$30 million, then those excess moneys shall be credited by the department for deposit in the general fund of the state. The board shall assist the department in determining whether the fund or accounts within the fund have met the limitations of this rule.

238.4(6) Reporting requirements. Each governmental entity approved by the board to use sales tax increment revenues for a project under this chapter shall submit two reports to the board certifying the total amount of nonpublic investment, as defined in Iowa Code section 418.9(2) “d,” that has occurred

in the governmental entity's area as defined in Iowa Code section 418.11(3). The first report shall be submitted not later than five years after the board approved the project. The second report shall be submitted to the board not later than ten years after the board approved the project.

238.4(7) Failure to meet nonpublic investment requirements. If the nonpublic investment requirements of Iowa Code section 418.9(2)“d” are not satisfied, the board shall reduce the governmental entity's amount of sales tax increment revenues eligible to be remitted during the remaining period of time for receiving remittances by an amount equal to the shortfall in nonpublic investment. However, such a reduction shall not be to an amount less than zero.

This rule is intended to implement Iowa Code section 418.12.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/16/13.