

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 427.1(4), the Department of Revenue hereby amends Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

The subject matter of new rule 701—80.31(427) is the broadband infrastructure property tax exemption. The rule is intended to implement 2016 Iowa Code section 427.1(40), which allows a property tax exemption for the installation of broadband infrastructure that meets certain requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2466C** on March 16, 2016. A public hearing was held on April 6, 2016. The Department received public comments on this rule making. The Department made no changes based on the public comments.

The Iowa Communications Alliance (ICA) commented that the root cause of uncertainty that a property will receive a 100 percent exemption from property tax was due to the process of central assessments. ICA noted that care should be taken to ensure that all inputs of value are separately accounted for and excluded from the assessment if related to qualifying broadband infrastructure property. ICA also suggested that the definition of “installation of the broadband infrastructure” should include “equipment and structures such as conduits, pedestals, enclosures, electronics, and other supporting equipment that is used in delivering or protecting equipment that delivers broadband services.” The Department declined to adopt this definition of the term “installation of the broadband infrastructure” because the Department determined it would be ultra vires to the statutory definition of the term “broadband infrastructure” under Iowa Code section 8B.1(2). ICA also commented that the February 1 deadline for applications for exemption might be too soon relative to the year-end for applicants to provide finalized supporting documentation at the time of application for exemption.

The Iowa Cable and Telecommunications Association (ICTA) commented that there should be a process for informing the public of applications for exemptions in order to allow for public feedback on the applications submitted. In addition, ICTA commented that interested parties should have a process whereby they could contest pending applications or participate in the revocation of an exemption. The Department determined that providing such a process would be ultra vires to the statute. ICTA commented that the rules should specify that the broadband infrastructure subject to exemption should be required to achieve and maintain 25 megabits per second of download speed and 3 megabits per second of upload speed and that the Office of the Chief Information Officer (OCIO) may not grant a waiver or variance of these speeds. The Department determined that the law and rule as they are written accommodate this comment and that under the law it is the province of OCIO to determine whether or not a waiver or variance may be issued for broadband speeds.

The Iowa League of Cities (ILC) commented that the exemption should only apply to new broadband infrastructure. The Department determined that the law and rule as they are currently written address this comment. ILC also commented that the administrative and notice procedures should take into consideration the March 15 annual deadline for the certification of local budgets. The Department determined that the rule, as written, conforms to the law and that the March 15 deadline has been contemplated in the notice requirements under the law.

One nonsubstantive change was made from the Notice. In subparagraphs 80.31(7)“b”(1) and (2), “denial” was changed to “revocation.”

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

The Department of Revenue adopted this rule on May 4, 2016.

After analysis and review of this rule making, a positive impact on jobs may exist. This rule implements a property tax exemption for the installation of new broadband infrastructure and furthers the goals of the Connect Every Acre initiative to provide broadband services to underserved areas in the state.

This rule is intended to implement Iowa Code section 427.1.

This rule will become effective June 29, 2016.

The following amendment is adopted.

Adopt the following new rule 701—80.31(427):

701—80.31(427) Broadband infrastructure.

80.31(1) Definitions. For purposes of this rule, the following definitions shall govern.

“*Broadband*” means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

“*Broadband infrastructure*” means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

“*Certified project*” means the installation of broadband infrastructure certified by the office of the chief information officer to serve a targeted service area.

“*Date of commencement*” means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

“*Date of completion*” means the date that the entire targeted service area receives broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

“*Installation of the broadband infrastructure*” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

“*Targeted service area*” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of June 22, 2015.

80.31(2) Exemption. An exemption from property tax shall be allowed for each certified project in the amount equal to 100 percent of the actual value added by installation of the broadband infrastructure in a targeted service area that facilitates broadband service for the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, as certified by the office of the chief information officer. The exemption shall be allowed beginning January 1 of the assessment year in which an application for exemption is approved until the exemption is revoked or at the expiration of ten years, whichever occurs earlier.

80.31(3) Calculation of actual value added by installation of the broadband infrastructure. The actual value added by installation of the broadband infrastructure is the amount of increase in the actual assessed value of the property that is directly attributable to the installation of broadband infrastructure in a targeted service area for the assessment year in which the property receives the exemption. Changes in the value of the property which are attributable to general market fluctuations are not to be included in the calculation of the actual value added by installation of the broadband infrastructure. Installation of broadband infrastructure that is not part of a certified project is not eligible to receive the exemption.

Broadband infrastructure in general may be assessed locally or by the department of revenue. Broadband infrastructure that qualifies as telephone or telegraph property under Iowa Code chapter 433 is centrally assessed by the department of revenue. Broadband infrastructure that does not qualify as telephone or telegraph property under Iowa Code chapter 433 is locally assessed under Iowa Code chapter 441. The owner of the property must separately report property that is centrally assessed from property that is locally assessed.

a. Locally assessed property. The local assessor shall determine the actual value added by installation of broadband infrastructure using the methodologies required under Iowa Code section 441.21.

b. Centrally assessed property. The department of revenue shall determine the actual value added by installation of the broadband infrastructure by using the appropriate methodologies set forth in 701—Chapter 77.

The department shall calculate the actual value added by installation of the broadband infrastructure as part of the total unit value of the operating property of the company. The exemption attributable to the installation of the broadband infrastructure shall be applied to each unit before any other exemption or credit. In no case shall the taxable value of the property be reduced below zero. The department shall certify the exemption value per line mile for each company to the county auditor pursuant to Iowa Code section 433.8.

80.31(4) Commencement and completion of project. To be eligible for the exemption, the date of commencement of the installation of the broadband infrastructure must occur on or after July 1, 2015, and the date of completion of the installation of the broadband infrastructure must occur on or before July 1, 2020.

80.31(5) Application for exemption. The owner of broadband infrastructure shall file one application with the department of revenue. The department shall forward the application to the appropriate county boards of supervisors for approval or denial for broadband infrastructure associated with property subject to local assessment. The department shall retain the application for approval or denial for broadband infrastructure associated with property subject to central assessment.

a. Application deadline. The owner of the property shall file the application with the department of revenue by February 1 of the year in which the broadband infrastructure is first assessed for taxation or by February 1 of the following two assessment years. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is filed or until revoked without further application. However, at any time prior to the completion of the installation of the broadband infrastructure, an owner may submit a proposal to the department requesting that the owner be allowed to file an application for exemption by February 1 of any other assessment year following completion of the installation of broadband infrastructure. The department shall approve the proposal for property that is centrally assessed. The board of supervisors shall approve the proposal by resolution for property that is locally assessed. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is approved or until revoked without further application. If an exemption that was revoked is reinstated on appeal, the exemption shall remain in effect only for the remaining period of exemption. No property shall receive an exemption for the installation of broadband infrastructure for a period greater than ten years.

Neither the department nor the board of supervisors shall approve an application for exemption that is missing any of the requirements listed in this subrule. The department or the board of supervisors may consult with the office of the chief information officer in order to obtain additional information necessary to review an application for exemption.

b. Application requirements. The owner shall submit the application to the department of revenue. It is the responsibility of the owner to ensure that the application is complete and accurate. The application must be made on forms prescribed by the department. In addition, the application must contain the following information, certifications and documentation:

(1) The nature of the broadband infrastructure installation, including the number of new line miles installed within the jurisdiction of the assessing authority to which the owner is applying for exemption, and a description of the property and how it is directly related to delivering broadband services.

(2) The percentage of homes, farms, schools, and businesses in the targeted service area that will be provided access to broadband service.

(3) The actual cost of installing the broadband infrastructure under the project, if available. The application shall contain supporting documents demonstrating actual cost.

(4) Certification from the office of the chief information officer pursuant to Iowa Code section 8B.10 that the installation is being performed or was completed in a targeted service area and that it

facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

(5) Certification by the company of the date of commencement and actual or estimated date of completion. If an application contains only an estimated date of completion, the owner must notify the department of the actual completion date once the certified project is completed. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

(6) A copy of any nonwireless broadband-related permit issued by a political subdivision, if applicable.

c. Special application requirements. If an owner submits a proposal to the department prior to the completion of the installation of broadband infrastructure requesting to file an application for exemption in any other assessment year following completion of the project, the owner must provide the following information and documentation in addition to those required under paragraph 80.31(5)“b.”

(1) The actual cost already incurred for installation of broadband infrastructure, if any, with supporting documentation demonstrating the actual cost.

(2) The estimated costs for project completion.

(3) The estimated date of project completion. Once the project has been completed, the owner must notify the department of the actual completion date. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

d. Approval or denial of application. All applications shall be submitted to the department of revenue. The department shall forward applications for property subject to local assessment to the board of supervisors of the county in which the exempt property is located. The department shall retain the applications for centrally assessed property. The department and the board of supervisors, as applicable, shall notify an applicant of approval or denial of an application for exemption by March 1 of the assessment year in which the application was submitted. The notification shall include a notification of the applicant’s right to appeal. The board of supervisors shall forward all approved applications and any necessary information regarding the applications to the appropriate local assessor by March 1 of the assessment year in which the application was submitted.

80.31(6) Revocation of exemption. The department or board of supervisors may revoke the exemption at any time after the exemption is granted if the department or board of supervisors determines that the property owner no longer provides the broadband service to a targeted service area at the speeds required under Iowa Code section 427.1(40). The property owner has the responsibility to provide the department, the board of supervisors or the office of the chief information officer the information required to substantiate that the broadband infrastructure meets the requirements of the exemption. The department or board of supervisors, as applicable, shall provide notice of revocation to the property owner. An owner may appeal the decision to revoke the exemption within 30 days of the issuance of the notice of revocation.

80.31(7) Appeals.

a. Appeal of denial of application for exemption. An applicant for the exemption under this rule whose application is denied may appeal the denial within 30 days of its issuance.

(1) Denial by board of supervisors. An applicant may appeal the denial of its application for exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the denial.

(2) Denial by the department of revenue. An applicant may appeal the denial of its application for exemption by the department of revenue to the director of revenue within 30 days of the issuance of the denial.

b. Appeal of revocation of exemption. An owner whose exemption is revoked may appeal the revocation within 30 days of its issuance.

(1) Revocation by board of supervisors. An owner may appeal the revocation of its exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the revocation.

(2) Revocation by the department of revenue. An owner may appeal the revocation of its exemption by the department of revenue to the director of revenue within 30 days of the issuance of the revocation.

c. Appeal of value of exemption. A property owner who is dissatisfied with the value of the owner's exemption may appeal the value assigned by the local assessor using the protest procedures under Iowa Code section 441.37. A property owner who is dissatisfied with the value of the owner's exemption may appeal the value assigned by the department using the appeal procedures under Iowa Code section 429.2. This rule is intended to implement Iowa Code section 427.1(40).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.