

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to water service excise tax and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt new Chapter 97, “State-Imposed Water Service Excise Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 512.

Purpose and Summary

Item 2 proposes to adopt new Chapter 97 within Title XIII, which establishes rules to administer the water service excise tax passed by the General Assembly in 2018. Specifically, these rules implement sections 10 through 17 of 2018 Iowa Acts, Senate File 512, which exempts certain sales of water from sales tax and enacts Iowa Code chapter 423G, which establishes a water service excise tax.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 512. That estimate predicts that in FY 2019, Senate File 512 will have no impact on the General Fund, will reduce Secure an Advanced Vision (SAVE) Program revenues by \$3.9 million, and will reduce local option sales tax (LOST) revenues by \$3 million. The estimate further predicts that by FY 2030, Senate File 512 will reduce General Fund revenues by \$26.1 million, will reduce SAVE revenues by \$5.2 million, and will reduce LOST revenues by \$4 million.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 7, 2018. Comments should be directed to:

Joe Fraioli
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.4057
Email: joe.fraioli@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** Title XIII:

TITLE XIII
WATER SERVICE EXCISE TAX

ITEM 2. Adopt the following **new** 701—Chapter 97:

CHAPTER 97
STATE-IMPOSED WATER SERVICE EXCISE TAX

701—97.1(87GA,SF512) Definitions. For the purposes of this chapter and 701—Chapters 98 and 99, unless the context otherwise requires:

“*Bundled water service sales*” means a sale consisting of water service and other distinct and identifiable tangible personal property or non-water services for one nonitemized price.

“*Department*” means the department of revenue.

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

“*Facilities*,” for purposes of the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, sections 11 to 17, means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water. “Facilities” shall not include interior plumbing.

“*Other sales*” means sales of any other tangible personal property or services, whether taxable or not, other than sales of water service.

“*Person*” means the same as the term is defined in rule 701—211.1(423).

“*Purchaser*” means a person to whom water service is provided for compensation and means the same as the term is defined in rule 701—211.1(423).

“*Sales price*” means the amount of consideration paid for water service and means the same as the term is defined in rule 701—211.1(423).

“*State-imposed tax*” or “*tax*” means the water service excise tax imposed by 2018 Iowa Acts, Senate File 512, section 13.

“Tax,” unless otherwise indicated, shall refer to the water service excise tax.

“Water service” means the delivery of water by piped distribution system, as defined in 2018 Iowa Acts, Senate File 512, section 10.

“Water utility” means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing water by piped distribution to the public for compensation, as defined in 2018 Iowa Acts, Senate File 512, section 10. “Corporation” as used in this definition includes municipal corporations. See 1968 Iowa Op. Atty. Gen. 1-21, 1968 WL 172465.

All other words and phrases used in this chapter and 701—Chapters 98 and 99 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 12 and 13.

701—97.2(87GA,SF512) Imposition. A state-imposed tax of 6 percent is imposed upon the sales price of water service by a water utility to a purchaser. The tax shall be collected by water utilities.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.3(87GA,SF512) Administration. The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement. The requirements of 701—Chapter 11 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 10, 13, and 15.

701—97.4(87GA,SF512) Charges and fees included in the provision of water service.

97.4(1) Sales integral to the ability to furnish water. The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if billed separately.

97.4(2) Examples of sales integral to the provision of water service. Sales of services to customers or users that are considered integral to furnishing water by piped distribution include, but are not limited to, the following:

- a. Sales of nonitemized tangible personal property included with the sale of water service or an accompanying service that is integral to the provision of water service. See subparagraph 97.4(4)“a”(2).
- b. The sales price of water sold, whether metered or not.
- c. Service or account charges and administrative fees for water service, including new customer account charges and minimum charges for access to water service whether the customer uses the water or not.
- d. Fees for connection, disconnection, or reconnection to or from a water supply.
- e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including fees for labor and nonitemized fees for materials.
- f. Fees for using or checking water meters, excluding the rental of water meters.
- g. Tap fees.
- h. Water distribution system infrastructure and improvement fees.

97.4(3) Examples of sales that are not considered water service or integral to the provision of water service. Sales of services that are not considered integral to furnishing water by piped distribution include, but are not limited to, the following:

- a. Residential service contracts regulated under Iowa Code chapter 523C.
- b. Sales or rentals of tangible personal property, other than water, sold for a separately itemized price. See subparagraph 97.4(4)“a”(1).
- c. Returned check fees.
- d. Deposits, including check and meter.
- e. Fees for printed bills, statements, labels, and other documents.
- f. Fees for late charges and nonpayment penalties.

g. Leak detection fees.

97.4(4) *Sales generally not subject to water service excise tax.* Water utilities may make other sales that may or may not be integral to the sale of water service but which are not subject to water service excise tax because they are separately taxable under Iowa Code section 423.2 as the sale of tangible personal property or non-water services.

a. *Sales of tangible personal property.* Whether the sale of tangible personal property that is integral to water service is subject to the water service excise tax depends on whether it is sold to the consumer or user for a separately itemized price.

(1) Itemized tangible personal property. Sales or rentals of tangible personal property by a water utility for a separately itemized price on a water bill are not subject to the water service excise tax but may be subject to sales and use tax.

(2) Nonitemized tangible personal property. If the sale of tangible personal property is not itemized and is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(3), then the entire sales price is subject to the water service excise tax.

b. *Painting of hydrants.* Painting of hydrants constitutes painting services under Iowa Code section 423.2(6) "a." Painting is subject to sales tax and is not subject to water service excise tax.

c. *Plumbing and pipefitting.* Some repairs of a water distribution system may constitute plumbing and pipefitting under Iowa Code section 423.2(6) "a." Plumbing and pipefitting services are subject to sales tax and are not subject to water service excise tax.

97.4(5) *Exemptions.* The exemptions from sales tax under Iowa Code section 423.3 also apply to sales subject to water service excise tax.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 14 and 15.

701—97.5(87GA,SF512) Itemization of tax required. The water utility shall add the tax to the sales price of the water service, and the tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of any other sales that may have also been made by the purchaser at that time. This rule shall take effect on January 1, 2019.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 13.

701—97.6(87GA,SF512) Apportionment of bundled water service sales—rebuttable presumption. Where a water utility makes bundled water service sales as defined in rule 701—97.1(87GA,SF512) and does not separately charge and bill the sale of water service as required by rule 701—97.4(87GA,SF512), there is a rebuttable presumption that the cost for the sale of water service subject to the water service excise tax is a pro rata portion of the total bundled water service sales price. Where a water utility makes other sales as defined in rule 701—97.1(87GA,SF512) as well as bundled water service sales at an additional cost in a single transaction, this calculation shall only apply to the additional cost for the bundled water service sale.

EXAMPLE 1: A water utility sells combined water and sewage services for nonresidential commercial operations for \$50 per month. The water utility does not bill its customers separately for the sale of water service and only remits to the department sales tax on the \$50. The department will assume that the cost of water service is \$25 and the cost of sewage service is \$25. Accordingly, the water utility will be assessed penalty and interest on the \$25 for its failure to properly remit the water service excise tax.

EXAMPLE 2: A water utility is a campground that provides the following services for \$20 per night: campground access, electricity, sewage, water, and trash removal. The water utility does not bill its customers separately for any of these services and only remits to the department sales tax on \$20. The department will assume that the cost of each of the five services is \$4 (total cost of \$20 divided by five separate services = \$4 per service). Accordingly, the water utility will be assessed penalty and interest on the \$4 for its failure to properly remit the water service excise tax.

EXAMPLE 3: A water utility sells varying service packages for different prices per day as follows:

	Campsite Access	Electricity	Water and Sewage	Total Cost
Package A	\$10			\$10
Package B	\$10	\$10		\$20
Package C	\$10	\$10	\$10	\$30

If the water utility makes sales of Package C, the department will assume the cost of water service for that sale is \$5 (the pro rata cost of water service included in the bundled water service sale).

This rule is intended to implement 2018 Iowa Acts, Senate File 512, sections 13 and 15.

701—97.7(87GA,SF512) Date of billing—effective date and repeal date. For purposes of determining whether sales tax or water service excise tax applies to billings which span the effective date of July 1, 2018, and the future repeal date as described in 2018 Iowa Acts, Senate File 512, section 17, the provisions of 701—subrule 14.3(9) shall apply.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.8(87GA,SF512) Filing returns; payment of tax; penalty and interest.

97.8(1) Application of 701—Chapter 12. The requirements of 701—Chapter 12 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.8(2) Frequency of deposit filing based on combined water service excise tax and sales tax. With respect to the tax thresholds used for determining whether a retailer must remit sales tax semimonthly, monthly, quarterly, or annually as described in rule 701—12.13(422), the threshold for determining the frequency with which a water utility must remit the water service excise tax shall be based on the sum of the total amount of sales tax collected and the total amount of water service excise tax collected.

EXAMPLE: Prior to the imposition of the water service excise tax, a water utility collected \$70,000 in sales tax per year. Pursuant to 701—subrule 12.13(2), the water utility filed its sales tax deposits with the department on a semimonthly basis. Following the imposition of the water service excise tax, the water utility now collects \$35,000 in sales tax per year and \$35,000 in water service excise tax per year. The combined sum of the water utility’s monthly collected sales tax and water service excise tax is \$70,000. Therefore, the water utility will continue to make semimonthly deposits.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.

701—97.9(87GA,SF512) Permits.

97.9(1) Application of 701—Chapter 13. The requirements of 701—Chapter 13 shall apply to water utilities in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

97.9(2) Separate water service excise tax permit required. All water utilities must register for a water service excise tax permit, and the water service excise tax shall be remitted under that permit. Water utilities that make water service sales and other sales subject to sales tax shall obtain a water service excise tax permit in addition to their current sales tax permit and shall remit all sales tax under the sales tax permit and all water service excise tax under the water service excise tax permit.

This rule is intended to implement 2018 Iowa Acts, Senate File 512, section 15.