

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to state-imposed and locally imposed hotel and motel taxes and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration,” rescind Chapter 104, “Hotel and Motel—Filing Returns, Payment of Tax, Penalty, and Interest,” and Chapter 105, “Locally Imposed Hotel and Motel Tax,” and amend Chapter 241, “Excise Taxes Not Governed by the Streamline Sales and Use Tax Agreement,” 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, Iowa Code chapter 423A as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

Item 1 proposes to consolidate the hotel and motel tax rules into a single chapter and implement changes to the tax made by division XIII of 2018 Iowa Acts, Senate File 2417.

Items 2 and 3 propose to eliminate Chapters 104 and 105, respectively, the content of which has been incorporated into Chapter 103.

Item 4 proposes to rescind duplicative rules on the hotel and motel tax found in Chapter 241 (rules 701—241.3(423A) to 701—241.5(423A)).

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 2417.

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 October 17, 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

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

October 17, 2018
11 a.m. to 12 noon

Auditorium
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

The Department reserves the right to cancel the hearing if no timely requests for a public hearing are received.

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. Amend 701—Chapter 103 as follows:

CHAPTER 103
STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND
MOTEL TAXES—ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

701—103.1(423A) Definitions, ~~administration, and imposition.~~

103.1(1) Incorporation of definitions. ~~Definitions.~~ ~~For the purposes of this chapter and 701—Chapters 104 and 105, unless the context otherwise requires: To the extent it is consistent with Iowa Code chapter 423A and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and rule 701—211.1(423).~~

103.1(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

~~“Department” means the department of revenue.~~

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

~~“Land use district” means a district created under Iowa Code chapter 303, subchapter IV.~~

~~“Lessor” means any person engaged in the business of renting lodging to users. “Lessor” is synonymous with the word “retailer.”~~

~~“Locally imposed tax” means the hotel and motel tax levied by Iowa Code section 423A.4.~~

“Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

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

“Renting” or *“rent”* means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

“Retailer” means a person required to collect hotel and motel tax, including but not limited to lodging providers, lodging facilitators, and lodging platforms.

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

“State-imposed tax” means the hotel and motel tax levied by Iowa Code section 423A.3.

“Tax” or *“hotel and motel tax”* means either the state-imposed or locally imposed hotel and motel tax levied by Iowa Code sections section 423A.3 and any locally imposed hotel and motel tax levied by Iowa Code section 423A.4, respectively.

“User” means a person to whom lodging is rented.

All other words and phrases used in this chapter and 701—Chapters 104 and 105 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

103.1(2) 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. Therefore, the term “retailer” will be used interchangeably between the two taxes.

103.1(3) Imposition. A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The state-imposed tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

103.1(4) A city, county, or land use district may impose a tax on lodging, at a rate not to exceed 7 percent, which shall be imposed in increments of one or more full percentage points upon the sales price from the renting of lodging. See 701—Chapter 105 for more information on locally imposed hotel and motel tax.

This rule is intended to implement Iowa Code sections 423A.2, 423A.3, and 423A.4.

701—103.2(423A) Statute of limitations, supplemental assessments and refund adjustments. Within three years after a return is filed, the department shall examine it, determine the tax due, and give notice of assessment to the taxpayer. If no return has been filed, the department may determine the tax due and give notice thereof. If such determination is based upon an examination of books, papers, records, or memoranda, such an examination will not include any transactions completed three years or more prior to such examination.

Whenever books and records are examined by an employee designated by the director, whether to verify a return or claim for refund or in making an audit, an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the three-year period of limitation.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue

involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 423.37 and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

~~701—103.3~~ **701—103.2(423A) Credentials and receipts Administration.** Employees of the department have official credentials, and the retailer should require proof of the identity of persons claiming to represent the department. No charges shall be made or gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the retailer should require the employee to issue an official receipt. Such receipt shall show the retailer's name, address and permit number; the purpose for the payment; and the amount of the payment. The retailer should retain all receipts, and only official receipts for payment will be recognized by the department.

103.2(1) Generally. 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.

103.2(2) Incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 shall apply to retailers required to collect hotel and motel tax 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 Iowa Code sections 422.68(1) and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4 section 423A.6.

~~701—103.4~~ **701—103.3(423A) Retailers required to keep records Tax imposition and exemptions.**

103.4(1) 103.3(1) Tax imposed. Every retailer shall keep and preserve the following records: A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the lodging is located in this state. A locally imposed tax of up to 7 percent is imposed to the extent permitted by Iowa Code section 423A.4.

a.—A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.

b.—A record of all deductions and exemptions taken in filing a tax return.

103.4(2) 103.3(2) Exemptions. The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time. The only exemptions from the hotel and motel tax are those in Iowa Code section 423A.5. The exemptions apply to both the state-imposed tax and the locally imposed tax under Iowa Code chapter 423A.

103.4(3) Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

103.4(4) If a tax liability has been assessed and an appeal is pending to the department, district court or an appellate court, books, papers, records, memoranda or documents specified in this rule that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

103.4(5) Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3, and 423A.4, and 423A.5.

~~701—103.5~~ **701—103.4(423A) Audit of records Filing returns; payment of tax; penalty and interest.** The department shall have the right and duty to examine or cause to be examined the books,

papers, records, memoranda or documents of a taxpayer for the purposes of verifying the correctness of a return filed or estimating the tax liability of any retailer. The right to examine records includes the right to examine copies of the retailer's state and federal income tax returns. When a retailer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the retailer and any other witness whom the department deems necessary or expedient to examine and compel the retailer and witness to produce books, papers, records, memoranda or documents relating in any manner to the tax.

The department shall have the obligation to inform the retailer when an examination of the retailer's books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

103.4(1) *Incorporation of 701—Chapter 12.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 12 shall apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

103.4(2) *Quarterly returns only.* Retailers required to collect hotel and motel tax must file returns on a quarterly basis; retailers may not file annual returns.

103.4(3) *Combined sales/hotel and motel tax return.*

a. On the quarterly sales tax return, a retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and calculating tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability and must be stated and computed separately even though total tax liability may be paid with a single remittance.

b. The quarterly returns are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, the monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

103.4(4) *Application of partial payments.*

a. All payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest.

b. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)“d.” The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE: Hotel owes a total of \$1,000 in net state sales tax and hotel and motel tax for the quarter. Of the \$1,000 owed, \$600 is for hotel and motel tax and \$400 is for state sales tax. Hotel files its quarterly sales tax return accompanied by a \$500 partial payment. The \$500 partial payment would be applied based on the following computation:

$$\begin{array}{r r r r r r}
 \underline{600} & & & & & \\
 & \times & 500 & = & \$300 & \text{Hotel and motel tax} \\
 \hline
 1,000 & & & & & \\
 & & & & & \\
 & & & & & \\
 400 & & & & & \\
 & \times & 500 & = & \$200 & \text{State sales tax} \\
 \hline
 1,000 & & & & &
 \end{array}$$

103.4(5) Application of payments upon termination by a land use district. If a land use district terminates its local hotel and motel tax, lodging within the district becomes subject to any local hotel and motel tax imposed by a city or county within the corporate boundaries of that district on the date of termination. If a city or county imposes a local hotel and motel tax within the district, all revenues received from or moneys refunded to lodging within the district after the date on which the land use district terminates its local hotel and motel tax shall be treated as collected from or refunded to lodging in such city or county. If no city or county imposes a local hotel and motel tax within the district, all revenues received from or moneys refunded to lodging within the district at least 180 days after the date on which the land use district terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund as described in Iowa Code section 423A.6(1).

This rule is intended to implement Iowa Code sections 422.70 and 423.41 and 2005 Iowa Code Supplement sections 423A.3, and 423A.4, and 423A.6.

701—103.6 701—103.5(423A) Billings Permits.

103.6(1) 103.5(1) Notice of adjustments Incorporation of 701—Chapter 13. Except as otherwise stated in this chapter, the requirements of 701—Chapter 13 shall apply to retailers required to collect hotel and motel tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

a.—An employee of the department, designated by the director to examine returns or make audits, who discovers discrepancies in returns or learns that a sales price subject to the tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of the discovery by ordinary mail. The notice shall not be termed an assessment. It merely informs the person what amount would be due if the information discovered is correct.

b.—Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, the person should then file a claim for refund. However, payment will not be required until a certified assessment has been made (although interest will continue to accrue on any amount of tax which is determined to be due if payment is not made). If no payment is made, the person may discuss with the employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which the person considers relevant to the situation. This person may also ask for a conference with the department. Documents and records supporting the person's position may be requested.

c.—Power of employee to compromise tax claim. Only the director has the power to compromise any tax claims. The power of the employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

103.6(2) 103.5(2) Notice of assessment Sales tax permit required. If, after following the procedure outlined in paragraph 103.6(1)“b,” no agreement is reached and the person does not pay the amount determined to be correct within 20 days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.8(17A) and Iowa Code section 423.37, proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule 701—7.8(17A).

a. There is no separate hotel and motel tax permit; retailers required to collect and remit hotel and motel tax shall obtain an Iowa sales tax permit.

b. Any person not in the business of renting rooms to transient guests but that facilitates rentals of lodging at varying locations in Iowa to transient guests may register once under this chapter. A lodging

facilitator shall not be required to register under this chapter if the lodging facilitator and its affiliates do not exceed the transaction and sales thresholds in 2018 Iowa Acts, Senate File 2417, section 250.

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39₂ and 2005 Iowa Code Supplement sections 423A.3₂ and 423A.4.

~~701—103.7~~ **701—103.6(423A) Collections Special collection and remittance obligations.** If determined expedient or advisable to do so, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of the tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

103.6(1) Obligations of lodging providers.

a. Rentals without lodging facilitators or lodging platforms. A lodging provider must collect and remit the hotel and motel tax on the entire sales price of the rental if the transaction does not involve a lodging facilitator or lodging platform. In transactions without lodging facilitators or lodging platforms, only the lodging provider has a hotel and motel tax collection and remittance obligation on the transaction. See example 1C below.

b. Rentals involving lodging facilitators. See subrule 103.6(2) for obligations of a lodging provider in rental transactions involving a lodging facilitator.

EXAMPLE 1A: Lodging provider. H owns a hotel located in Iowa. H offers rooms for rent to transient guests. Users can book rooms directly with H—in person, by phone, or through H’s website—or through lodging facilitators. H is a lodging provider. See 2018 Iowa Acts, Senate File 2417, section 246.

EXAMPLE 1B: Lodging provider—property management company. M offers property management and listing services on behalf of lake homeowners. O owns a lake home. O enters into an agreement with M, under which M will manage the property, list the property for rent, enter into rental agreements with users, and receive money from users for the rental of the property.

The lake home is lodging. See Iowa Code section 423A.2(1)“e.” M is a lodging provider as a consequence of operating and managing the lodging and making the lodging available for rent. M must collect and remit the hotel and motel tax to the department.

EXAMPLE 1C: Collection and remittance by a lodging provider. H operates a hotel and is a lodging provider. A user books a room by calling H’s telephone number and paying a sales price of \$100 to rent the room for one night. H’s hotel is located in a jurisdiction with a 7 percent locally imposed hotel and motel tax. H shall charge the user \$112. H shall add the \$5 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. H shall add the \$7 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax. H shall remit \$12, the total hotel and motel tax, to the department. See 2018 Iowa Acts, Senate File 2417, section 250.

103.6(2) Obligations of retailers in transactions involving lodging facilitators. Where a user rents lodging through a lodging facilitator, the lodging facilitator shall collect from the user the hotel and motel tax on the entire sales price paid by the user to the lodging facilitator and the lodging provider shall collect from the user the hotel and motel tax on the entire sales price paid by the user to the lodging provider. The remittance obligations of the retailers depend on whether the lodging provider charges the user for facilitating the user’s rental of the lodging.

a. Remittance of tax when lodging facilitators do not charge the user a facilitation fee. If the lodging facilitator does not charge the user a facilitation fee, the lodging facilitator shall transmit to the lodging provider the entire hotel and motel tax collected from the user. The lodging provider shall receive the hotel and motel tax transmitted from the lodging facilitator. The lodging provider shall remit that tax, together with any hotel and motel tax collected by the lodging provider directly from the user, to the department. See examples 2D and 2F below.

b. Remittance of tax when lodging facilitators charge the user a facilitation fee. If the lodging facilitator charges the user a facilitation fee, the lodging facilitator shall transmit to the lodging provider

the portion of the hotel and motel tax that represents the discount room charge incurred from the lodging provider and shall remit to the department the remaining hotel and motel tax, which represents tax on the facilitation fee charged to the user. The lodging provider shall receive the hotel and motel tax transmitted from the lodging facilitator and shall remit that tax, together with any hotel and motel tax collected by the lodging provider directly from the user, to the department. See examples 2C and 2D below.

c. *Exclusion from the definition of facilitation fee.* The commission that a lodging provider pays to a lodging facilitator or lodging platform is not a facilitation fee.

d. *Examples.*

EXAMPLE 2A: Lodging facilitator—online travel company. F operates an online travel company. On its website, F allows users to search for, book, and pay for hotel rooms. F’s website includes listings from various hotels. Users are allowed to pay for the hotel room through a checkout page on F’s website. F retains a portion of each sale as compensation for arranging the rental.

A user finds and selects a hotel room in Iowa on F’s website. The user pays for the room through F’s website. The lodging provider that owns the hotel is not an affiliate of F. The total price charged to the user includes an amount retained by F for arranging the rental of the hotel room. In this transaction, F is a lodging facilitator. See Iowa Code section 423A.2(1) “c,” “d,” and “f.” The amount F retains from the user as compensation for arranging the rental is a facilitation fee. See Iowa Code section 423A.2(1) “d.”

EXAMPLE 2B: Lodging facilitator—travel agency. T operates a travel agency. T allows customers to book hotel rooms in Iowa by coming to T’s office or by calling one of T’s agents. A user books a hotel room in Iowa through T. The user pays T a sales price of \$120. Of this amount, \$100 is consideration for renting the room. The remaining \$20 is a fee paid to T for coordinating the rental. In this transaction, T is a lodging facilitator. The \$20 fee T charges the user is a facilitation fee.

EXAMPLE 2C: Lodging rented through a lodging facilitator. H operates a hotel and is a lodging provider. F operates an online travel company and is therefore a lodging facilitator. A user books a room at H’s hotel through F’s website. The total sales price charged to the user is \$100. The \$100 sales price includes a \$20 facilitation fee that is retained by F. H charges F a discount room charge of \$80.

The lodging is located in a jurisdiction with a locally imposed hotel and motel tax of 7 percent. The total price F must charge to the user is \$112, which is the sum of the sales price, the 5 percent state imposed hotel and motel tax, and the 7 percent locally imposed hotel and motel tax.

F shall add the \$5 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. F shall add the \$7 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax.

F shall remit to H that portion of hotel and motel taxes collected on the sales price that represents the discount room charge. See 2018 Iowa Acts, Senate File 2417, section 250. F remits \$9.60 hotel and motel tax (i.e., 12 percent hotel and motel tax rate × \$80 discount room charge) to H. F remits \$2.40 hotel and motel tax (i.e., 12 percent hotel and motel tax rate × \$20 facilitation fee) to the department. H remits the \$9.60 hotel and motel tax to the department.

EXAMPLE 2D: Additional sales price paid to a lodging provider. Assume the same facts as in example 2C. However, at check-in time, the user upgrades with H to a larger room for an additional sales price of \$50. The user pays this additional \$50 directly to H. H must charge the user \$56, which is the sum of the additional sales price, the 5 percent state-imposed hotel and motel tax, and the 7 percent locally imposed hotel and motel tax. H remits the \$6 hotel and motel tax, as well as the \$9.60 hotel and motel tax received from F as described in example 2C, to the department.

EXAMPLE 2E: Lodging rented through a travel agent who retains a fee. Assume the same facts as in example 2C. However, instead of booking the hotel room through F’s online travel company, the user books the hotel room through travel agency T, and T handles the transaction the same as the online travel company in example 2C.

The result is the same as example 2C. T has the same collection and remittance obligations as F in example 2C.

EXAMPLE 2F: Lodging rented through a travel agent who only receives a commission from the hotel. H owns a hotel and is a lodging provider. A user books a room for one night at H’s hotel using T, a travel agency. The total sales price is \$100. T coordinates the user’s payment by collecting and transmitting

the \$100 sales price plus tax from the user to H. T is a lodging facilitator. T does not retain any part of the user's \$100 payment nor impose an additional fee to the user for facilitating the transaction with H. After the user has stayed at H's hotel, T receives a \$20 commission from H. T and H are not affiliates.

The lodging is located in a jurisdiction with a locally imposed hotel and motel tax of 7 percent. The commission H pays to T is not a facilitation fee. See Iowa Code section 423A.2(1) "d." Therefore, there is no hotel and motel tax applied to the commission paid to T. T is required to collect \$12 of hotel and motel tax (12 percent combined hotel and motel tax rate × \$100 sales price) and remit the \$12 to H when T facilitates payment of the sales price to H. H must receive the \$12 tax on the sales price from T and must then remit the entire \$12 tax to the department. T does not have an obligation to remit any hotel and motel tax to the department on this transaction.

103.6(3) *Obligations of lodging platforms.* Where a retailer is a lodging platform, the retailer must collect and remit to the department the hotel and motel tax on the entire sales price of the transaction.

EXAMPLE 3A: Lodging platform—home-sharing marketplace. Z operates a home-sharing platform. Z allows individual property owners to list rooms or entire properties with sleeping accommodations for rent to transient guests on the home-sharing platform. Users search, book, and pay for lodging through Z's platform.

O lists O's house on Z's home-sharing platform. O is not an affiliate of Z. A user books and pays for O's listing using Z's home-sharing platform. In this transaction, Z is a lodging platform. See Iowa Code section 423A.2(1) "g."

EXAMPLE 3B: Lodging platform—home-sharing marketplace collection and remittance. Z operates the home-sharing platform described in example 3A. O owns a cabin in Iowa. The cabin is located in a local jurisdiction that imposes a 7 percent locally imposed hotel and motel tax. O lists O's property for short-term rentals on Z's marketplace. O offers O's property for rent for a three-day weekend for \$900. When listing O's property, O also requires the guests pay a \$20 towel fee and a \$50 cleaning fee. On this transaction, Z imposes a \$30 service charge on the user for processing the transaction on Z's website. A user reserves and pays for the cabin on Z's website.

The total sales price is \$1,000 (i.e., \$900 lake home rental + \$20 towel fee + \$50 cleaning fee + \$30 service charge) before taxes. Z must charge the user \$1,120. Z shall add the \$50 state-imposed tax as separate and apart from the sales price and separate and apart from the locally imposed tax. Z shall add the \$70 locally imposed tax as separate and apart from the sales price and separate and apart from the state-imposed tax. As a lodging platform, Z does not remit any part of the \$112 in tax to O. Z shall remit the \$112 in tax to the department. See 2018 Iowa Acts, Senate File 2417, section 250.

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39, and 2005 Iowa Code Supplement sections 423A.3, and 423A.4.

~~701—103.8~~ ~~701—103.7(423A)~~ ~~No property exempt from distress and sale Certification of funds.~~ The provisions of Iowa Code section 422.26 apply with respect to a tax liability determined to be due by the department. The department shall proceed to collect the tax liability after it has become delinquent; and no property of the taxpayer is exempt from the process whereby the tax is collected.

103.7(1) *Certification of funds.* Within 45 days after the date that the quarterly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund that is to be distributed to each city, county, and land use district that has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

103.7(2) *Revenues credited to local fund.* All locally imposed hotel and motel tax revenues received under Iowa Code chapter 423A are to be credited to the local transient guest tax fund. Revenues include all interest and penalties applicable to any locally imposed hotel and motel tax report or remittance, whether resulting from delinquencies or audits.

This rule is intended to implement Iowa Code sections 422.26 and 423.42 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4 section 423A.7.

~~**701—103.9(423A) Information confidential.** When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists, or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the tax. See rule 701—6.3(17A).~~

~~All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.~~

~~This rule is intended to implement Iowa Code section 422.72 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~**701—103.10(423A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount which the director may fix, or in lieu of such bond, securities approved by the director in an amount which the director may prescribe.~~

~~The determination of when and in what amount a bond is required will be determined pursuant to rule 701—11.10(422). The bond required under this rule and rule 701—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential state imposed tax (see 701—Chapter 241) and the locally imposed tax liabilities, plus any applicable local option taxes. Whether or not the person required to post the bond files a monthly deposit for state imposed tax purposes, the basis for determining the locally imposed tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.~~

~~This rule is intended to implement Iowa Code section 423.35 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~**701—103.11(423A) Sales tax.** The hotel and motel tax is levied in addition to the state sales tax imposed in Iowa Code chapter 423. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law except that portion of the law which implements the streamlined sales and use tax agreement. See 701—Chapters 12 to 14 for details. The computation of the tax shall be based on the sales price of the room excluding the sales tax.~~

~~This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3, 423A.4, and 423A.6.~~

~~**701—103.12(423A) Judicial review.** Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act in a manner similar to that provided for review of sales tax matter. See 701—Chapter 7 for details.~~

~~This rule is intended to implement Iowa Code section 423.38 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.~~

~~**701—103.13(423A) Registration.** All persons who are required to collect and remit the locally imposed tax are required to register with the department as a hotel and motel tax collector.~~

~~This rule is intended to implement 2005 Iowa Code Supplement section 423A.6.~~

~~**701—103.14(423A) Notification.** Before the local option hotel and motel tax of a city, county, or land use district can become effective, be revised, or be repealed, 45 days' notice of such action must be given to the director in writing by mail.~~

~~This rule is intended to implement Iowa Code section 423A.4.~~

~~**701—103.15(423A) Certification of funds.** Within 45 days after the date that the quarterly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund, which is to be distributed to each city, county, and land use district that has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.~~

~~This rule is intended to implement Iowa Code section 423A.7.~~

ITEM 2. Rescind and reserve **701—Chapter 104.**

ITEM 3. Rescind and reserve **701—Chapter 105.**

ITEM 4. Rescind and reserve rules **701—241.3(423A) to 701—241.5(423A).**