

REVENUE DEPARTMENT[701]

Amended 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.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 18, 2018, as **ARC 3896C**. No public comments were received. In addition to providing for a public hearing to receive oral and written comment on Chapter 97, this Amended Notice of Intended Action proposes new Chapter 97 with revisions as described below.

The definition of “facilities” has been revised to remove the exclusion of interior plumbing, and new rule 701—97.5(87GA,SF512) has been added to more clearly define when a sale of water service for compensation occurs. Purchasers of water service make taxable sales of water service for compensation if the purchaser separately itemizes the sale of water service or provides water service for an identifiable price, including where the addition of water service increases the overall price of a sale. Water service is not sold for compensation where the sale of water service is incidental to the rental of real property.

Proposed rule 701—97.6(87GA,SF512), Apportionment of bundled water service sales—rebuttal presumption, was deleted, and the content of that rule was placed in new subrule 97.5(2).

In addition, nonsubstantive edits have been applied to other rules.

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 for Education (SAVE) 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 November 13, 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:

November 13, 2018
1 to 2 p.m.

Room 430, Fourth Floor
Hoover 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.

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.

97.1(1) Incorporation of definitions. To the extent they are consistent with 2018 Iowa Acts, Senate File 512, all 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).

97.1(2) Chapter-specific definitions. For the purposes of this chapter, unless the context otherwise requires:

“*Facilities*” means any storage tanks, water towers, wells, plants, reservoirs, aqueducts, hydrants, pumps, pipes, or any other similar devices, mechanisms, equipment, or amenities designed to hold, treat, sanitize, or deliver water.

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

“*Water utility*” means the same as defined in 2018 Iowa Acts, Senate File 512, section 10. “*Corporation*” as used in Iowa Code section 476.1(3) and as incorporated by 2018 Iowa Acts, Senate File 512, section 10, includes municipal corporations. See 1968 Iowa Op. Atty. Gen. 1-21, 1968 WL 172465.

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 furnished by a water utility to a purchaser.

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

701—97.3(87GA,SF512) Administration.

97.3(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 Iowa Code which implements the streamlined sales and use tax agreement.

97.3(2) Application of 701—Chapter 11. 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 service. 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 the water service and accompanying services are 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 the furnishing of 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, regardless of whether the water is metered.
- c. Service, account, or administrative charges or fees for water service, including but not limited to new customer account charges and minimum charges for access to water service, whether the customer uses the water service or not.
- d. Fees for connection, disconnection, or reconnection to or from a water utility’s facilities, including tap fees.
- e. Fees for maintenance, inspection, and repairs of the water distribution system, water supplies, and facilities, including but not limited to fees for labor or materials.
- f. Fees for using or checking water meters.
- g. Water distribution system infrastructure and improvement fees.

97.4(3) Examples of sales that are not water service or are not integral to the provision of water service. Sales of services that are not integral to the furnishing of 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 but not limited to check and meter deposits.
- 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 sales that may or may not be integral to the sale of water service but that are not subject to water service excise tax because those nonintegral sales are subject to sales tax under Iowa Code section 423.2 as the sale of tangible personal property or as enumerated 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 the tangible personal property 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 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 but is instead bundled with the sale of water service, including sales of services listed in subrule 97.4(2), then the entire sales price is subject to the water service excise tax.

b. *Painting of hydrants.* The 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. For example, a water utility that purchases water service from a different water utility may be eligible to claim the sale for resale exemption pursuant to Iowa Code section 423.3(2).

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

701—97.5(87GA,SF512) When water service is furnished for compensation.

97.5(1) *Itemized sales of water service.* Water service is furnished for compensation when water service is sold for a separately itemized price.

EXAMPLE: Itemized sale of water service. Z is an entity that provides water from a well by piped distribution to various homes in the community. Each home that is connected to the well pays \$20 per month, which is used by Z for maintaining the water distribution system. Z is a water utility making sales of water service and must collect and remit water service excise tax on the \$20 monthly fee charged to each of Z’s members. See *In the Matter of Lakewood Utils.*, Iowa Dep’t of Revenue, Docket No. 78-161-6A-RC (Feb. 8, 1980).

EXAMPLE: Sale for resale. An apartment owner purchases water from a city water utility and distributes the water to each unit through a system of pipes. The city meters the apartment owner’s use of water each month and charges the apartment owner for the water service. The apartment owner separately bills each of the tenants \$40 per month for water service, including the cost of water and maintenance on the water distribution system. The apartment owner is a water utility and must collect and remit water service excise tax on the \$40 monthly charge for water service. The apartment owner may purchase the water from the city tax exempt as a sale for resale.

97.5(2) *Water service sold for an identifiable price.* Water service is furnished for compensation when the price of the water service is identifiable from an invoice, bill, catalogue, price list, rate card, receipt, agreement, or other similar document, including where the total sales price increases when water service is included in the sale.

EXAMPLE: Cost varies with inclusion of water service. A campground provides three campsite packages to its customers:

Package A includes only campsite access for \$10 per night.

Package B includes campsite access and an electrical hookup for \$20 per night.

Package C includes campsite access, an electrical hookup, and water service for \$30 per night.

Sales of package C by the campground include sales of water service. The campground must collect and remit water service excise tax on \$10—the identifiable sales price of water service.

97.5(3) *Water service not furnished for compensation; incidental sales.* No sale of water service for compensation occurs where water service is not sold for a separately itemized or identifiable price and is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) owner owns a well and pipes water to the lots. The MHC owner charges tenants \$500 per month for each lot rental. Water from the well is included in the \$500 rental charge. The MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

EXAMPLE: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) purchases water from a city water utility and distributes the water to each lot in the community through a system of pipes. The city meters the MHC's use of water each month and charges the MHC for the water service and the applicable water service excise tax. The MHC charges its tenants \$500 for lot rental. As in the previous example, the MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

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

701—97.6(87GA,SF512) Itemization of tax required. A 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 on any bill, receipt, agreement, or other similar document. The tax shall be identified as the water service excise tax, and the amount of tax paid shall be displayed clearly on the bill, receipt, agreement, or other similar document provided to the purchaser. This rule shall take effect on January 1, 2019.

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

701—97.7(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 across the 2018 Iowa Acts, Senate File 512, 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 how frequently 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 subject to water service excise tax 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.