

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sourcing of taxable services, tangible personal property, and specified digital products and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 223, “Sourcing of Taxable Services,” 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 section 423.15 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This rule making proposes to amend the Department’s chapter on the sourcing of taxable services to remove language that is outdated, unnecessary, or duplicative of Iowa Code provisions. This proposed rule making incorporates the sourcing of tangible personal property and specified digital products pursuant to changes to the Iowa Code made by 2018 Iowa Acts, Senate File 2417. This proposed rule making also adopts rules relating to sourcing that are proposed for rescission from Chapter 107, Local Option Sales and Services Tax, in **ARC 4202C** (IAB 1/2/19).

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

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 January 23, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

January 23, 2019
10 to 11 a.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. Amend **701—Chapter 223**, title, as follows:
**SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED
DIGITAL PRODUCTS**

ITEM 2. Amend rule 701—223.2(423), introductory paragraph, as follows:

701—223.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services ~~under~~ using the ~~general~~ destination sourcing ~~regime~~ requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the service is received, first used, or could potentially be first used, by the purchaser or the purchaser's donee. With respect to taxable services performed on tangible personal property, the location where the retailer performs the taxable service does not determine the location where the purchaser receives the service. This rule and subsequent rules in Chapter 223 clarify the application of the definition of "receive" or "receipt" to various categories of services to assist in applying the sourcing provisions of Iowa Code section 423.15 to sales of services. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

ITEM 3. Amend subrule 223.3(2) as follows:

223.3(2) Sourcing of taxable services performed on tangible personal property as applied to local option sales and ~~service~~ services tax. A local option sales and ~~service~~ services tax shall be imposed on the same basis as the state sales and ~~service~~ services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and ~~service~~ services tax sourcing rules shall be the same as the ~~general~~ destination ~~regime~~ sourcing requirements described in Iowa Code section 423.15 and as set forth in rules 701—223.1(423) and 701—223.2(423) and subrule 223.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

ITEM 4. Adopt the following new rule 701—223.5(423):

701—223.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events. Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—223.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. See Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

223.5(1) Sales of admissions to virtual events. First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

223.5(2) Sales of admissions that can be used at multiple locations. Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore the sale is sourced to Clive. See Iowa Code section 423.15(1) "c." X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

ITEM 5. Adopt the following new rule 701—223.6(423):

701—223.6(423) Sourcing rules for tangible personal property and specified digital products. All sales of tangible personal property and specified digital products by sellers obligated to collect sales and use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1) "b" applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. See Iowa Code section 423.1(43) "b" and *In the Matter of Clipper Windpower, LLC*, Iowa Dep't of Revenue Declaratory Order No. 2016-300-2-0058 (Sept. 8, 2017).

223.6(1) *General examples of sourcing of tangible personal property.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. See Iowa Code section 423.15(1) “a.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced to the warehouse in Cedar Falls because that is the business location where X receives the product. See Iowa Code section 423.15(1) “a.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X’s home address as the location where X would like to have the product delivered. The retail store’s delivery truck delivers the product to X’s home in Waverly, Iowa. The sale is sourced to X’s home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. See Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X’s home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X’s home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. See Iowa Code section 423.15(1) “b.” The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state. See Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X’s home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. See Iowa Code section 423.15(1) “b.” It is irrelevant that the product was delivered by a third-party common carrier. See Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser’s donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y’s Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser’s donee. The gift is received by Y in Davenport, Iowa, and that location is known to the seller. See Iowa Code section 423.15(1) “b.” The retailer must therefore collect states sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser’s address available from seller’s business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X’s payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a

shipping address. Even though the retailer does not know the delivery address, the retailer's business records indicate that the purchaser's address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. See Iowa Code section 423.15(1) "c." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser's address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. See Iowa Code section 423.15(1) "d." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer's address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X's address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. See Iowa Code section 423.15(1) "e." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

223.6(2) General examples of sourcing of specified digital products. The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller's business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests' access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y's on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. See Iowa Code section 423.15(1) "a." Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X's smart phone through an online application marketplace. The marketplace knows X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (see Iowa Code section 423.1(43)) and that location is known to the seller. See Iowa Code section 423.15(1) "b." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser's address is available from seller's business records. X purchases a specified digital product from C's website. Prior to purchasing the specified digital product, X creates a user account through C's website and lists X's home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C's business records that are maintained in the ordinary course of business indicate that X's address is in Jefferson, Iowa. See Iowa Code section 423.15(1) "c." If C meets the thresholds described in Iowa Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser's address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X's phone through an online application marketplace. X pays for the video game with X's credit card. The marketplace saves the Ames, Iowa, home address associated with X's credit card. However, the marketplace does not know X's location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X's payment information to source the sale. See Iowa Code section 423.15(1) "d." If the marketplace meets the thresholds described in Iowa Code

section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

223.6(3) *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, for the rental of a couch. The agreement specifies that X will pay to Y a \$50 down payment and \$20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required \$50 down payment to Y at Y's office in Des Moines, Iowa. X receives the couch at Y's office in Des Moines, and X takes the couch to X's home in Indianola, Iowa. While purchasing the couch, X provides Y with X's Indianola address, which Y keeps on file. For the remainder of the rental period, X's primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). See Iowa Code section 423.15(2)“a.” In this case, the down payment was made and the product was received at the seller's business location. Iowa Code section 423.15(1)“a” governs the sourcing of the down payment. See subrule 223.5(1). Therefore in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X's home address is on file with Y for the remainder of the rental period, X's address is the “primary property location” of the couch during those periods. See Iowa Code section 423.15(2)“a.” Therefore, the subsequent monthly payments are sourced to X's Indianola address that is contained in the records maintained by Y in the ordinary course of business. See Iowa Code section 423.15(2)“a.” Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the \$50 down payment, gives Y X's home address in Indianola, Iowa, and arranges to have Y deliver the couch to X's home in Indianola, Iowa. The \$50 down payment constitutes the “first periodic payment” and is therefore sourced to Indianola in accordance with Iowa Code section 423.15(1)“b.” See Iowa Code section 423.15(2)“a.” Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the city of Indianola on the down payment. See subrule 223.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. See subrule 223.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, part way through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the “primary property location” as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. See Iowa Code section 423.15(2)“a.”

EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, part way through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the “primary property location” indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. See Iowa Code section 423.15(2)“a.” Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. See Iowa Code section 423.15(1)“b.” C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 223.6(1). See Iowa Code section 423.15(2)“b.”

223.6(4) *Sales of items from vending machines.* Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

223.6(5) *Sales of items by an itinerant merchant, peddler, or salesperson having a route.* When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1)“b,” regardless of whether the location is the customer’s home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

223.6(6) *Items purchased for resale but withdrawn from inventory.* If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the item was purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X’s home instead of selling it. Because the rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County is due.

223.6(7) *Items withdrawn from inventory by a manufacturer.* Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials, supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. See rule 701—219.6(423) for more information.

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X’s withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax is due.