

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to local option sales and services tax and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 107, “Local Option Sales and Service 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, Iowa Code chapter 423B as amended by 2018 Iowa Acts, Senate File 2417.

*Purpose and Summary*

This rule making proposes amendments to the Department’s chapter on local option sales and services tax. The Department proposes to remove rules that repeat the language of the statute, to update calculations, and to incorporate changes necessary as a result of 2018 Iowa Acts, Senate File 2417. The Department also proposes to strike language from this chapter that will be moved to Chapter 223, which is proposed to be amended in **ARC 4200C** (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 22, 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](mailto: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  
9 to 10 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 107**, title, as follows:

**LOCAL OPTION SALES AND SERVICE SERVICES TAX**

ITEM 2. Amend rule 701—107.1(422B) as follows:

**701—107.1(422B 423B) Definitions.** The following words and terms are used in the administration of the local option sales and service tax:

**107.1(1) Incorporation of definitions.** To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code chapter 423B, Iowa Code section 423.1, and rule 701—211.1(423).

**107.1(2) Chapter-specific definitions.** For purposes of this chapter, unless the context otherwise requires:

The word “city” “*City*” means a municipal corporation and includes towns in Iowa which were incorporated prior to July 1, 1975, but a city does not mean a county, township, school district, or any special purpose district or authority.

When the word “department” is used, it means the “Iowa department of revenue.”

“*Local option tax*” or “*local option taxes*” means the taxes imposed by Iowa Code chapter 423B.

“*Most recent certified federal census*” means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs which modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The term “unincorporated area of the county” “*Unincorporated area of the county*” means all areas of a county which are outside the corporate limits of all cities which are located within the geographical area of the county.

When the meaning of the word “sale” cannot be determined by referring to the definition of that word set out in Iowa Code section 422.42(17), its meaning should be determined by studying Iowa Code chapter 554, Uniform Commercial Code, Article 2.

ITEM 3. Amend rule 701—107.2(422B) as follows:

**701—107.2(422B 423B) Local option sales and service tax. Imposition of local option taxes and notification to the department.** This rule describes notification and other requirements as related to the department. For information on the election forms and instructions, see 721—Chapter 21.

~~107.2(1) Imposition and jurisdiction. Notice to the department. Only a county may impose a tax upon the gross receipts of sales of tangible personal property sold within the county and upon the gross receipts from services rendered, furnished, or performed within the county. The local option sales and service tax may not be imposed by a city except under the circumstances described in rule 107.14(422B). However, the tax may be imposed by a county for transactions in a specified city. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric services are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option sales and service tax also include local excise tax, and all rules governing the administration and collection of local option sales and service tax are also applicable to local excise tax. With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. The local sales and service tax may be imposed at any rate of not more than 1 percent. See rule 701—14.2(422,423) for a tax schedule setting out the combined rate for a state sales tax of 5 percent and a local sales tax of 1 percent. Frequency of deposit and quarterly reports of local option tax with the department of revenue is governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of filing under Iowa Code section 422.52.~~

~~The local option sales and service tax can be imposed upon the unincorporated area of any county only if a majority of those voting in the area favor its imposition. The tax can be imposed upon any incorporated area within a county only if a majority of those voting in that area favor its imposition. All cities within a county contiguous to each other must be treated as part of one incorporated area, and tax can be imposed in such an incorporated area only if the majority of persons voting in the total area covered by the contiguous cities favor imposition of the tax. For the purposes of this rule, the local option sales and service tax can only be imposed in those areas specified in the ordinance of a county board of supervisors which imposes the tax.~~

~~Within ten days of the election at which a majority of those voting in favor of on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director in the form of by sending a copy of the abstract of votes and a copy of the sample ballot from the election.~~

~~107.2(2) Procedures for implementing and repealing the tax. Avoiding a lapse in tax due to expiration of a former local option tax.~~

~~a. Implementing the tax. The ballot proposition imposing the tax shall specify the type and rate of the tax and other items set forth in Iowa Code section 422B.1. Effective April 1, 2000, the date of imposition of the tax must occur on either January 1 or July 1, but cannot be earlier than 90 days from the date of the election in which a majority of those voting on the tax favored its imposition. Within ten days of the favorable election, the county auditor must give written notice of the election by sending a copy of the abstract of ballot from the favorable election to the director of revenue. For the purposes of this rule, the “abstract of ballot” is defined as abstract of votes as provided in 721—21.800(4).~~

~~A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. Effective July 1, 2001, a local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.~~

~~b. Repeal of the tax. A county that has imposed a local option tax may have the tax repealed. Repeal of the tax in an unincorporated area or an incorporated city area may occur either by the board of supervisors' acting upon its own motion or by the board's acting on a motion submitted by the governing body of an incorporated area asking for the repeal. The repeal is effective on the later of the date of the adoption of the motion of repeal or the earliest date set forth in Iowa Code section 422B.9(1).~~

~~Effective April 1, 2000, tax shall only be repealed on June 30, or December 31, but not sooner than 90 days following the favorable election if one is held. If the tax has been imposed prior to April 1, 2000, and at the time of election a date for the repeal was specified on the ballot, the tax may be repealed on that date despite the dates previously set forth.~~

~~This rule is intended to implement Iowa Code sections 422B.1 and 422B.8 and 422B.9 as amended by 2001 Iowa Acts, House File 715, section 14 section 423B.1.~~

ITEM 4. Rescind rule 701—107.3(422B) and adopt the following **new** rule in lieu thereof:

**701—107.3(423B) Administration.**

**107.3(1) Generally.** The department is charged with the administration of the tax, once imposed, 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.

**107.3(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 local option taxes 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 section 423B.6.

ITEM 5. Rescind rule 701—107.4(422B) and adopt the following **new** rule in lieu thereof:

**701—107.4(423B) Filing returns; payment of tax; penalty and interest.**

**107.4(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 local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

**107.4(2) Local tax collections not included to determine filing frequency.** Local option tax collections shall not be included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.

ITEM 6. Rescind rule 701—107.5(422B) and adopt the following **new** rule in lieu thereof:

**701—107.5(423B) Permits.** Except as otherwise stated in this chapter, the requirements of 701—Chapter 13 shall apply to retailers required to collect local option 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 section 423B.6.

ITEM 7. Rescind rule 701—107.6(422B) and adopt the following **new** rule in lieu thereof:

**701—107.6(423B) Sales subject to local option sales and services tax.** All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

**107.6(1) Sourcing.** The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 223 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

**107.6(2)** *Sellers responsible for collecting local option sales and services tax.* Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).

ITEM 8. Rescind rules **701—107.7(422B)** and **701—107.8(423B)**.

ITEM 9. Renumber rules **701—107.9(423B,423E)** to **701—107.11(422B)** as **701—107.7(423B,423E)** to **701—107.9(422B)**.

ITEM 10. Amend renumbered rule 701—107.7(423B) as follows:

**701—107.7(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax.** The local option sales and service services tax is imposed upon the same basis as the Iowa state sales and service services tax, with ~~six~~ the following exceptions:

1. The sales price from the sale of or service of providing motor fuel or special fuel as defined under Iowa Code chapter 452A is subject to local option tax. However, the sales price from the sale or service of these types of fuels is exempt from local option tax if all of the following criteria are met:

- The motor or special fuel must be consumed by a motor vehicle for highway use, or used in watercraft or aircraft;
- Fuel tax must have been paid on the transaction; and
- A refund has not been or will not be allowed.

~~2. For taxes imposed prior to July 1, 2005, the sales price from the rental of rooms, apartments, or other lodging which was taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax was imposed under that chapter shall be exempt from local option sales tax. As of July 1, 2005, the sales price of lodging is no longer subject to the sales tax imposed by Iowa Code chapter 423; thus, the sales price of lodging is not subject to the local option sales tax. Also, as of July 1, 2005, Iowa Code chapter 422A is repealed. See 701—Chapter 241 for a description of the new state imposed tax on lodging; see 701—Chapters 103, 104, and 105 for a description of the new local option hotel and motel tax.~~

~~3. 2.~~ The sales price from the sale of natural gas or electricity in a city or county is exempt from tax if the sales price is subject to a franchise or user fee during the period the franchise or user fee is imposed.

~~4. 3.~~ A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government's Telecommunications Act of 1996 defines a "direct-to-home satellite service" as "only programming transmitted or broadcast by satellite directly to the subscribers' premises or in the uplink process to the satellite." A "local taxing jurisdiction" is "any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state."

~~5. 4.~~ The sales price from sales of equipment by the Iowa state department of transportation is exempt from local option sales tax.

~~6. Certain construction-related equipment and other items are exempt.~~

The general application of this exception is as follows: The sales price from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures is exempt from local option sales tax. As of July 1, 2005, taxation of the above-mentioned machinery and equipment is removed from Iowa Code chapter 423 and thus is not subject to the local option sales tax. See 701—Chapter 241, division II, for an explanation of the new state excise tax imposed on sales of construction machinery and equipment.

The following definitions apply to this rule:

*“Directly used”* includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is “directly used,” one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be “directly used,” it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that the machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also “directly used” in such an activity. Machinery or equipment may be necessary to one of the previously mentioned activities, but so remote from it that it is not directly used in the activity.

In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1.—The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

2.—The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment’s use is direct rather than remote.

3.—The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.

*“Equipment”* means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Equipment” may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.

*“Primarily used”* includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is “primarily used” in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

*“Real property”* includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. *Mid-American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property “building material” and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

~~“Replacement parts” means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment’s exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Replacement parts” does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.~~

~~“Self-propelled building equipment” has the same meaning as that in 701—subrule 17.9(5), paragraph “c,” where the term is defined as an implement which is capable of movement from one place to another under its own power. “Self-propelled building equipment” includes, but is not limited to, skid-loaders, earthmovers and tractors.~~

5. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax the one-time registration fee applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax. However, if

6. Local excise on gas and electricity. If a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then a local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. ~~Local~~ This local excise tax is to be collected and administered in the same manner as local option sales and service services tax. Except as otherwise provided in this chapter, all rules governing local option sales and service services tax also apply to local excise tax.

~~When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, the sales price from the sale is exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 423.3(43)). Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.~~

~~This rule is intended to implement 2005 Iowa Code Supplement sections section 423B.5 and 423E.3.~~

ITEM 11. Amend renumbered rule 701—107.8(422B) as follows:

**701—107.8(422B 423B) Local option sales and service services tax payments to local governments.** For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. For periods after July 1, 2002, the director of revenue by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. An adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county’s account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum

of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

~~“The most recent certified federal census” is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. If a subsequent certified census occurs which modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.~~

~~The “sum of property tax dollars levied” by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.~~

**107.8(1) *County-imposed local sales and services tax; division of funds from accounts.*** Division of the amount from each county’s account to be distributed is done with these steps.

~~1. *a.*~~ The total amount in the county’s account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

~~2. *b.*~~ The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government’s percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the “interim” or “subsequent” census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction’s share of the revenue from the county’s account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.

~~3. *c.*~~ The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately then totaled. The property tax amount for each sales tax imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

~~4. *d.*~~ For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in ~~“3”~~ paragraph 107.8(1) “c” is added to the amount found in ~~“2.”~~ paragraph 107.8(1) “b.” This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and ~~servi~~ service services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1. If a local option sales tax is approved for all of Pottawattamie County, the distribution of \$100,000 in countywide receipts would be made in this manner:

Step 1:

<b>Distribution Basis</b>	<b>Amount</b>
Population	\$ 75,000.00
Property Taxes Levied	<u>25,000.00</u>
Total	<u>\$100,000.00</u>

Step 2:

<b>Jurisdiction</b>	<b>Certified Population</b>		<b>Receipts to be</b>
	<b>Number</b>	<b>Percentage</b>	<b>Distributed</b>
Avoca	1,650	1.91%	\$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	<u>17,796</u>	<u>20.59%</u>	<u>15,442.50</u>
Total	<u>86,442</u>	<u>100.00%</u>	<u>\$75,000.00</u>

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.

Step 3:

<b>Jurisdiction</b>	<b>Three-Year Total Taxes Levied</b>		<b>Receipts to be</b>
	<b>Amount</b>	<b>Percentage</b>	<b>Distributed</b>
Avoca	\$ 454,556	0.82%	\$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	<u>21,782,457</u>	<u>39.42%</u>	<u>9,855.00</u>
Total	<u>\$55,262,284</u>	<u>100.00%</u>	<u>\$25,000.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$ 1,432.50	\$ 205.00	\$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	<u>15,442.50</u>	<u>9,855.00</u>	<u>25,297.50</u>
Total	<u>\$75,000.00</u>	<u>\$25,000.00</u>	<u>\$100,000.00</u>

EXAMPLE 2. If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and \$10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 7,500.00
Property Taxes Levied	<u>2,500.00</u>
Total	<u>\$10,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	39.45%	\$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	<u>981</u>	<u>23.45%</u>	<u>1,758.75</u>
Total	<u>4,183</u>	<u>100.00%</u>	<u>\$7,500.00</u>

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	40.56%	\$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	<u>346,849</u>	<u>30.96%</u>	<u>774.50</u>
Total	<u>\$1,120,558</u>	<u>100.00%</u>	<u>\$2,500.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$2,958.75	\$1,014.00	\$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	<u>1,758.75</u>	<u>774.00</u>	<u>2,532.75</u>
Total	<u>\$7,500.00</u>	<u>\$2,500.00</u>	<u>\$10,000.00</u>

EXAMPLE 3. For the purposes of understanding this example, assume that the numbers for “certified population” from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The towns’ percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1752}{1752 + 1493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1493}{1493 + 1752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	<u>981</u>	<u>23.21%</u>	<u>1,740.75</u>
Total	<u>4,226</u>	<u>100.00%</u>	<u>\$7,500.00</u>

The “amount to be distributed by population” found in Step 4 of Example 2 would then be recomputed based on the new figures.

**107.8(2) City-imposed local option sales and services tax.** For information on the distribution of city-imposed local sales and services tax, see Iowa Code section 423B.7(1).

~~Rule 107.10(422B)~~ This rule is intended to implement Iowa Code section 422B.10 as amended by 2002 Iowa Acts, House File 2622, section 12 423B.7.

ITEM 12. Amend renumbered rule 701—107.9(422B) as follows:

**701—107.9(422B 423B) Procedure if county of receipt's origins Allocation procedure when sourcing of local option sales tax remitted to the department is unknown.** If the director is unable to determine from which county ~~gross receipts were~~ local option sales tax was collected, ~~those receipts that local option sales tax shall be allocated among the various counties in which local option sales and service services tax is imposed according to the following procedure:~~

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and ~~service services~~ tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection which have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and ~~service services~~ tax is imposed shall be determined.

4. The amount of population so determined in "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and ~~service services~~ tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and ~~service services~~ tax is imposed is determined.

5. The sum determined to exist in "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in "3" above and the denominator of which is the number calculated by the method described in "4." The procedure described herein in "5" shall be used until the amount of tax due to every county imposing local option sales and ~~service services~~ tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and ~~service services~~ tax fund. See rule ~~107.10(422B)~~ 701—107.1(423B) for characterization of the term "most recent certified federal census" and rule 701—107.8(423B) for methods of rounding off percentages and monetary sums.

This rule is intended to implement Iowa Code ~~subsection 422B.10(1)~~ section 423B.7(1).

ITEM 13. Adopt the following new rule 701—107.11(423B):

**701—107.11(423B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option sales and services tax.** For information on when motor vehicles, recreational vehicles, and recreational boat rentals are subject to local option sales and services tax, see rule 701—26.68(422).

This rule is intended to implement Iowa Code section 423B.3.

ITEM 14. Amend rule 701—107.12(422B) as follows:

**701—107.12(422B 423B) Computation of local option tax due from mixed sales on excursion boats.** Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, whether local option sales tax is payable if tangible personal property is delivered under a contract for sale or if taxable services are rendered, furnished, or performed within that portion of a county where a tax is imposed to a particular jurisdiction is based on destination sourcing. See Iowa Code section 423.15 and 701—Chapter 223. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department

will accept the use of any formula which rationally apportions the progress of an excursion gambling boat among jurisdictions which impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples A and C utilize a “distance” formula for apportionment. Examples B and D utilize a “time” formula for apportionment. In Examples A and B, state sales tax is included in the sale sales price of the taxable items. In Examples C and D, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE A. The excursion gambling boat “Auric” is based in Clinton. Assume that during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters which are part of a local option sales tax jurisdiction and 25 of those miles which are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a “distance” apportionment formula are determined as follows:

Computation of state sales tax due

1.  $\$10,000 \div 1.04 = \$9,615.38$
2.  $\$10,000 - \$9,615.38 = \$384.62 = \text{amount of state sales tax due}$

Computation of local option tax due

1.  $\$9,615.38 \div 1.01 = \$9,520.18$
2.  $\$9,615.38 - \$9,520.18 = \$95.20$
3.  $\$95.20 \times \frac{1}{2} = \$47.60 = \text{amount of local option sales tax due}$
1.  $(25 \div 50) \times 0.01 = 0.005$

(miles in LOST jurisdiction  $\div$  total miles)  $\times$  LOST rate = effective LOST rate

2.  $1 + 0.06 + 0.005 = 1.065$

1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)

3.  $\$10,000.00 \div 1.065 = \$9,389.67$

Gross receipts  $\div$  (1 + effective total tax rate) = total sales

4.  $\$9,389.67 \times 0.06 = \$563.38$

Total sales  $\times$  state tax rate = state tax amount

5.  $\$9,389.67 \times 0.005 = \$46.95$

Total sales  $\times$  effective LOST rate = LOST amount

6.  $\$563.38 + \$46.95 = \$610.33$

State tax amount + LOST amount = total tax amount

EXAMPLE B. The gambling excursion gambling boat “Blue Diamond” is based in Davenport. Assume that, as in Example A, during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example A, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. ~~In this case, all calculations are the same as those performed in Example A, except that the last~~ The calculation is performed as follows:

$\$95.20 \times \frac{2}{3} = \$63.40 = \text{amount of local option sales tax due}$

1.  $(2 \div 3) \times 0.01 = 0.00666$

(hours in LOST jurisdiction  $\div$  total hours)  $\times$  LOST rate = effective LOST rate

2.  $1 + 0.06 + 0.00666 = 1.06666$

1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)

3.  $\$10,000.00 \div 1.06666 = \$9,375.06$

Gross receipts  $\div$  (1 + effective total tax rate) = total sales

$$4. \quad \$9,375.06 \times 0.06 = \$562.50$$

Total sales × state tax rate = state tax amount

$$5. \quad \$9,375.06 \times 0.00666 = \$62.44$$

Total sales × effective LOST rate = LOST amount

$$6. \quad \$562.50 + \$62.44 = \$624.94$$

State tax due + LOST due = total tax amount

EXAMPLE C. The excursion gambling boat “Golconda” is based in Dubuque, Iowa. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles the Golconda is passing through waters which are part of a local option sales tax jurisdiction. Assume that on one particular cruise, \$100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the \$100,000 amount but not state sales tax. Thus, the total amount collected is ~~\$104,000~~ \$106,000; \$100,000 in gross receipts, ~~\$4,000~~ \$6,000 in state sales tax. Local option tax is calculated as follows: ~~Divide \$100,000 by 1.01. This result is \$99,009.90. Subtract this from \$100,000 leaving \$990.10. \$990.10 is the amount of local option tax which would be due if all sales during the cruise had occurred in a jurisdiction imposing a local option tax. Since only half the distance traveled was in a jurisdiction imposing the tax, \$990.10 is multiplied by .5 to discover the amount of local option tax due (\$495.05).~~

$$1. \quad (25 \div 50) \times 0.01 = 0.005$$

(miles in LOST jurisdiction ÷ total miles) × LOST rate = effective LOST rate

$$2. \quad 1 + 0.005 = 1.005$$

1 + effective LOST rate

$$3. \quad \$100,000.00 \div 1.005 = \$99,502.49$$

Gross receipts including LOST ÷ (1+ effective LOST rate) = total sales

$$4. \quad \$99,502.49 \times 0.06 = \$5,970.15$$

Total sales × state tax rate = state tax amount

$$5. \quad \$100,000.00 - 99,502.49 = \$497.51$$

Gross receipts including LOST – total sales = LOST amount

$$6. \quad \$5,970.15 + \$497.51 = \$6,467.66$$

State tax due + LOST due = total tax amount

$$7. \quad \$99,502.49 + \$497.51 + \$5,970.15 = \$105,970.15$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE D. The ~~gambling~~ excursion gambling boat “Black Jack” is based in Davenport. Assume that during a particular cruise there is \$150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is ~~\$156,000~~ \$159,000; ~~\$6,000~~ \$9,000 in state sales tax and \$150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example B, the Black Jack’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example tax is computed as follows:

$$1. \quad \$150,000 \div 1.01 = \$148,514.85$$

$$2. \quad \$150,000 - \$148,514.85 = \$1,485.15$$

$$3. \quad \$1,485.15 \times 2/3 = \$989.11 = \text{amount of tax due}$$

$$1. \quad (2 \div 3) \times 0.01 = 0.00666 \text{ effective LOST rate}$$

(hours in LOST jurisdiction ÷ total hours) × LOST rate = effective LOST rate

$$2. \quad 1 + 0.00666 = 1.00666$$

1 + effective LOST rate

$$3. \quad \$150,000.00 \div 1.00666 = \$149,007.61$$

Gross receipts including LOST but not state tax ÷ (1 + effective LOST rate) = total sales

$$4. \quad \$149,007.61 \times 0.06 = \$8,940.46$$

Total sales × state tax rate = state tax amount

5.  $\$150,000.00 - 149,007.61 = \$992.39$   
Gross receipts including LOST but not state tax - total sales = LOST amount

6.  $\$8,940.46 + \$992.39 = \$9,932.85$   
State tax amount + LOST amount = total tax amount

7.  $\$149,007.61 + \$992.39 + \$8,940.46 = \$158,940.46$   
Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the “distance” method of apportionment set out in Examples A and C or the “time” method set out in B and D above without informing the department in advance of filing a sales tax return of its the licensee’s choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method, and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and ~~422B.8~~ 423B.5.

ITEM 15. Rescind rules **701—107.13(421,422B)** and **701—107.14(422B)**.

ITEM 16. Renumber rule **701—107.15(422B)** as **701—107.10(422B)**.

ITEM 17. Amend renumbered rule 701—107.10(422B) as follows:

**701—107.10(422B 423B) Application of payments.** Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and ~~service~~ services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received 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 ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and ~~service~~ services tax due for the given tax period in relation to combined total payment of sales and local option sales and ~~service~~ services tax actually received for that tax period.

This rule is intended to implement Iowa Code ~~Supplement~~ section ~~422B.10~~ 423B.7.

ITEM 18. Rescind rules **701—107.16(422B)** and **701—107.17(422B,422E)**.