

REVENUE DEPARTMENT[701]

Amended Notice of Intended Action

Proposing rule making related to remote sales and marketplace sales and providing an opportunity for public comment

The Revenue Department hereby proposes to adopt Chapter 215, “Remote Sales and Marketplace Sales,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.14A as amended by 2019 Iowa Acts, House File 779.

Purpose and Summary

The Department proposes to adopt the following new chapter of rules to implement sales tax collection requirements imposed on marketplace facilitators and remote sellers by 2018 Iowa Acts, Senate File 2417. These proposed rules provide information about how and when remote sellers and marketplace facilitators are required to register, collect, and remit sales tax in Iowa.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4292C**. The Department received several written comments as well as oral comments at the March 5 public hearing for **ARC 4292C**. Also, since publication of the Notice, the legislature made changes to Iowa Code section 423.14A through 2019 Iowa Acts, House File 779. The Department proposes amending the original Notice on this topic to address some of the comments received during the public comment period for **ARC 4292C** and to make adjustments in response to House File 779.

The proposed changes include the following:

- Revising the rule on coupons to clarify that coupons offered both by marketplace facilitators and remote sellers reduce the taxable amount of a sale.
- Clarifying that a marketplace seller that merely advertises a product on a marketplace is not selling or offering to sell that product on the marketplace.
- Removing reference to the 200-separate-transaction threshold that was removed from Iowa Code section 423.14A(3).
- Clarifying the obligations of a marketplace facilitator when a purchaser returns a product directly to a marketplace seller.
- Explaining that an exemption certificate that identifies a marketplace facilitator as the seller may be used by a purchaser for sales made or facilitated by the marketplace facilitator.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond the impact of the provisions of 2018 Iowa Acts, Senate File 2417, and 2019 Iowa Acts, House File 779, that it seeks to implement. Table 7 of the Legislative Services Agency Fiscal Note for Senate File 2417 estimated that collection on sales by “online sellers” and “online marketplaces” would increase General Fund revenues by \$27.6 million in fiscal year (FY) 2019, \$66.4 million in FY 2020, \$69.3 million in FY 2021, \$71.7 million in FY 2022, \$74.2 million in FY 2023, and \$76.5 million in FY 2024.

The elimination of the 200-separate-transaction threshold by 2019 Iowa Acts, House File 779, is estimated by the Legislative Services Agency to reduce General Fund revenues by \$0.9 million in FY 2020, \$1.0 million in FY 2021, \$1.1 million in FY 2022, \$1.3 million in FY 2023, and \$1.4 million in FY 2024.

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 July 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:

July 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 action is proposed:

Adopt the following **new** 701—Chapter 215:

CHAPTER 215
REMOTE SALES AND MARKETPLACE SALES

701—215.1(423) Definitions.

215.1(1) Incorporation of definitions. To the extent it is consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code sections 423.1 and 423.14A and rule 701—211.1(423).

215.1(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

“Gross revenue from sales” means all revenue from Iowa sales.

“Iowa sales” means the same as defined in Iowa Code section 423.14A(1)“a.” “Iowa sales” includes all retail sales, whether taxable or exempt, and other sales of tangible personal property, specified digital products, or services otherwise sold into Iowa or for delivery into Iowa, including wholesale or sale for resale. “Iowa sales” includes sales made through a marketplace.

“Marketplace” means any physical or electronic place, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property, or specified digital products, or where services are offered for sale into Iowa regardless of whether the tangible personal property, specified digital product, marketplace seller, or marketplace has a physical presence in Iowa.

“Physical presence in Iowa” means the activities described in Iowa Code section 423.1(48)“a”(1).

“Remote seller” means a retailer that does not have a physical presence in Iowa but that makes sales of tangible personal property, specified digital products, or services that are sourced to Iowa.

“Retailer” means the same as defined in Iowa Code section 423.1(47). “Retailer” includes a marketplace facilitator that meets or exceeds the sales threshold and includes a remote seller.

“Sales threshold” means the revenue level that triggers collection and remittance obligations for Iowa sales tax and local option tax as described in Iowa Code section 423.14A(3): \$100,000 or more in gross revenue from Iowa sales into Iowa in either the current or immediately prior calendar year.

701—215.2(423) Retailers with physical presence in Iowa.

215.2(1) Sales threshold inapplicable. The sales threshold does not apply to any seller, marketplace facilitator, or other retailer that has physical presence in Iowa. A seller, marketplace facilitator, or other retailer with physical presence in Iowa must collect and remit Iowa sales tax and any applicable local option sales tax pursuant to Iowa Code section 423.14 even if the sales threshold is not met.

215.2(2) Mixed marketplace and nonmarketplace sales. A retailer with physical presence in Iowa who makes both marketplace and nonmarketplace sales must do the following:

a. Collect Iowa sales tax and any applicable local option tax on any taxable sales on which the marketplace does not collect tax.

b. Report on its Iowa sales tax return its gross revenue from all Iowa sales, including any marketplace sales on which the marketplace facilitator collected Iowa sales tax and applicable local option tax, regardless of whether the sales threshold is met.

EXAMPLE: Seller X is an Iowa-based business, with property and personnel located in Iowa. Seller X has \$80,000 in gross revenue from Iowa sales. Seller X makes \$10,000 of gross revenue from Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax. The remaining \$70,000 in gross revenue comes from Iowa sales made at Seller X’s storefront in Iowa. Seller X must collect and remit Iowa sales tax and applicable local option sales tax on the \$70,000 in nonmarketplace sales. On its Iowa sales tax return, Seller X should report \$80,000 in gross revenue from sales. Seller X may take a deduction on its Iowa sales tax return of \$10,000 for sales on which the marketplace collected Iowa sales tax and applicable local option sales tax.

701—215.3(423) Remote sellers—registration and collection obligations.

215.3(1) Combined Iowa sales from all sources. Remote sellers must determine whether they meet the sales threshold based on the total of their Iowa sales through marketplaces combined with their nonmarketplace Iowa sales.

215.3(2) Remote sellers with Iowa sales solely through marketplaces. If a remote seller meets the sales threshold but only makes retail sales in Iowa through marketplaces, the remote seller’s registration

and collection obligations depend on whether all of the marketplace facilitators through which the remote seller makes Iowa sales are registered to collect Iowa sales tax and applicable local option tax.

a. Registered marketplace facilitators. If all the marketplace facilitators used by the remote seller to make taxable Iowa sales collect Iowa sales tax and applicable local option sales tax, the remote seller does not have to collect the tax. The marketplace facilitator will report and pay Iowa sales tax and applicable local option sales tax on a sales tax return filed by the marketplace facilitator.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X makes all of its Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax on sales. Seller X does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. The marketplace facilitator will report the Iowa sales tax and applicable local option sales tax on the marketplace facilitator's Iowa sales tax return.

b. Nonregistered marketplace facilitators. If a marketplace facilitator is not required to or fails to register and collect tax in Iowa, remote sellers who exceed the sales threshold must obtain an Iowa sales tax permit, collect Iowa sales tax and applicable local option sales tax, and file Iowa sales tax returns for sales made on that marketplace.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X has \$2,000 gross revenue from sales on Marketplace Y and \$198,000 in gross revenue from sales on Marketplace Z. Marketplace Y meets the sales threshold and is registered to collect and remit Iowa sales tax and applicable local option sales tax in Iowa. Marketplace Z, however, has very few, low-cost Iowa sales, and meets neither the gross revenue nor volume of sales threshold, and is therefore not required to and does not collect tax on Iowa sales. Seller X must collect Iowa sales tax and applicable local option sales tax on retail sales sourced to Iowa that are made on Marketplace Z.

215.3(3) Remote sellers making both marketplace and nonmarketplace sales. A remote seller that exceeds the sales threshold and makes nonmarketplace Iowa sales, such as through the remote seller's own website, must obtain an Iowa sales tax permit. The remote seller must report on its Iowa sales tax return its gross revenue from all Iowa sales. The remote seller would be able to deduct the amount of gross sales made through any marketplaces registered to collect tax in Iowa on the remote seller's sales tax return. A remote seller making Iowa sales through a marketplace operated by an unregistered marketplace facilitator must collect and remit Iowa sales tax and applicable local option sales tax on those sales.

701—215.4(423) Marketplace facilitators—registration and collection obligations. Marketplace facilitators that meet the sales threshold must collect and remit Iowa sales tax and applicable local option sales tax on all taxable sales made through their marketplace that are sourced to Iowa. Marketplace facilitators must collect Iowa sales tax on all taxable Iowa sales, regardless of the location or sales volume of the marketplace sellers who make sales on marketplace facilitator's marketplaces.

EXAMPLE: M is a marketplace facilitator that meets the sales threshold and therefore collects Iowa sales tax and applicable local option sales tax on Iowa sales facilitated through M's marketplace. Seller S lists soccer balls for sale on M's marketplace. A purchaser in Iowa buys a soccer ball listed by S on M's marketplace. The soccer ball is delivered to the purchaser's home address in Iowa. M must collect Iowa sales tax and applicable local option sales tax on the sale of the soccer ball. The outcome is the same regardless of whether S is located in Iowa and regardless of S's Iowa sales volume.

701—215.5(423) Advertising on a marketplace. A marketplace seller does not sell or offer to sell tangible personal property, a specified digital product, or a service on a marketplace when merely advertising that product on a marketplace.

701—215.6(423) Commencement of collection obligation and sales tax liability.

215.6(1) Commencement of collection obligation. If a remote seller or marketplace facilitator without physical presence in Iowa did not exceed the sales threshold for the prior year, and therefore does not collect sales tax in the current year, and exceeds the sales threshold in the current year, the remote seller or marketplace facilitator must collect Iowa sales tax and applicable local option sales tax

starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller or marketplace facilitator first exceeded the sales threshold. The remote seller or marketplace facilitator must collect tax through the end of the calendar year in which the sales threshold was met or exceeded as well as the entire next calendar year.

EXAMPLE: Company S, a remote seller, did not exceed the sales threshold in 2018. On September 15, 2019, S exceeds the sales threshold for the first time. S must register to collect Iowa sales tax and must begin collecting Iowa sales tax and applicable local option sales tax on November 1, 2019. S must continue to collect through at least December 31, 2020. S's sales volume in 2020 and later years will determine whether S must collect Iowa sales tax and applicable local option sales tax after December 31, 2020.

215.6(2) Commencement of sales tax liability. If a remote seller or marketplace facilitator without physical presence in Iowa exceeds the sales threshold as described in subrule 215.6(1), the remote seller or marketplace facilitator without physical presence in Iowa shall not be liable for any Iowa sales tax and applicable local option sales tax not collected beginning on January 1 of the current year through the day prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect the tax as described in subrule 215.6(1). Purchasers will be liable for any use tax that accrues prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 215.6(1).

215.6(3) Permit registration. If a remote seller or marketplace facilitator without physical presence in Iowa that makes taxable sales exceeds the sales threshold, the remote seller or marketplace facilitator without physical presence in Iowa must register for a sales tax permit under 701—Chapter 13 prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 215.6(1).

701—215.7(423) Retailers registered and collecting who fail to meet or exceed sales threshold. If a retailer is registered to collect Iowa sales tax and applicable local option sales tax and collects in year 1 and fails to meet or exceed the sales threshold in year 2, the retailer must still collect all applicable sales taxes in year 2. If the retailer does not meet or exceed the sales threshold at any point in year 2, the retailer is not required to collect and remit Iowa sales tax or applicable local option sales tax in year 3. However, if a retailer is registered to collect, the retailer must continue collecting regardless of the impact of the sales threshold. A retailer that falls under the sales threshold may either submit sales tax returns demonstrating it did not collect tax until a time in the future when the retailer meets or exceeds the sales threshold or cancel its sales tax permit if it wishes to cease collecting. If the retailer meets or exceeds the sales threshold at any point thereafter, the retailer would need to register again in accordance with 701—Chapter 13 and begin collecting in accordance with this chapter.

EXAMPLE: Company S, a remote seller, exceeds the sales threshold on June 25, 2019. S must collect Iowa sales tax and applicable local option sales tax beginning August 1, 2019, and must collect for all of 2020. S does not meet or exceed the sales threshold in 2020. S is not obligated to collect sales tax on January 1, 2021. S may cease collection and cancel its sales tax permit effective January 1, 2021.

701—215.8(423) Coupons; incorporation of rule 701—212.3(423). Coupons and other discounts offered by marketplace facilitators and remote sellers are retailer's discounts, which reduce the sales price and thus the taxable amount of a sale. The requirements of rule 701—212.3(423) shall apply to marketplace facilitators and remote sellers in the same manner that those requirements apply to retailers.

701—215.9(423) Customer returns marketplace purchase directly to marketplace seller.

215.9(1) If a marketplace facilitator collects Iowa sales tax and applicable local option sales tax on the sale and the customer returns the item directly to the marketplace seller, either the marketplace facilitator or marketplace seller shall refund the full price paid by the customer including all tax collected by the marketplace facilitator upon acknowledgement of receipt of the item by the marketplace seller.

215.9(2) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the

customer including all tax collected by the marketplace facilitator. The marketplace seller shall seek reimbursement of Iowa sales tax and applicable local option sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the returned Iowa sales tax and applicable local option sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the tax in conjunction with a return made directly to the marketplace seller. The marketplace facilitator may claim a credit for the return of Iowa sales tax and local option sales tax on its Iowa sales tax return.

215.9(3) Nothing in this rule requires a marketplace seller to accept a return as described in this rule. Nothing in this rule requires a marketplace facilitator to allow returns to be made directly to a marketplace seller.

701—215.10(423) Exempt and nontaxable sales.

215.10(1) *Exempt sales.* A retailer required to collect and remit Iowa sales tax and applicable local option sales tax in accordance with Iowa Code section 423.14A and this chapter is responsible for correctly applying exemptions for tangible personal property, specified digital products, and services. As a member of the streamlined sales tax governing board, the department maintains a taxability matrix to describe whether various items are taxable or exempt. See rule 701—240.6(423) for an explanation of the liability relief provided to retailers who rely on the taxability matrix in determining whether to collect tax on an item.

215.10(2) *Nontaxable sales.* A retailer, including an Iowa retailer with a physical presence in Iowa, a remote seller, or a marketplace facilitator, that makes or facilitates only nontaxable sales, such as sale for resale or wholesale transactions, is not required to register for a sales tax permit.

215.10(3) *Exemption certificates submitted to a marketplace facilitator.* An exemption certificate as described in rule 701—15.3(422,423) that identifies the marketplace facilitator as the seller may be used by the purchaser for sales made or facilitated by the marketplace facilitator.

701—215.11(423) Other taxes for marketplace sales and items not subject to sales/use tax. A marketplace facilitator is not obligated to collect tax on a product sold through a marketplace it operates that is not subject to Iowa sales and use tax.

EXAMPLE: A marketplace facilitator allows marketplace sellers to list for sale vehicles subject to registration under Iowa Code chapter 321, including the fee for new registration imposed in accordance with Iowa Code section 321.105A. Because the fee for new registration is not imposed under Iowa Code chapter 423, the marketplace facilitator is not obligated to collect the fee for new registration.

701—215.12(423) Administration; incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 shall apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—215.13(423) Filing returns; payment of tax; penalty and interest; incorporation of 701—Chapter 12. Except as otherwise stated in this chapter, the filing requirements of 701—Chapter 12 shall apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—215.14(423) Permits; incorporation of 701—Chapter 13. Except as otherwise stated in this chapter, the permit requirements of 701—Chapter 13 shall apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit Iowa sales tax and applicable local option sales tax under this chapter.

These rules are intended to implement Iowa Code section 423.14A.