

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to sourcing of taxable services

The Revenue Department hereby amends Chapter 26, “Sales and Use Tax on Services,” and Chapter 223, “Sourcing of Taxable Services, Tangible Personal Property, and Specified Digital Products,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted 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 423.15.

Purpose and Summary

In Item 2 of this rule making, the Department amends a rule relating to the sourcing of taxable services to provide an explanation and examples of how taxable services should be sourced. Item 1 of this rule making provides a cross reference to this sourcing rule in the rule regarding the service of photography in Chapter 26.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 3, 2019, as **ARC 4523C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on August 8, 2019.

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).

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).

Effective Date

This rule making will become effective on October 2, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new subrule 26.17(3):

26.17(3) Sourcing. For information about how various aspects of photography services may be sourced, see 701—subrule 223.2(1).

ITEM 2. Amend rule 701—223.2(423) 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 using the destination sourcing 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 result of 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.

223.2(1) Determining the "result" of a service. Determining the location where the result of a service is received by a purchaser requires a fact-based inquiry on a case-by-case basis.

EXAMPLE 1: Company Z is a photography business located in Mason City, Iowa. Company Z enters into an agreement with Customer Y, a resident of the state of Illinois, to take a photoshoot in Okoboji, Iowa. Company Z charges Customer Y \$2,000 for the photoshoot itself and \$1,000 for printed photos once they are finalized. Customer Y pays Company Z \$3,000 in advance for the photoshoot and photographs. The photoshoot takes place as planned in Okoboji, and three weeks later Company Z sends Customer Y a package containing the photographs to Customer Y's Illinois address.

The photoshoot is the result of Company Z's service, which occurs in Okoboji, Iowa—the location where the performance of the photoshoot begins. Company Z must therefore charge Iowa sales tax and any applicable local option tax on the \$2,000 charge for the photoshoot. The \$1,000 charge for the photographs is a sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$1,000 but may be responsible for collecting and remitting Illinois tax.

EXAMPLE 2: Same facts as in Example 1, except that Company Z charges Customer Y a one-time, flat \$3,000 charge without any itemization or breakdown of the cost. This \$3,000 charge represents the sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$3,000 but may be responsible for collecting and remitting Illinois tax.

223.2(1) 223.2(2) Subsequent use in Iowa. If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (See Iowa Code section 423.5.)

223.2(2) 223.2(3) Measurement of use tax due. If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (See Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to

use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

[Filed 8/8/19, effective 10/2/19]

[Published 8/28/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/28/19.