

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to exemption of sales and use tax for grain bins

The Revenue Department hereby amends Chapter 226, “Agricultural Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted 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 423.3 as amended by 2019 Iowa Acts, House File 779.

Purpose and Summary

During the 2019 Legislative Session, the General Assembly added a new exemption from sales and use tax: “The sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin.” The exemption defines a “grain bin” as “property that is vented and covered with corrugated metal or similar material, and that is primarily used to hold loose grain for drying or storage.”

Item 2 sets forth a general explanation of what materials will be taxable or exempt under the exemption and then provides a nonexhaustive list of items commonly used to construct a grain bin or sold in conjunction with a grain bin. The rule also explains how entities may claim the exemption. Item 1 amends a current rule to note that cement and concrete are exempt if used in accordance with the new rule in Item 2.

The Department solicited feedback on an initial draft of these proposed amendments with a wide variety of stakeholders, including grain bin manufacturers, retailers, contractors, and others interested in the exemption. The Department made several changes in response to these initial comments in the Notice of Intended Action.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 12, 2020, as **ARC 4915C**. A public hearing was held on March 3, 2020, at 9 a.m. at Room 430, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa. The hearing was attended by four people.

The Department also received written comments from three entities. In light of the comments received, the Department made several changes from the Notice, mainly to the subrule describing how taxpayers may claim the exemption. Notably, the Department added seven examples to provide taxpayers guidance on how to handle potential situations.

Several commenters requested that the Department make an additional change: to treat all sales of certain pieces of equipment as either taxable or exempt without regard to their use. The Department contemplated this change but felt it was not in line with the language of the statute providing the exemption and would have resulted in a deviation from other longstanding rules relating to construction activities. The Department determined it best for taxpayers relying on these rules to be consistent with its existing rules on similar subjects.

Adoption of Rule Making

This rule making was adopted by the Department on June 23, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond the impact of 2019 Iowa Acts, House File 779. The Legislative Services Agency’s fiscal note for House File 779 estimated a reduction in General Fund revenue of \$5.2 million in FY 2020, increasing to \$5.8 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).

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 August 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 226.19(4) as follows:

226.19(4) *Taxable even if used in agricultural production.*

additives	lubricants and fluids
air compressors	lumber*
air conditioners, unless a replacement part for exempt machinery	marking chalk
air tanks	mops
antifreeze	motor oils
axes	nails
barn cleaner, permanent	office supplies
baskets	oxygen
belt dressing	packing room supplies
bins, permanent^	paint and paint sprayers
brooms	pliers
buckets	posthole diggers, hand tool
building materials* and supplies	poultry brooders, permanent
burlap cleaners	poultry feeders, permanent
cattle feeders, permanent	poultry nests, permanent
cement#	pruning tools
chain saws	pumps for household or lawn use
cleaning brushes	radios, unless a replacement part for exempt machinery

cleansing agents and materials	refrigerators for home use
computers (including laptop), for personal use	repair tools
computer software	road maintenance equipment
construction tools	road scraper
concrete [#]	roofing
conveyors, permanent	sanders
cow ties, permanent	scrapers
ear tags	screwdrivers
fence, posts, wire, permanent	shingles
field toilets	shovels
fire prevention equipment	silos
freon	snow fence unless portable and used directly in dairy and livestock production
fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent
garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain bins and tanks, permanent ^{*^}	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders
lanterns	wheel barrows
light bulbs (for household use)	wrenches

*The buyer of building materials is responsible for paying sales tax or use tax on those materials, including materials to construct grain bins. The buyer is the person who pays the vendor. Contractors and sponsors that purchase building materials, other than grain bin materials, are responsible for paying sales tax to the vendor or supplier or accruing and remitting use tax on those materials.

^ Does not include grain bins used to hold loose grain for drying or storage.

Does not include cement or concrete used in pads or foundations under grain bins.

ITEM 2. Adopt the following **new** rule 701—226.20(423):

701—226.20(423) Grain bins. The Iowa Code exempts from sales and use tax the sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin. “Grain bin” is defined by Iowa Code section 423.3(16A). Grain bins are real property, and grain bin materials are building materials as that term is used in rule 701—219.3(423).

226.20(1) Property considered to be a grain bin or material used to construct a grain bin. In general, materials that are permanently attached to a grain bin and are required to hold loose grain for drying or storage are used to construct a grain bin and thus exempt from sales and use tax. This generally does not include equipment used to move loose grain into or out of a grain bin. The following lists of exempt or taxable property are not exhaustive.

- a. Exempt property:
 - (1) Grain bins, including hopper bins.

- (2) Corrugated metal or other similar material for the sides or roof of a grain bin.
 - (3) Steps, ladders, or staircases permanently attached to a grain bin.
 - (4) Structural support towers for a grain bin or for steps, ladders, or staircases providing access to a grain bin.
 - (5) Catwalks.
 - (6) Roof vents permanently attached to a grain bin.
 - (7) Grain bin flooring and floor supports.
 - (8) Concrete pad or foundation under a grain bin.
 - (9) Stirring equipment permanently attached in a grain bin.
 - (10) Fans permanently attached to a grain bin.
 - (11) Temperature sensors or temperature cables permanently attached in a grain bin.
 - (12) Spreaders permanently attached in a grain bin.
 - (13) Sweeps or augers permanently attached in a grain bin.
 - (14) Bolts and other builders' hardware permanently attached to a grain bin.
 - (15) Controls and devices to operate the above-listed property.
 - (16) Motors for the above-listed property.
 - (17) Replacement parts for the above-listed property.
- b.* Taxable property:
- (1) Bucket elevators.
 - (2) Distributors.
 - (3) Receiving stations, including drag conveyors and dump pits.
 - (4) Pneumatic or air systems.
 - (5) Conveyors, including chain conveyors, belt conveyors, and drag conveyors.
 - (6) Anchors, bin jacks, or other construction equipment used to assemble, construct, repair, or replace a grain bin or part of a grain bin.
 - (7) Samplers.
 - (8) Scales or weighers.
 - (9) Other items that remain tangible personal property and are not permanently attached to a grain bin.

226.20(2) *Primarily used to hold loose grain for drying or storage.* Property is deemed to be “primarily used to hold loose grain for drying or storage” if it is used more than 50 percent of the time to hold loose grain for drying or storage.

226.20(3) *Claiming the exemption.*

a. A contractor must provide an exemption certificate to its supplier when purchasing grain bins, grain bin materials, or grain bin replacement parts in order to purchase them free from sales tax. The contractor entering into a construction contract with a sponsor to erect a grain bin or entering into a contract to repair a grain bin must also obtain an exemption certificate from the sponsor of the construction/repair contract to avoid accruing and remitting use tax on the grain bins, grain bin materials, and the grain bin replacement parts that were purchased tax-free from the contractor's supplier.

b. The contractor must accrue consumer's use tax on the purchase price of the grain bins, grain bin materials, and grain bin replacement parts unless the contractor obtains an exemption certificate from the sponsor of the construction or repair contract. If the grain bin materials or replacement parts are not used in an exempt manner or if an exemption certificate is not obtained, it is the contractor's responsibility to accrue and remit use tax. The contractor must not charge sales tax to the sponsor of a construction or repair contract because those materials and replacement parts remain building materials used in the performance of a construction contract.

EXAMPLE 1: Company A is in the business of constructing and repairing grain bins. Company A regularly purchases grain bin materials and replacement parts from its supplier. Company A may provide to its supplier an exemption certificate pursuant to Iowa Code section 423.3(16A) so that the materials and replacement parts are purchased tax-free.

A person, also known as a sponsor, enters into a construction contract with Company A to construct a grain bin on the sponsor's property. The sponsor provides an exemption certificate to Company A

also pursuant to Iowa Code section 423.3(16A). Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials purchased from its supplier tax-free.

EXAMPLE 2: Assume the same facts as in Example 1, except that Company A does not provide an exemption certificate to its supplier when it purchases grain bin materials and replacement parts. The supplier must charge and collect from Company A sales tax on the full sales price of the grain bin materials and replacement parts.

The sponsor enters into a construction contract with Company A to erect a grain bin. Whether or not the sponsor provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A), Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials because Company A paid sales tax on the sale price of the grain bin materials when it purchased them from its supplier.

EXAMPLE 3: Assume the same facts as in Example 2. The sponsor enters into a construction contract with Company A to erect a grain bin and provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A). Company A may now file a refund claim with the department requesting that the department refund the sales tax that Company A paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. Alternatively, Company A may claim a credit on its sales tax return(s) equal to the amount of sales tax paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. The burden is on Company A to prove that the building materials for which the credit or refund is claimed were used in erecting a grain bin.

EXAMPLE 4: Assume the same facts as in Example 1, except that the sponsor does not provide an exemption certificate to Company A. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 5: Assume the same facts as in Example 1, except that the sponsor enters into a construction contract with Company A for the construction of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 6: Assume the same facts as in Example 1, except that the sponsor enters into a contract with Company A for the repair of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. When invoicing the sponsor, Company A must separately itemize the materials and the labor charges incurred in fulfilling this repair contract, and the sales price of the materials included on the invoice must include any mark-up. Company A is obligated to charge and collect sales tax on the materials and labor charges listed on the invoice.

EXAMPLE 7: Assume the same facts as in Example 1 except that, in addition to constructing the grain bin, the contractor provides and installs property, such as portable equipment, that remains tangible personal property after installation. As with the grain bin, grain bin materials, and grain bin replacement parts, the contractor purchases the portable equipment tax-free, not because it is exempt under this subrule, but because it is a purchase for resale. Unless the portable equipment qualifies for another exemption (such as in rule 701—226.1(423)), even if the contractor obtains an exemption certificate from the sponsor for the grain bin, grain bin materials, and replacement parts, the contractor must charge sales tax to the sponsor because the portable equipment remains tangible personal property and the contractor sells that equipment to the sponsor at retail.

This rule is intended to implement Iowa Code section 423.3.

[Filed 6/23/20, effective 8/19/20]

[Published 7/15/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/20.