

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to affiliated corporations acting as a unit

The Revenue Department hereby amends Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” and Chapter 213, “Miscellaneous Taxable Sales,” 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 423.1.

Purpose and Summary

In November 2019, the Department received a petition for a declaratory order, pursuant to Iowa Code section 17A.9 and rule 701—7.24(17A). The petition requested that the Department analyze facts under rule 701—213.24(423) relating to affiliated corporations acting as a unit. Upon review of the rule at issue, the Department determined that a change to its rules regarding affiliated corporations acting as a unit is appropriate.

Before Iowa’s conformity to the Streamlined Sales and Use Tax Agreement (Streamlined) in 2005, rule 701—18.32(422,423) was intended to implement Iowa Code section 422.42(12). Prior to 2005, Iowa Code section 422.42(12) defined “person” to include “any individual firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.”

In 2005, the Iowa Legislature adopted the Streamlined definition of “person” under current Iowa Code section 423.1(36), which no longer includes the “acting as a unit” language. Subsequently, the Department adopted new rules to reflect the changes brought about by the State’s participation in Streamlined. Included in those new rules is rule 701—213.24(423), which is very similar to 701—18.32(422,423). The Department should not have adopted the “acting as a unit” provisions in rule 701—213.24(423) because they no longer have meaning without the “acting as a unit” language in the “person” definition under Iowa Code section 423.1(36). The Department did not rescind or otherwise amend the pre-Streamlined rules at that time.

After reviewing the petition for a declaratory order, the Department has concluded that rescinding rule 701—18.32(422,423) and amending rule 701—213.24(423) are appropriate to improve accuracy and clarity of the Department’s rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 15, 2020, as **ARC 5077C**.

The Department received one written comment in response to **ARC 5077C**, signed by three groups. The written comment asserted the Legislature did not intend to require affiliates to charge each other sales tax and that the change to the Iowa Code definition of “person” was an “administrative convenience.” The Department met with one of the concerned groups, who suggested the Department either simply strike the Iowa Code references in the rule and maintain the rest of the rule language or rescind rule 701—213.24(423) in its entirety.

The Department considered but declined these suggested changes. Maintaining the language, as suggested, would not resolve the problem of having rule language that is not accurate or enforceable.

Rescinding the rule was a possible option, but doing so would create potential ambiguity regarding sales between affiliates, especially since other states mentioned in the written comment have statutory exemptions for such sales. Thus, the Department concluded keeping this rule in place as amended may benefit taxpayers by pointing out there is no such exemption in the Iowa Code.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 15, 2020.

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 November 11, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind and reserve rule **701—18.32(422,423)**.

ITEM 2. Amend rule 701—213.24(423) as follows:

701—213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

~~**213.24(1) In general.** The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent. The sales price of transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 423.1(32) and 423.1(46).~~

~~**213.24(2) Affiliated corporations acting as a unit.** If an affiliated corporation acts as an agent for another affiliated corporation in a transaction listed in 213.24(1), the corporations may be considered as acting as a unit. There may not be taxable transactions between the affiliates, but this does not create an exemption for the purchase of tangible personal property or taxable services.~~

~~EXAMPLE. Corporation A and Corporation B are affiliated corporations. Corporation A is in the business of negotiation, arbitration, and mediation. Corporation B runs a fleet of taxis. Corporation A acts as Corporation B's agent in negotiating a contract between B and an outside third party C for C to~~

~~do all of B's vehicle repair at a very favorable price. In spite of a bookkeeping entry listing a sale of the contract for repair from A to B, in securing the contract, the corporations have "acted as a unit," and the "sale" from A to B is not subject to Iowa tax. However, any payments from A to C or from B to C in return for C's performance of taxable vehicle repair would be subject to tax, and C must collect Iowa sales tax on the sales price of those services.~~

~~This rule should not be equated with the unitary business concept used in corporation income tax law.~~

~~This rule is intended to implement Iowa Code sections 423.1(32) and 423.1(46) section 423.1(50).~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/20.