

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to taxable and exempt sales
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” 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 section 423.3 as amended by 2020 Iowa Acts, House File 2641.

Purpose and Summary

Through 2020 Iowa Acts, House File 2641, the Legislature added language to an exemption from sales tax for purchases by certain government entities and instrumentalities of the government. The exemption, Iowa Code section 423.3(31), did not previously include reference to tribal governments. By function of federal law and treaties, purchases by tribal governments have always been exempt. However, the lack of reference to tribal governments in the Iowa Code created confusion for taxpayers. Thus, the Department suggested through its departmental bill that the Legislature add this reference to the exemption.

Following the codification of this language, the Department reviewed its existing rule implementing the exemption. In addition to proposing new language to mention tribal governments, the Department felt the rule needed some overall reorganization to improve clarity. The Department also proposes to replace references to sales tax being due on “gross receipts” with “sales price,” and has rearranged and modified some of the examples from the prior version of this rule. These proposed changes are not intended to impact the types of purchases that are exempt or taxable for the applicable government entities or instrumentalities.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The portion of 2020 Iowa Acts, House File 2641, being implemented by this rule making was not estimated to have a fiscal impact.

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 19, 2021. 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

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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:

Rescind rule 701—18.5(422,423) and adopt the following new rule in lieu thereof:

701—18.5(423) Sales to federal, state, county, municipal, or tribal government or the government’s agencies or instrumentalities.

18.5(1) Sales to government or agencies or instrumentalities.

a. A sale to a government or an agency or instrumentality of government occurs only if a government or an agency or instrumentality of government pursuant to a contract for sale, takes title or ownership to tangible personal property or a specified digital product, or receives an enumerated taxable service as a buyer from a seller.

b. No sale to a government or an agency or instrumentality of government occurs if a government or an agency or instrumentality of government pays some portion of the sales price of the sale of tangible personal property, a specified digital product, or a taxable service but title to and ownership of the tangible personal property or specified digital product are transferred to or a taxable service is received by another person as a result of the sale.

c. Independent contractors who deal with agencies, instrumentalities, or other entities of government do not, by virtue of their contracting with those entities, acquire immunity or exemption from taxation for themselves. Sales to these contractors are still subject to tax. See rule 701—19.12(422,423) for rules concerning construction contracts with designated exempt entities.

18.5(2) Sales by or to the federal government or its agencies or instrumentalities.

a. The sales price of the sale of tangible personal property, specified digital products, or enumerated taxable services made directly by or to the United States government or to recognized agencies, departments, or instrumentalities of the United States government shall not be subject to sales tax.

b. The sales price of retail sales made directly to patients, inmates, or employees of an institution or department of the United States government are taxable, as the sales are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

EXAMPLE 1: Patient B purchases a hospital bed from a drugstore. A percentage of Patient B's bill is paid by federal funds from Medicaid. Because Patient B, not the federal government, purchased the hospital bed, Iowa sales tax is due.

EXAMPLE 2: Employee C is a federal government employee who eats at a restaurant while on government business. Employee C pays for the meal with a credit card. The credit card was issued in Employee C's name, and the cost of the meal is billed to Employee C, who pays it. The federal government later reimburses Employee C the entire cost of the meal. Because Employee C, not the federal government, purchased the meal, Iowa sales tax is due.

EXAMPLE 3: Similar to Example 2, Employee D is a federal government employee who eats at a restaurant while on government business. Employee D uses a credit card to pay for the meal. However, the credit card is issued in Employee D's name, but the cost of the meal is billed to the federal government, which pays that cost. Here, the federal government is the purchaser of the meal on Employee D's behalf, and the sale is exempt from tax.

18.5(3) *Sales to the state of Iowa or its agencies or instrumentalities.* The sales price of sales to the state of Iowa or agencies, departments, or instrumentalities of the state of Iowa are not taxable when used for public purposes.

EXAMPLE 1: City X, an exempt instrumentality, issues a bond to finance the construction of a school. Corporation Y purchases the bond but is not involved in the project in any other way. Since City X does not enjoy the benefits of earnings of the school, the exemption provided to the city is applicable.

EXAMPLE 2: Corporation Z, an instrumentality of the federal government which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. These purchases are subject to tax because the profits of the corporation are distributed to the corporation's stockholders.

18.5(4) *Sales to a tribal government and its agencies or instrumentalities.* The sales price of tangible personal property, specified digital products, or enumerated taxable services furnished to a tribal government as defined in Iowa Code section 216A.161, or an agency or instrumentality of tribal government, shall not be subject to tax when used for public purposes.

18.5(5) *Sales by a municipal utility.*

a. The sales price of tangible personal property, specified digital products, or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public shall be subject to tax.

b. Sewage service or solid waste collection and disposal service provided to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall also be subject to tax. See rules 701—26.71(423) and 701—26.72(423) for more information.

This rule is intended to implement Iowa Code section 423.3(31).