

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to solar energy system tax credit**

The Revenue Department hereby amends Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 422.11L and 422.68.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 422.11L, 422.33 and 422.60.

*Purpose and Summary*

This rule making makes a number of changes to the Department’s rules on the Iowa solar energy system tax credit in rules 701—42.48(422), 701—52.44(422), and 701—58.22(422). These changes can generally be separated into two categories. The first category of changes includes updates that reflect current law, improve clarity and readability, and provide additional guidance on the administration of certain tax credit issues. The second category of changes revises the criteria used to determine whether a solar energy system constitutes a “separate and distinct solar installation” and therefore qualifies for the Iowa solar energy system tax credit. These amendments include:

- Updates to language describing the relationship between the Iowa solar energy system tax credit, the federal residential energy efficiency property credit, and the federal energy credit, including federal definitions and terms relevant to the Iowa tax credit.
- A table describing the relevant Iowa tax credit rates based on the applicable solar property involved, the calendar year in which construction begins, and the calendar year in which the property is placed in service.
- A description of the Department’s treatment of solar installations that are used for both residential and business purposes. In such instances, both tax credit award limitations apply and are calculated separately based on the proportion of the installation used for business purposes and for residential purposes.
- A description of the Department’s treatment of business property solar installations that receive an Iowa tax credit and are later subject to a federal tax credit recomputation. Because the Iowa tax credit is a percentage of the applicable federal tax credit, recomputation of the Iowa tax credit is also required.
  - Updates to the information required with an Iowa tax credit application.
  - Additional information relating to the effect of the Iowa tax credit expiration on the waitlist.

The Iowa Code calculates the Iowa tax credit in part as a percentage of applicable federal tax credits and provides that the approval of Iowa tax credit applications is contingent upon the availability of tax credits in that particular year. Likewise, the Department’s current rules provide that after the final year the federal tax credit is available, no applications remaining on the waitlist will be carried over to the next year. This rule making further describes this tax credit limitation for both residential and business solar tax credit applications. Because the federal residential solar tax credit expires and is unavailable for Iowa purposes for installations completed after December 31, 2021, any Iowa residential solar tax credit application that does not receive a tax credit award by the time the 2021 aggregate award limitation is met shall expire. Because the federal business solar tax credit does not expire for Iowa purposes, and is available in any future year if construction on the installation begins prior to January 1, 2022, any

Iowa business solar tax credit application that does not receive a tax credit award by the time the annual aggregate award limitation is met shall be carried over on the waitlist to future years and will be eligible to receive a tax credit award in a future year.

- A revision to criteria used to determine whether an installation is considered a “separate and distinct installation” from other installations that have received an Iowa solar energy system tax credit, and thus is eligible for an additional Iowa tax credit. By law, the Department is responsible for establishing the criteria by rule for what constitutes a separate and distinct installation. The Department’s current rule and interpretation of that rule require only that the solar installation have a separate utility meter. Based on scenarios that have come up in the administration of the credit, the Department has concluded that the presence or absence of a separate utility meter is not, by itself, the best indicator for whether solar property is separate and distinct from another solar installation. Relying on that single criterion has the potential to produce inequitable results between similarly situated taxpayers, and taxpayers have various reasons for installing or not installing a utility meter with respect to solar property. This rule making creates a multifactor test in lieu of that single-factor test. Under revised rule 701—42.48(422), the Department will consider the following factors:

- First, the Department will evaluate whether the installation is categorized as a repair or maintenance of another installation. Repairs and maintenance do not qualify for the Iowa tax credit.
- Second, the Department will consider whether the solar property is a replacement installation. A replacement installation may qualify for the Iowa tax credit as described in the rule.
- Finally, if the solar property does not fall into either of those categories, the Department will evaluate whether the solar installation can be considered independent of other solar installations based primarily on a review of the buildings or structures being powered by the solar installation (referred to as “electrical generation purpose” in the revised rule). Solar installations that power similar buildings or structures will be evaluated differently than those that do not power similar buildings or structures. The rule contains an exception that allows solar installations that power similar buildings or structures to nonetheless qualify for the Iowa credit if the taxpayer can demonstrate a substantial increase in electricity demand as defined in the rule. If a determination cannot be made by the Department by only reviewing the electrical generation purpose of the solar installation, the rule includes a nonexhaustive list of other criteria that may be considered by the Department, including but not limited to location, billing, utility metering, payment terms, contract terms, and timing of the installation or application.

The revised rule contains a safe harbor for solar installations that begin construction prior to June 1, 2021, which allows a taxpayer to rely on the prior single-factor separate utility meter test in determining whether that solar installation is separate and distinct under Iowa law.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5470C**. The Department received one request for a public hearing. A public hearing was held via conference call on March 16, 2021, at 10 a.m. No one attended the public hearing.

The Department received two comments on the proposed amendments. The first comment expressed a general sentiment that the rules should not be amended because it would add complexity to the administration of the tax credit.

The second set of comments, received jointly from four organizations, proposed changes to the provisions for mixed-use solar installations in paragraph 42.48(2)“c” and the provisions for the waitlist in paragraph 42.48(4)“d.” First, the commenters suggested that a taxpayer who installs a mixed-use (residential and business) solar installation should be permitted to establish the proper residential use and business use proportions using any reasonable method, and suggested striking language stating that the taxpayer bears the burden to prove the proper proportions and that the residential credit cap is the default if the taxpayer fails to provide adequate evidence of business use to the Department. The Department finds it suitable for a taxpayer to establish the applicable proportions using any reasonable method, and has incorporated that standard into the adopted rules, but the Department did not adopt

the other requested changes. Second, the commenters requested, but the Department did not adopt, language that would impose additional waitlist publication requirements on the Department.

The provisions relating to mixed-use solar installations in paragraph 42.48(2)"c" have been revised to permit a taxpayer to establish the business and residential use proportions applying to the solar installation using any reasonable method, but the burden is on the taxpayer to prove the proper proportions. Example 1 and Example 2 have also been modified to reflect this change. The proposed language published in the Notice made no mention of the manner in which the proportions must be established, and provided only that the burden is on the taxpayer to prove the proper proportions.

Finally, nonsubstantive technical corrections have been made in these adopted rules. The adopted rules remove an unnecessary comma in paragraph 42.48(5)"b"(1), add the word "a" missing in Example 11, remove outdated Iowa Acts references in the implementation language at the end of rule 701—42.48(422), and restore the word "is" that was inadvertently stricken in rule 701—58.22(422).

#### *Adoption of Rule Making*

This rule making was adopted by the Department on March 31, 2021.

#### *Fiscal Impact*

These amendments have no fiscal impact beyond that of the legislation they are intended to implement.

#### *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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—42.48(422) as follows:

**701—42.48(422) Solar energy system tax credit.** ~~For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for both residential property and business property located in Iowa as provided in Iowa Code section 422.11L and this rule. The solar energy system must be installed on or after January 1, 2012, to be eligible for the credit.~~

**42.48(1)** ~~Property eligible for the tax credit.~~ The following property located in Iowa is eligible for the tax credit:

*a.* ~~Qualified solar water heating property described in Section 25D(d)(1) of the Internal Revenue Code.~~

*b.* ~~Qualified solar energy electric property described in Section 25D(d)(2) of the Internal Revenue Code.~~

~~e. Equipment which uses solar energy to generate electricity, to heat or cool (or to provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purposes of heating a swimming pool) and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(i) of the Internal Revenue Code.~~

~~d. Equipment which uses solar energy to illuminate the inside of a structure using fiber optic distributed sunlight and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code.~~

**42.48(2) 42.48(1) Relationship between the Iowa and federal credits.** As stated in subrules 42.48(3) to 42.48(5) below, the

*a.* The Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also qualify for and claim the corresponding federal credit. Availability of the Iowa credit for a specific type of installation in a given year is dependent upon availability of the federal credit for that type of installation.

*b.* The Iowa credit is ~~coupled~~ conforms with the Internal Revenue Code as amended to and including January 1, 2016. The term "Internal Revenue Code" as used in this rule refers to the Internal Revenue Code as it existed on January 1, 2016. See Iowa Code section 422.11L(6); see also Public Law No. 114-113, Div. P, Title III, §§ 302, 303, 304, and Div. Q, Title I, § 187.

**42.48(3) Calculation of credit for systems installed during tax years beginning on or after January 1, 2012, but before January 1, 2014.** The credit is equal to the sum of the following federal tax credits:

*a.* Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code.

*b.* Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code.

*c.* Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

*d.* Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3) "a" and "b" cannot exceed \$3,000 for a tax year. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3) "c" and "d" cannot exceed \$15,000 for a tax year.

**42.48(4) Calculation of credit for systems installed during tax years beginning on or after January 1, 2014, and installed before January 1, 2016.** The credit is equal to the sum of the following federal tax credits:

*a.* Sixty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code.

*b.* Sixty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code.

*c.* Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

*d.* Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(4) "a" and "b" cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(4) "c" and "d" cannot exceed \$20,000 per separate and distinct installation. "Separate and distinct installation" is described in subrule 42.48(7).

**42.48(5) 42.48(2) Calculation of the credit for systems installed on or after January 1, 2016 — per installation award limitation.**

*a.* The credit is equal to the sum of the following federal tax credits for property located in Iowa:

*a. (1)* Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code. This federal credit equals an applicable percentage of qualified solar energy electric property expenditures described in Section 25D(d)(2) of the Internal Revenue Code for residential use. This credit is set to expire not available for Iowa purposes for any qualified solar energy

electric property placed in service after December 31, 2021, in accordance with Public Law No. 114-113  
Div. P, Title III, § 304.

b. (2) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code. This federal credit equals an applicable percentage of the qualified solar water heating property expenditures described in Section 25D(d)(1) of the Internal Revenue Code for residential use. This credit is set to expire not available for Iowa purposes for any qualified solar water heating property placed in service after December 31, 2021, in accordance with Public Law No. 114-113  
Div. P, Title III, § 304.

e. (3) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property equipment described in Section 48(a)(3)(A)(i) of the Internal Revenue Code that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purpose of heating a swimming pool), for business use. This credit applies to is not available for Iowa purposes for any qualified property the construction of which begins before on or after January 1, 2022, in accordance with Public Law No. 114-113 Div. P, Title III, § 303.

d. (4) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, for business use. This credit is set to expire not available for Iowa purposes for any qualified property placed in service after December 31, 2016, in accordance with Public Law No. 114-113 Div. Q, Title I, § 187.

| Iowa Solar Energy System Tax Credit Rates for Installations On or After January 1, 2016,* Based on 50% of Applicable Federal Rate Under Sections 25D and 48 of the Internal Revenue Code in Effect on January 1, 2016 |                                   |  |                      |
|---|-----------------------------------|--|----------------------|
| Applicable Property   | Calendar Year Construction Begins | Calendar Year Property Placed in Service | Iowa Tax Credit Rate |
| <u>Qualified Residential Solar Electric Property Under Section 25D(a)(1) of the Internal Revenue Code</u>   | <u>N/A</u>                        | <u>2016-2019</u>                         | <u>15%</u>           |
|   | <u>N/A</u>                        | <u>2020</u>                              | <u>13%</u>           |
|   | <u>N/A</u>                        | <u>2021</u>                              | <u>11%</u>           |
|   | <u>N/A</u>                        | <u>2022 or later</u>                     | <u>0%</u>            |
| <u>Qualified Residential Solar Water Heating Property Under Section 25D(a)(2) of the Internal Revenue Code</u>  | <u>N/A</u>                        | <u>2016-2019</u>                         | <u>15%</u>           |
|   | <u>N/A</u>                        | <u>2020</u>                              | <u>13%</u>           |
|   | <u>N/A</u>                        | <u>2021</u>                              | <u>11%</u>           |
|   | <u>N/A</u>                        | <u>2022 or later</u>                     | <u>0%</u>            |
| <u>Qualified Business Energy Property (electric, heat/cool, solar process heat) Under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code</u>   | <u>2016-2019</u>                  | <u>2016-2023</u>                         | <u>15%</u>           |
|   |                                   | <u>2024 or later</u>                     | <u>5%</u>            |
|   | <u>2020</u>                       | <u>2020-2023</u>                         | <u>13%</u>           |
|   |                                   | <u>2024 or later</u>                     | <u>5%</u>            |
|   | <u>2021</u>                       | <u>2021-2023</u>                         | <u>11%</u>           |
|   |                                   | <u>2024 or later</u>                     | <u>5%</u>            |
|   | <u>2022 or later</u>              | <u>2022 or later</u>                     | <u>0%</u>            |
| <u>Qualified Business Energy Property (fiber-optic solar illumination) Under Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code</u>   | <u>N/A</u>                        | <u>2016</u>                              | <u>15%</u>           |
|   | <u>N/A</u>                        | <u>2017 or later</u>                     | <u>0%</u>            |

\*For a description of Iowa tax credit rates for installations placed in service prior to January 1, 2016, consult the prior versions of this rule.

b. A solar installation must be placed in service to be eligible for the tax credit. In determining whether this requirement is met, the term “placed in service” has the same meaning as used for purposes of Section 25D or 48 of the Internal Revenue Code, as applicable. The date a taxpayer begins construction of a solar installation for purposes of Section 48 of the Internal Revenue Code shall be the same date the taxpayer begins construction for Iowa purposes.

c. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(5) “*a*” and “*b*” subparagraphs 42.48(2) “*a*”(1) and 42.48(2) “*a*”(2) cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(5) “*c*” and “*d*” subparagraphs 42.48(2) “*a*”(3) and 42.48(2) “*a*”(4) cannot exceed \$20,000 per separate and distinct installation. When a separate and distinct installation is used for both residential and business purposes, both award limitations apply and are calculated separately based on the proportion of the installation used for business purposes and for residential purposes. The taxpayer may use any reasonable method to establish the business and residential proportions, but the burden is on the taxpayer to prove the proper proportions. If the taxpayer does not provide adequate evidence to prove that the amounts of the business and residential proportions and the method for determining those proportions are reasonable, and if the department is unable to determine reasonable proportions from the information provided by the taxpayer, the entire installation shall be deemed used for residential purposes. The term “separate and distinct installation” is described in subrule 42.48(7) 42.48(5).

EXAMPLE 1: Taxpayer A is a farmer who installs solar energy property during 2020 that provides power to two farm buildings and A’s residence. Taxpayer A submits one application for the Iowa solar energy system tax credit showing \$100,000 of total eligible expenditures. Taxpayer A provides evidence to the department that adequately explains A’s method of allocating the solar energy system’s total usage between business use and personal use, and shows that 40 percent of the solar energy property is used for residential purposes and 60 percent is used for farm business purposes. The department determines the amounts and the method for determining those proportions to be reasonable and therefore considers the taxpayer to have submitted a tax credit application requesting both a residential solar energy system tax credit and a business solar energy system tax credit. The residential tax credit request includes \$40,000 ( $\$100,000 \times 40\%$ ) of eligible expenditures, subject to the \$5,000 tax credit cap. Therefore, A is eligible for a residential tax credit of \$5,000 ( $\$40,000 \times 13\% \text{ Iowa credit rate} = \$5,200$ , less \$200 in excess of cap). The business tax credit request includes \$60,000 ( $\$100,000 \times 60\%$ ) of eligible expenditures, subject to the \$20,000 tax credit cap. Therefore, A is eligible for a business tax credit of \$7,800 ( $\$60,000 \times 13\% \text{ Iowa credit rate}$ ). Taxpayer A receives a total Iowa tax credit of \$12,800 ( $\$5,000 + \$7,800$ ). Although A submitted one tax credit application in this situation, the resulting tax credit amount would have been the same if A had instead submitted two separate tax credit applications: one residential application with \$40,000 of eligible expenditures and one business application with \$60,000 of eligible expenditures.

EXAMPLE 2: Same facts as Example 1, except that taxpayer A does not submit adequate evidence to the department supporting a reasonable method of determining the proportion of the solar energy property used for residential and business purposes, and the department is unable to determine reasonable proportions from the information provided by A. The department deems the entire installation used for residential purposes, subject to the \$5,000 tax credit cap. Therefore, A receives a total Iowa tax credit of \$5,000 ( $\$100,000 \times 13\% \text{ Iowa credit rate} = \$13,000$ , less \$8,000 in excess of cap).

d. Recomputation of federal credit.

(1) Because the Iowa credit is a percentage of the applicable federal credit, when the federal credit under Section 48 of the Internal Revenue Code is recomputed under 26 CFR §1.47-1, the Iowa credit amount must also be recomputed and reduced by the same percentage that the federal credit was reduced. The federal credit recomputation is required on the federal Form 4255, Recapture of Investment Credit.

(2) In the year of the recomputation, if the amount of the Iowa credit previously claimed is less than the recomputed Iowa credit amount, the taxpayer must reduce any remaining available carryforward amount to reflect the Iowa credit carryforward remaining after the recomputation.

(3) If the amount of the Iowa credit previously claimed is more than the recomputed Iowa credit amount, the taxpayer must include the amount that was overclaimed in prior tax years as a negative credit amount on the IA 148, Iowa Tax Credit Schedule, and any remaining unused credit carryforward

amount expires immediately. The negative credit amount represents the overclaimed Iowa credit and will be netted against the taxpayer's other nonrefundable tax credits on the IA 148, Iowa Tax Credit Schedule, if any. After applying the negative credit amount against other available nonrefundable credits, if the taxpayer's net total nonrefundable credits for the year is a negative amount, that negative amount must be entered on the appropriate line of the taxpayer's income tax return for reporting nonrefundable Iowa credits from the IA 148, Iowa Tax Credit Schedule, and will increase the taxpayer's tax liability.

**42.48(6) 42.48(3) Tax credit award program limitations.** The following program limitations apply:

*a. Aggregate tax credit award limit.* No more than \$5 million of tax credits per year will be issued for calendar years beginning on or after January 1, 2015. The annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax and in rule 701—58.22(422) for franchise tax.

*b. Allocation for residential installations.* Beginning with tax year 2014, at least \$1 million of the annual tax credit allocation cap for each tax year is reserved for residential installations qualifying under Section 25D of the Internal Revenue Code. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations qualifying under Section 48 of the Internal Revenue Code.

*c. Rollover of unallocated credits.* Beginning with calendar year 2014, if the annual tax credit allocation cap is not reached, the remaining amount below the cap will be allowed to be carried forward to shall be made available for the following tax year and shall not count toward the in addition to, and cumulated with, the cap for that year.

**42.48(7) 42.48(4) How to apply for the credit.** Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit may shall be submitted through the Tax Credit Award, Claim, and Transfer Administration System (CACTAS) tax credit submission system, which applicants may access through the department's website.

*a. Separate and distinct installation requirement.* A taxpayer may apply for one tax credit for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. In order for an installation to be considered a separate and distinct solar installation, both of the following factors must be met:

(1) Each installation must be eligible for the federal residential energy property credit or the federal energy credit as provided in subrule 42.48(1).

(2) Each installation must have separate metering.

*b. a. Application deadline.* For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

*e. b. Contents of the application.* The application must contain the following information:

- (1) Name, address, and federal identification number of the taxpayer.
- (2) Date of installation of the solar energy system. This is the same as the date the installation was placed in service by the taxpayer.
- (3) The kilowatt capacity of the solar energy system.
- (4) Copies of invoices or other documents showing the cost of the solar energy system.
- (5) Amount of federal income tax credit claimed for the solar energy system.

(6) Amount of Iowa tax credit requested.

(7) All applicants must provide a completion sheet from a local utility company or similar documentation verifying that installation of the system has been completed. For nonresidential installations, the completion sheet must indicate the date the installation was placed in service. If a completion sheet from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) ~~For leased solar energy systems where the lessor is the applicant, the lessor should also provide a copy of the solar energy system lease that indicates the property that is the subject of the lease and the parties to the lease agreement. If the lessor A copy of any signed agreement made regarding the solar energy system that verifies the applicant is a qualified applicant. This includes, but is not limited to, lease agreements. When an applicant is entitled to the Iowa solar energy system tax credit for a leased solar energy system, the lessee other party to the lease will not be entitled to such a credit for the same leased solar energy system.~~

(9) For nonresidential installations, the date on which construction began.

(10) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

c. *Previously claimed expenditures disallowed.* An applicant may not include on an application any expenditure for which the taxpayer previously received, or was denied, a tax credit award or any expenditure that was part of an approved separate and distinct installation but was disallowed due to exceeding the maximum Iowa tax credit amount.

d. *Waitlist.* If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. ~~The applications will be prioritized based on the date the department received the applications and shall first be funded in the order listed on the waitlist. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist.~~ With the exception of the extension described in subparagraphs 42.48(7) "b"(1) and (2) 42.48(4) "a"(1) and 42.48(4) "a"(2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. This tax credit limitation shall apply as follows:

(1) Residential property tax credit claims. The federal credits related to residential property under Sections 25D(a)(1) and 25D(a)(2) of the Internal Revenue Code expire and are unavailable for Iowa tax purposes for installations completed on or after January 1, 2022. Therefore, any residential tax credit request related to an installation completed prior to January 1, 2022, that does not receive a tax credit award by the time the 2021 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(2) Business property tax credit claims. The federal credit related to business property under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code does not expire for Iowa tax purposes. It is available for installations that begin construction prior to January 1, 2022, in any future tax year the installation is placed in service. Therefore, any business tax credit request related to an installation that begins construction prior to January 1, 2022, but that does not receive a tax credit award by the time the annual aggregate award limitation is met will not expire and will be eligible to be carried over on the waitlist to future years, and receive a tax credit award in a future year, provided the authorization to approve and issue tax credits under Iowa Code section 422.11L(4) "a" is not repealed.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval

of a tax credit application pursuant to subrule 42.48(7) this rule in a future year is contingent upon the availability of tax credits in that particular year.

e. *Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

f. *Claiming the tax credit.* The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the solar energy system tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

g. *Refundability Nonrefundable.* Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. *Carryforward.* Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. *Transferability Nontransferable.* The credit may not be transferred to any other person.

**42.48(5) Separate and distinct installation requirement.** Only one tax credit may be awarded and claimed for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. For purposes of this subrule, unless the context otherwise requires, use of the term "installation" or "solar installation" refers to the physical equipment that generates electricity using solar energy in a manner that qualifies that equipment for a tax credit. In order for an installation that otherwise meets the requirements of Iowa Code section 422.11L and this rule to be considered a separate and distinct solar installation, both of the factors in paragraphs 42.48(5) "a" and "b" must be met. This determination is made by the department and requires a review of the current application received by the department and all prior applications received by the department from any taxpayer. When determining whether a solar installation is separate and distinct from other solar installations, the department will consider the totality of the facts and circumstances surrounding the solar installations. The taxpayer bears the burden of showing that an installation qualifies as separate and distinct. For a safe harbor rule relating to solar installations that begin construction prior to June 1, 2021, see paragraph 42.48(5) "c."

a. A repair or maintenance shall not constitute a solar installation. If the installed equipment repairs or otherwise maintains the working order of another solar installation or part of another solar installation, it will not be considered separate and distinct from that other solar installation, even if the installed equipment results in increased production capacity because of its superior quality, performance, or efficiency, or other similar reason. Evidence that part of the other solar installation was removed or replaced at or around the time the equipment was installed is a strong indication that the equipment is a repair or maintenance, but it is not required for such a determination.

EXAMPLE 3: Taxpayer B applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer B's workshop. Two years after that solar installation is placed in service, the solar inverter malfunctions. Taxpayer B purchases and installs a new solar inverter, which keeps the solar installation in working order. At the same time, B also replaces several functioning solar panels on the solar installation with new, higher quality panels that increase the solar installation's production capacity. Taxpayer B submits a second application for the costs of the solar inverter and the solar panels. These costs are considered a repair or maintenance and do not qualify as separate and distinct from the prior installation. Therefore, they do not qualify for the Iowa solar tax credit. This is the result even if the costs qualify for the federal tax credit and even though the solar panels improve the productivity of the solar installation.

b. The solar installation must be a replacement installation or an independent installation.

(1) *Replacement installation.* When previous solar installations have been completely decommissioned, whether from disposal by the applicant or casualty loss or theft, the new solar installation may be considered a replacement installation of the decommissioned solar installation. A solar installation that ceases operation but that has not been physically removed and discarded by a person is not decommissioned unless it cannot operate and is incapable of being repaired to working order. A solar installation that merely changes location or ownership has not been decommissioned and thus may not qualify as a replacement installation. Expenditures that are subject to an insurance reimbursement do not qualify for the solar energy system tax credit.

EXAMPLE 4: Taxpayer C applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer C's business. One year after that solar installation is placed in service, it is destroyed beyond repair by a severe storm. Taxpayer C's insurance policy does not cover damage to a solar installation. Taxpayer C purchases and places in service another solar installation that powers taxpayer C's business and timely applies for the Iowa solar energy system tax credit. Taxpayer C's subsequent installation may be eligible for the Iowa solar energy system installation credit as a replacement installation.

(2) Independent installation. An independent installation is one that has a sufficiently remote association with other solar installations that received the Iowa solar energy system tax credit such that it can be considered independent from those other solar installations. When determining whether a particular solar installation qualifies as an independent installation, the department will first consider the electrical generation purpose of the relevant solar installations, as described in numbered paragraph 42.48(5) "b "(2)"1" below. Only if the department finds that it cannot make a determination from that criteria alone will the department consider other criteria. A nonexhaustive list of other criteria that may be considered by the department is provided in numbered paragraph 42.48(5) "b "(2)"2" below.

1. Electrical generation purpose. The department will review the electrical generation purpose of each solar installation. As described below, this involves a review of the building(s) or structure(s) being powered by each solar installation. When two or more solar installations have the same electrical generation purpose, they are not independent installations. When two or more solar installations have different electrical generation purposes, this is an indication that they may be independent installations. With respect only to a multiple housing cooperative under Iowa Code chapter 499A or a horizontal property regime under Iowa Code chapter 499B, each apartment shall constitute a building or structure, and each cooperative or regime owner's proportionate share of qualifying expenses incurred by the cooperative or regime shall constitute a solar installation paid by the cooperative or regime owner.

• Same building(s) or structure(s). If the applied-for solar installation will power buildings or structures that are also being powered by another solar installation, or that were being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, then the installations have the same electrical generation purpose. However, adequate proof from the taxpayer of a substantial increase in electricity demand is evidence tending to indicate that the solar installations do not have the same electrical generation purpose. A "substantial increase in electricity demand" exists when the sum of the average monthly electricity consumption of each building or structure powered by the applied-for solar installation for the 12-month period before the applied-for solar installation is placed in service is at least 50 percent greater than the sum of the average monthly electricity consumption of each building or structure powered by the other solar installation for the 12-month period before the other solar installation was placed in service. Average electricity consumption shall be measured in kilowatt hours. With respect to the other solar installation, if any applicable building or structure was not in service for a period of 12 months before the other solar installation was placed in service, the average monthly electricity consumption for that building or structure shall be the average electricity consumption for the first 12 months the building or structure was in service. With respect to the applied-for solar installation, the calculation of the average monthly electricity consumption for any building or structure that was not placed in service prior to the other solar installation shall be calculated using a denominator of 12 even if that building or structure was not in service for a period of 12 months before the applied-for solar installation was placed in service. The reason for the increased electricity consumption shall not be relevant in determining if a substantial increase in electricity demand exists.

EXAMPLE 5: Taxpayer D is awarded a solar energy system tax credit for a solar installation that provides power to D's home. Three years later, D installs a second solar installation that also provides power to D's home. Absent additional information from D that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first installation because they both provide power to D's home. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 6: Taxpayer E owns an apartment building with ten apartment units. In 2021, taxpayer E installs solar energy business property with a cost of \$300,000 that will power the apartment building. Taxpayer E submits solar tax credit applications for ten different solar installations, one for each unit within the apartment building. Each application claims \$30,000 in qualifying costs and requests an Iowa solar credit of \$3,300 ( $\$30,000 \times 11\%$ ) for business property, for a sum total of \$33,000 in tax credits. Because the solar installations claimed on all ten applications provide power to the same apartment building, they all have the same electrical generation purpose. Therefore, only one of the solar installations could qualify for the tax credit as an independent installation, subject to the \$20,000 per-installation tax credit cap. The other nine installations would all fail to qualify as independent installations. The result is the same whether or not the apartment units have separate utility meters. See Example 10 for a different result if the building were organized as a multiple housing cooperative or horizontal property regime.

EXAMPLE 7: Taxpayer F, a machinist, is awarded a solar energy system tax credit for a solar installation that provides power to F's machine shop. Several years later, F installs a second solar installation that will provide power to F's machine shop but also to F's office building. Taxpayer F submits a complete and timely application for the solar energy system tax credit. Absent additional information from F that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first solar installation because they both provide power to F's machine shop. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 8: Assume the same facts as Example 7, except that taxpayer F provides additional information to the department regarding the electricity consumption of F's machine shop and office building. Taxpayer F provides utility bills which show that for the 12-month period before the first solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,000 kilowatt hours. For the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,200 kilowatt hours. Additionally, the office building was constructed and placed in service three months before the second solar installation was placed in service. Taxpayer F provides utility bills which show that for the three months the office building was in service, the monthly electricity consumption for the office building was 1,400 kilowatt hours, 1,600 kilowatt hours, and 1,800 kilowatt hours, respectively. This means that the average monthly electricity consumption of the office building for purposes of the "substantial increase in energy demand" test is 400 kilowatt hours [i.e.,  $(1,400 + 1,600 + 1,800) \div 12 = 400$ ]. Therefore, for the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop and office building was 1,600 kilowatt hours [i.e.,  $1,200 + 400 = 1,600$ ]. Because this 1,600 monthly kilowatt hour average applicable to the second solar installation exceeds by at least 50 percent the 1,000 monthly kilowatt hour average applicable to the first solar installation, taxpayer F has shown a substantial increase in electricity demand and the second solar installation may qualify as an independent installation.

- Different building(s) or structure(s). If the applied-for solar installation will not power any building or structure that is also being powered by another solar installation, or that was also being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, this is an indication that the solar installations may have a different electrical generation purpose.

EXAMPLE 9: Taxpayer G, a farmer, is awarded a solar energy system tax credit for a solar installation that provides power to G's equipment barn. Later, G installs a second solar installation that will only provide power to G's livestock building. Because the first solar installation only provides power to G's barn and the second solar installation only provides power to G's livestock building, this is an indication that each solar installation has a different electrical generation purpose. The second solar installation would be considered an independent installation, unless additional information shows the contrary to be true.

EXAMPLE 10: Taxpayer H, a multiple housing cooperative under Iowa Code chapter 499A, owns an apartment building with ten apartment units. In 2021, H installs solar energy property with a cost of

\$300,000 that will power the apartment building. The owner of each apartment unit submits a solar tax credit application for a solar installation claiming a proportionate share of H's qualifying expenditures for the solar energy property, which in this case is \$30,000 per owner, and requesting an Iowa credit of \$3,300 ( $\$30,000 \times 11\%$ ), for a sum total of \$33,000 in tax credits. Since this building is organized as a multiple housing cooperative under Iowa Code chapter 499A, each apartment constitutes a building or structure and each owner's proportionate share of qualifying expenses incurred by the cooperative constitutes a solar installation paid by the owner. This is the first solar installation with respect to each of these apartments, so they are not being powered by another solar installation that received an Iowa tax credit. Therefore, this is an indication that each solar installation has a different electrical generation purpose. Each of the ten solar installations would be considered an independent installation, unless additional information shows the contrary to be true. The result would be the same if the building were organized as a horizontal property regime under Iowa Code chapter 499B. However, see Example 7 regarding apartment buildings not organized as a multiple housing cooperative or horizontal property regime.

2. Other criteria.

• Location. The department will consider the physical location of each solar installation. When two or more solar installations are in close physical proximity, this is an indication that the installations may not be independent installations. The farther in physical proximity the installations are, the stronger the likelihood that they are independent installations. Locating an installation at the same address or on the same or adjacent parcel as another installation is a stronger indication that the two installations are not independent installations than if they were located at different addresses or on nonadjacent parcels. The expansion in physical size or production capacity of an existing solar installation is an indication that the installations are not independent installations. If two or more solar installations are physically attached or connected to the same building or structure, this is an indication that the installations are not independent installations.

EXAMPLE 11: Taxpayer Q submits a complete and timely solar energy system tax credit application for a solar installation located at an address that is adjacent to the address of a prior solar installation for which taxpayer Q received a solar energy system tax credit award. Based on the information provided by the taxpayer, the department is unable to determine the electrical generation purpose of the solar installations. Without additional information, the proximity of the two solar installations supports a determination by the department that the second solar installation is not an independent installation.

• Billing. The department will consider the manner in which a utility company issues bills associated with solar installations. Even when a solar installation does not actually provide electricity to any buildings or structures that are also being powered by another solar installation, if a utility company issues bills associated with a solar installation under a net metering agreement in a manner that allows credits from the net outflow of one solar installation to be applied against the utility costs of buildings or structures that are powered by another solar installation, the department will evaluate the solar installations subject to the net metering agreement as if they were powering the same buildings or structures for purposes of determining electrical generation purpose in numbered paragraph 42.48(5) "b "(2)"1" above.

• Utility metering. The department will consider whether each solar installation is connected to a separate utility meter and the business reason, if any, for using separate utility meters. For purposes of this subrule, "utility meter" means a device installed by a utility company used to monitor the amount of electricity consumed or produced by a consumer. When a metering agreement requires a person to install two unidirectional meters, the set will be considered a single utility meter for purposes of this subrule. The department will not consider a measuring device installed and used by a person for personal monitoring of electricity production or consumption to be a "utility meter" for purposes of this subrule. This should not be interpreted to require a person to connect the person's solar installation to a utility provider's grid in order to be eligible for the tax credit.

• Payment for installation or service. The department will consider how expenses incurred for construction or servicing of a solar installation are paid. When expenses incurred for two or more solar installations are paid by related parties, it may indicate that the installations are not independent

installations. However, the department may request additional information to evaluate the relationship between the person who pays for such expenses and the person who claims the tax credit.

● Contract terms. The department will consider the terms of installation and service contracts related to the solar installation and may require a person to provide installation and service contracts related to any prior solar installation for which the department has received a tax credit application. When contract terms indicate that the solar installations have been installed as or are serviced as a single, functional unit or system, the department will consider that as evidence that the installations are not independent installations.

● Timing of installation or application. The department will consider when the applied-for solar installation was placed in service and when a person submits the tax credit application as compared to other solar installations.

c. Safe harbor for solar installations that begin construction prior to June 1, 2021. For any solar installation for which the taxpayer begins construction prior to June 1, 2021, the taxpayer may rely on the factors in the prior version of paragraph 42.48(7) "a" in determining whether the solar installation is a separate and distinct installation. Prior versions of the Iowa Administrative Code are located here: www.legis.iowa.gov/law/administrativeRules/agencies.

**42.48(8) 42.48(6)** *Unavailable to those eligible for renewable energy tax credit.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422,476C) is not eligible for the solar energy system tax credit.

**42.48(9) 42.48(7)** *Allocation of tax credit to owners of a business entity or beneficiaries of an estate or trust.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate, or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014.

This rule is intended to implement Iowa Code section 422.11L as amended by 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

ITEM 2. Rescind rule 701—52.44(422) and adopt the following new rule in lieu thereof:

**701—52.44(422) Solar energy system tax credit.** For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. The credit is available according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.33.

ITEM 3. Amend rule 701—58.22(422) as follows:

**701—58.22(422) Solar energy system tax credit.** Effective for installations placed in service during tax years beginning on or after January 1, 2014, a solar energy system tax credit for financial institutions is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. For information on property eligible for the credit, the calculation of the credit and applying for the credit, see rule 701—52.44(422). The credit is available

to financial institutions according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.60 as amended by 2014 Iowa Acts, House File 2438, section 27, and 2014 Iowa Acts, House File 2473, section 78. 422.60(12) “a.”

[Filed 4/1/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.