

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to broadband infrastructure grant exemption

The Revenue Department hereby amends Chapter 40, “Determination of Net Income,” Chapter 53, “Determination of Net Income,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.7, 422.35 and 422.61.

Purpose and Summary

This rule making implements new income tax exemptions created by 2020 Iowa Acts, House File 2641, for certain broadband grants provided to qualified service providers by providing definitions necessary to implement those exemptions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5399C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5503C**.

A public hearing was held virtually via videoconference call on March 30, 2021, at 10 a.m.

One commenter spoke at the hearing. The commenter primarily objected to state incentives being provided to wireless companies. The commenter’s objections were based mainly on possible health effects of radiation from wireless infrastructure. The commenter provided several online sources to support the commenter’s position that installing 5G wireless infrastructure poses a public health risk, and the commenter ultimately requested that the Department consider whether it has the authority to exclude wireless infrastructure from the exemption through a definition that could be included in these rules.

The Department received several requests for a public hearing on the original Notice for these rules (**ARC 5399C**). Several of those requests appeared to object to the rules, but did not specify the commenters’ objections.

No substantive changes from the Notice have been made. Upon review of the Iowa Code, the Department determined that wireless infrastructure is included in the statutory definition of “broadband infrastructure” for purposes of this exemption. Therefore, the Department has no authority to exclude wireless infrastructure from the exemption by rule as requested by the commenter at the hearing. The implementation sentences at the end of each rule were amended slightly to remove unnecessary information.

Adoption of Rule Making

This rule making was adopted by the Department on April 14, 2021.

Fiscal Impact

These rules 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 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 June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** rule 701—40.84(422):

701—40.84(422) Broadband infrastructure grant exemption.

40.84(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.7.

40.84(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

40.84(3) *Limitation on certain refund claims.* For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.7.

ITEM 2. Adopt the following **new** rule 701—53.28(422):

701—53.28(422) Broadband infrastructure grant exemption.

53.28(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

53.28(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

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53.28(3) *Limitation on certain refund claims.* For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.

ITEM 3. Adopt the following **new** rule 701—59.30(422):

701—59.30(422) *Broadband infrastructure grant exemption.*

59.30(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

59.30(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

59.30(3) *Limitation on certain refund claims.* For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.

[Filed 4/14/21, effective 6/9/21]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.