

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to marketable food products for human consumption and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3.

Purpose and Summary

Iowa Code section 423.3(49) provides a limited exemption for manufacturers producing “marketable food products for human consumption.” Specifically, the Iowa Code section exempts from sales tax:

“The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce *marketable food products for human consumption*, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.” [Emphasis added]

This exemption was first codified in 1985 and has only been amended once, in 2005, to add leases or rentals of otherwise-qualifying tangible personal property to the exemption. The phrase “marketable food products for human consumption” has never been defined in the Iowa Code or the Department’s administrative rules. The Department’s long-standing interpretation of the term, articulated through audits and protests, has been that only final food products, not food ingredients, are “marketable food products for human consumption.” This interpretation is consistent with the statutory construction principle that exemption provisions be narrowly construed.

To provide clarity to taxpayers seeking to claim this exemption as manufacturers of marketable food products for human consumption, the Department proposes to adopt this definition of the term. The Department notes that if a taxpayer does not produce marketable food products for human consumption, the taxpayer may still be eligible for other processing-related exemptions, such as those in Iowa Code section 423.3(47).

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).

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 May 25, 2021. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

May 25, 2021
2 to 3 p.m.

Via videoconference call

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Persons who wish to participate in the videoconference call should contact Tim Reilly before 4:30 p.m. on May 24, 2021, to facilitate an orderly hearing. A link will be provided to participants prior to the hearing.

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:

Adopt the following **new** subrule 230.2(1):

230.2(1) “Marketable food products for human consumption” means products intended to be sold ultimately at retail as items which furnish energy, sustain growth, support vital processes in the human body, and are final products ready for and capable of consumption without the need for further processing after being sold to the purchaser. “Marketable food products for human consumption” includes food products traditionally accepted and sold as food products and products that have been enhanced or compounded with nutritional elements. “Marketable food products for human consumption” does not include medicines or dietary or food supplements. A product that may be consumed by a human but is sold for other purposes is not a marketable food product for human consumption.

a. Certain entities eligible. An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, who will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

b. Determination. The burden is on the taxpayer seeking to claim this exemption to establish a product is a marketable food product for human consumption. The department's determination shall be a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine is not a marketable food product for human consumption. The orange juice is a marketable food product for human consumption.