

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sales tax administrative procedures and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 13, “Permits,” Chapter 14, “Computation of Tax,” Chapter 15, “Determination of a Sale and Sale Price,” Chapter 17, “Exempt Sales,” Chapter 30, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 40, “Determination of Net Income,” Chapter 53, “Determination of Net Income,” Chapter 108, “Local Option School Infrastructure Sales and Service Tax,” Chapter 213, “Miscellaneous Taxable Services,” and Chapter 231, “Exemptions Primarily of Benefit to Consumers,” 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 chapter 423.

Purpose and Summary

The Department has several chapters of rules that implement a variety of sales tax administrative procedures set forth in Iowa Code chapter 423. This proposed rule making updates those chapters to make a variety of nonsubstantive changes. Implementation sentences and other Iowa Code references are updated from Iowa Code sections no longer in effect or related to sales tax. Headings and subheadings are added to long rules that currently do not have them to provide additional clarity for readers. Rules describing the law for specifically identified time periods in the past are stricken, since they are no longer needed. Tax rates are updated to reflect the current law. Some rules are rescinded because they are entirely out of date or have been replaced by newer, more recently adopted rules in other chapters. The term “specified digital products” is added to references of taxable sales because those products became taxable several years ago. The proposed rule making also amends rules in other chapters to update affected cross-references.

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 August 17, 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

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

August 17, 2021
3 to 4 p.m.

Via video/conference 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.

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 actions are proposed:

ITEM 1. Amend rule 701—12.1(422), parenthetical implementation statute, as follows:

701—12.1(~~422~~ 423) Returns and payment of tax.

ITEM 2. Amend rule **701—12.1(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~421.14, 422.43, 422.47, 422.51, 422.52, and 423.2~~ 423.31 and 423.32.

ITEM 3. Amend rule 701—12.2(422,423) as follows:

701—12.2(422,423) Remittances.

12.2(1) *Submission of remittances.* The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; ~~and, when.~~ When feasible, the taxpayer shall use ~~them~~ the items provided by the department when completing and mailing a return and remittance. All remittances shall be made payable to the Iowa Department of Revenue.

12.2(2) *Electronic payments required for semimonthly remitters.* Semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified by the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly

returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is ~~added to the bank account designated by the treasurer of the state of Iowa~~ submitted in the electronic submission system. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections ~~422.16, 422.51, 422.52, 423.6, 423.13 and 423.14~~ 423.31 and 423.32.

ITEM 4. Amend rule 701—12.3(422), parenthetical implementation statute, as follows:

701—12.3(422 423) Permits and negotiated rate agreements.

ITEM 5. Amend subrule 12.3(2) as follows:

12.3(2) Direct pay permits. Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property, specified digital products, or ~~enumerated~~ taxable services pursuant to Iowa Code ~~chapters 422, 422B, and chapter 423~~ may remit tax owed directly to the department of revenue instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property, specified digital products, or ~~enumerated~~ taxable services.

(2) and (3) No change.

b. to f. No change.

ITEM 6. Amend rule **701—12.3(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266~~ section 423.36.

ITEM 7. Amend rule 701—12.4(422) as follows:

701—12.4(422 423) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property or a specified digital product which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section ~~422.43~~ 423.2 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

ITEM 8. Amend rule 701—12.5(422,423) as follows:

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections ~~422.53 and 423.9~~ 423.14 and 423.36.

ITEM 9. Amend rule 701—12.6(422,423) as follows:

701—12.6(422,423) Sale of business.

12.6(1) *Final return due.* A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

12.6(2) *Record retention.* A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections ~~422.51(2) and 422.52~~ section 423.33.

ITEM 10. Amend rule 701—12.7(422) as follows:

701—12.7(422 423) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section ~~422.51(2)~~ 423.31.

ITEM 11. Amend rule 701—12.8(422) as follows:

701—12.8(422 423) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes ~~gross receipts~~ the sales price from sales from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the ~~gross receipts~~ sales price.

This rule is intended to implement Iowa Code sections ~~422.42(16), 422.43, 422.51, and Iowa Code chapter 455C~~ 423.1 and 423.2.

ITEM 12. Amend rule 701—12.9(422) as follows:

701—12.9(422 423) Claim for refund of tax.

12.9(1) *Eligibility for refund; filing claims.* Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department. A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based.

~~A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879.~~

12.9(2) *Denial of refund claim—protest.* If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.8(17A).

12.9(3) Request for abeyance. When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section ~~422.73(1)~~ 422.73(2). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE A: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A \$10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of ~~their~~ its audit liability if the decision in Y's case was also applicable to X.

EXAMPLE B: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section ~~422.73(1)~~ 422.73(2). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE C: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in ~~section~~ Iowa Code ~~422.73(1)~~ section 422.73(2). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section ~~422.73~~ 423.45.

ITEM 13. Rescind and reserve rule **701—12.10(423)**.

ITEM 14. Amend rule 701—12.12(422) as follows:

701—12.12(422 423) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section ~~422.54~~ 423.31.

ITEM 15. Amend rule 701—12.13(422) as follows:

701—12.13(422, 423) Determination of filing status.

12.13(1) and **12.13(2)** No change.

This rule is intended to implement Iowa Code sections ~~421.14, 422.51, and 422.52, and sections 422.54 as amended by 2002 Iowa Acts, House File 2622, section 11, and 423.13 as amended by 2002 Iowa Acts, House File 2622, section 14~~ section 423.31.

ITEM 16. Amend rule 701—12.14(422,423) as follows:

701—12.14(422,423) Immediate successor liability for unpaid tax. A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

12.14(1) and **12.14(2)** No change.

12.14(3) "*Sale of a retailer's business*" characterized. Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel*, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

12.14(4) No change.

This rule is intended to implement Iowa Code section ~~421.28~~ 423.33.

ITEM 17. Amend rule 701—12.15(422,423), parenthetical implementation statute, as follows:

701—12.15(422,423) Officers and partners—personal liability for unpaid tax.

ITEM 18. Amend rule 701—12.16(422), parenthetical implementation statute, as follows:

701—12.16(422, 423) Show sponsor liability.

ITEM 19. Amend rule **701—12.16(422)**, implementation sentence, as follows:

This rule is intended to implement the requirements of Iowa Code section ~~422.52~~ 423.33.

ITEM 20. Rescind and reserve rules **701—12.18(423)** and **701—12.20(423)**.

ITEM 21. Amend rule 701—13.1(422) as follows:

701—13.1(422, 423) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales, the word "permit" shall mean "a retail sales tax permit."

A person shall not ~~engage in any Iowa business~~ make taxable sales of taxable tangible personal property, specified digital products, or services subject to tax until the person has procured a permit

except as provided in ~~13.5(422)~~ rule 701—13.5(423). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property, specified digital products, or services will occur shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property, specified digital products, or taxable services. Persons shall not ~~make application~~ apply for a permit for any other purpose. For details regarding direct pay permits, see rule 701—12.3(~~422~~ 423).

This rule is intended to implement Iowa Code section ~~422.53~~ as amended by 1999 Iowa Acts, chapter ~~452~~ 423.36.

ITEM 22. Amend rule 701—13.2(422) as follows:

701—13.2(~~422~~ 423) Application for permit.

13.2(1) *Permit application.* An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form. An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual, or the trade name and the name of all partners, in the case of a partnership.

~~An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual, or the trade name and the name of all partners, in the case of a partnership.~~

13.2(2) *Signatures required.*

a. Paper applications. The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners' names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by the officers for another person to sign the application.

b. Electronic applications. For electronically transmitted applications, the application form shall state that in lieu of a person's handwritten signature, the ~~E-mail~~ email address will constitute a valid signature.

13.2(3) *Date when sales begin.* The application shall state the date when the applicant will begin selling tangible personal property, specified digital products, or taxable services at retail in Iowa from the location for which the application is made.

This rule is intended to implement Iowa Code sections ~~421.17(15) and 422.53~~ section 423.36.

ITEM 23. Amend rule 701—13.3(422) as follows:

701—13.3(~~422~~ 423) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling the business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

ITEM 24. Amend rule 701—13.4(422) as follows:

701—13.4(~~422~~ 423) Permit—consolidated return optional. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made and the second is certain affiliated corporations.

13.4(1) *Permit holders with multiple locations.*

a. Permit holder option. A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

b. Filing a consolidated return. ~~Effective July 1, 2002, in~~ In order to file a complete consolidated sales tax return, the taxpayer must file a form entitled Schedule of Consolidated Business Locations with its quarterly sales tax return, and the schedule must include all of the following items: (1) the taxpayer's consolidated permit number; (2) the permit number for each Iowa location; (3) the amount of state sales tax by business location; and (4) the amount of state sales tax due on goods consumed that are

not assigned to a specific business location. Failure by the taxpayer to file a Schedule of Consolidated Business Locations form with a quarterly sales tax return will result in the consideration of the quarterly return's being considered return as incomplete, and the taxpayer will be subject to the penalty provisions set forth in Iowa Code section 421.27.

13.4(2) *Affiliated corporations.*

a. Application by affiliate group. Any group consisting of a parent and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property, specified digital products, or taxable ~~enumerated~~ services, may make application to the director for permission to make deposits and file a consolidated Iowa sales tax return. An application for consolidation can be made for any tax period beginning on or after January 1, 2000. The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.

~~The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.~~

b. Joint and several liability. A parent corporation and each affiliate corporation that file a consolidated return are jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

13.4(3) No change.

This rule is intended to implement Iowa Code section ~~422.51 as amended by 2002 Iowa Acts, Senate File 2305, section 8, and Iowa Code section 422.53~~ 423.31.

ITEM 25. Strike “422” wherever it appears in rules **701—13.5(422)**, **701—13.6(422)**, **701—13.8(422)**, **701—13.10(422)**, **701—13.11(422)**, **701—13.14(422)** and **701—13.15(422)** and insert “423” in lieu thereof.

ITEM 26. Amend rule **701—13.5(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~422.53(6)~~ 423.36.

ITEM 27. Amend rule **701—13.6(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

ITEM 28. Amend rule **701—13.7(422)** as follows:

701—13.7(422 423) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions include payment of any tax liability which may be due to the department. See rule ~~13.17(422)~~ 701—13.17(423) for a description of the circumstances under which nonpayment of taxes may lead to revocation of a permit.

Pursuant to the director’s statutory authority in Iowa Code section ~~422.53(5)~~ 423.36(6) to restore licenses after a revocation, the director has determined that upon the revocation of a sales tax permit the initial time, the permit holder will be required to pay all delinquent sales tax liabilities, to file returns, and to post a bond and to refrain from taxable occurrences under Iowa Code section ~~422.43~~ 423.2 as required by the director prior to the reinstatement or issuance of a new sales tax permit.

As set forth above, the director may impose a waiting period during which the permit holder must refrain from taxable occurrences pursuant to the penalties of Iowa Code section ~~422.58(2)~~ 423.40, not to exceed 90 days to restore a permit or issue a new permit after a revocation. The department may require a sworn affidavit, subject to the penalties of perjury, stating that the permit holder has fulfilled

all requirements of said order of revocation, and stating the dates on which the permit holder refrained from taxable occurrences.

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

Failure to post a bond as required.

Failure to file a quarterly return or monthly deposit timely.

Failure to pay tax timely (including unhonored checks, failure to pay, and late payments).

Failure to file a quarterly return or a monthly deposit and pay tax shown on the return or deposit timely (counts as two offenses).

The administrative law judge or director of revenue may order a waiting period after the revocation not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The administrative law judge or director of revenue may order a waiting period not to exceed:

Forty-five days if the second revocation occurs within 24 months of the first revocation.

Sixty days if the second revocation occurs within 18 months of the first revocation.

Ninety days if the second revocation occurs within 12 months of the first revocation.

Ninety days if the third revocation occurs within 36 months of the second revocation.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder, who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections ~~422.53 and 422.58(2) and 1995 Iowa Acts, chapter 115~~ 423.2, 423.36, and 423.40.

ITEM 29. Rescind and reserve rule **701—13.9(422)**.

ITEM 30. Amend rule **701—13.10(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~422.53 as amended by 2001 Iowa Acts, House File 715~~ 423.36.

ITEM 31. Amend rule **701—13.11(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

ITEM 32. Rescind and reserve rule **701—13.12(422)**.

ITEM 33. Amend rule 701—13.13(422) as follows:

701—13.13(422 423) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property, specified digital products, or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and noninventory items. In Re Hubs Repair Shop, Inc. 28 B.R. 858 (Bkrtcy 1983). A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.

~~A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.~~

This rule is intended to implement Iowa Code sections ~~422.42(1) and 422.53~~ section 423.36.

ITEM 34. Amend rule **701—13.14(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.43 and 422.53~~ as amended by 1986 Iowa Acts, House File 2471, and Iowa Code section ~~422.42~~ section 423.36.

ITEM 35. Amend rule **701—13.15(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~chapter 422~~ section 423.36.

ITEM 36. Amend rule 701—13.16(422) as follows:

701—13.16(422 423) Substantially delinquent tax—denial of permit.

13.16(1) Substantial delinquency of tax.

a. Applicant identity. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership.

b. Tax administered by the department. The local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are nonexclusive examples of taxes which are not administered by the department.

13.16(2) Substantial delinquency factors. The amount of tax delinquent, the number of filing periods for which a tax remains due and unpaid, and the length of time a tax has been unpaid are the principal, but nonexclusive circumstances, which the department will use to determine whether an applicant is “substantially” or insubstantially delinquent in paying a tax. The department may deny a permit for substantial delinquency. Nonexclusive factors which the department will consider in determining whether substantial delinquency will or will not result in the denial of an application for a permit are the following: whether the delinquency was inadvertent, negligent, or intentional; the amount of tax, interest, or penalty owed in relation to the applicant’s total financial resources; and whether the applicant’s business is likely to survive over the long term if a license or permit is granted. ~~This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.~~

13.16(3) Child support noncompliance. The department will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code ~~subsection 422.53(2) and 1995 Iowa Acts, chapter 445~~ section 423.36.

ITEM 37. Amend rule 701—13.17(422) as follows:

701—13.17(422 423) Substantially delinquent tax—revocation of permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the person holding a permit is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the permit-holding corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner’s failure to pay a tax which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See rule ~~13.16(422)~~ 701—13.16(423). Also, see rule ~~13.16(422)~~ 701—13.16(423) for characterizations

of the terms “tax administered by the department” and “substantially delinquent” and for a description of some of the factors which the department will use in determining whether substantial delinquency will or will not result in the revocation of a permit. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code subsection ~~422.53(5)~~ and 1995 Iowa Acts, chapter ~~445~~ section 423.36.

ITEM 38. Rescind and reserve rules **701—14.1(422)** and **701—14.2(422,423,77GA,ch1130)**.

ITEM 39. Amend rule 701—14.3(422,423) as follows:

701—14.3(422,423) Taxation of transactions due to rate change. The following provisions shall apply in determining whether or not a transaction is subject to an existing rate of sales or use tax or to a new rate of sales or use tax. In the examples contained in the rest of this rule, assume that a bill has been enacted into law which increases the sales and use tax rate from 4 6 to 5 7 percent and that the effective date of this bill is July 1.

14.3(1) General principles. A change in the sales tax rate applies to a sale of tangible personal property and specified digital products if delivery of the property or product under a contract of sale occurs on or after the effective date of the legislation which changes the rate of taxation. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). ~~See also *Crown Iron Works v. Commissioner of Taxation*, 214 N.W.2d 462 (Minn. 1974).~~ The intent of the parties to the contract for sale determines when delivery occurs. However, in the event the intent is not readily established from the contract, the rules set out in the Uniform Commercial Code (Iowa Code chapter 554) shall apply in order to determine the place of delivery.

In the examples below, so long as delivery under a contract for sale occurs on or after July 1, the 5 7 percent sales tax rate applies. It is not necessary that any other aspects of the sale, such as payment for the delivered property, occur on or after that date.

In the three examples immediately below, “delivery” is physical transfer of possession of the tangible personal property directly from the seller to the purchaser. However, see subrule 14.3(2) for examples of delivery which do not involve transfer of possession directly from the buyer to the seller, and subrule 14.3(3) which explains a type of delivery which does not involve any physical transfer of possession of property.

EXAMPLE A: A enters into a sales contract to purchase a riding lawn mower from B. This contract (offer and acceptance) is entered into on June 20. B delivers the lawn mower to A on June 28, and A pays B for the lawn mower on July 3. Since delivery, under the contract for sale, occurred prior to July 1, the sales tax in this example is computed at the rate of 4 6 percent.

EXAMPLE B: A wants to purchase a home computer from B. On June 28, A orders the computer from B and the parties agree that the contract of sale is made if and when B makes delivery of the home computer to A. B delivers the computer on July 10. In this example, the sales tax is at the rate of 5 7 percent because delivery was not made until July 10. It is the delivery after July 1, rather than the lack of the valid contract of sale prior to that date, which determines that the rate of tax shall be 5 7 rather than 4 6 percent.

EXAMPLE C: On May 1, A enters into a conditional sales contract with B to purchase a television set. The contract requires A to make monthly installment payments for 36 months, beginning June 1. The contract also requires B to deliver the television to A on or before July 15. B retains title to the television set solely for the purpose of securing payment from A. A makes the first monthly payment to B on June 1. B delivers the television to A on the last day allowable, July 15. The 5 7 percent rate will apply. See subrule 14.3(4) for more ~~material regarding~~ discussion of conditional sales.

14.3(2) Shipment by carrier. The following principles shall be used to determine the conditions under which delivery is made pursuant to a contract for sale when the retailer utilizes a carrier to ship tangible personal property to a purchaser. If the contract for sale makes no reference of an F.O.B. (free on board) or F.A.S. (free along side) point or of any other point at which title and risk of loss with regard to the tangible personal property are transferred from the retailer to the purchaser and contains no other indication of a delivery point, it shall be presumed that delivery of the property occurs when the seller transfers possession of the property to the carrier. If property is sold under a C.I.F. (cost, insurance and freight) or a C. & F. (cost and freight) contract it shall also be presumed that delivery occurs when the retailer transfers possession of the property to the carrier. If a contract for sale makes mention of an F.O.B. or F.A.S. point, it shall be presumed that the parties intended delivery of the property at the time the property reaches that point.

14.3(3) Constructive delivery. “Constructive delivery” has occurred if the retailer and the purchaser agree that title, risk of loss, and right of possession to tangible personal property have passed from the retailer to the purchaser; that is, the parties agree that a sale has occurred, but actual physical possession of the property remains with the retailer or someone other than the buyer after the sale. If parties to a contract of sale have agreed upon constructive delivery, the sale occurs at the time of constructive delivery and not at the time of transfer of physical possession of the property from buyer to seller or at an F.O.B., F.A.S., or similar type of point.

EXAMPLE: A owns an art gallery in Des Moines. Art collector B from Cedar Rapids visits the gallery. Collector B wishes to purchase a painting that is very large. However, collector B cannot immediately transport the painting back to Cedar Rapids. On June 1, A and B sign a contract for the sale of the painting. Title to the painting, risk of loss, and the right to take possession of the painting immediately pass to B. However, the parties also agree that B can store the painting with A in return for a small monthly charge. B inquires of various parties whether or not they would be willing to transport the painting from Des Moines to Cedar Rapids. B finds no one satisfactory to do this and eventually signs a separate contract for transport with A in which A agrees to do the transporting. The transport of the painting is accomplished on September 1. The painting was delivered from A to B in Des Moines on June 1. Thus, its sale occurred on that date rather than September 1. Delivery was accomplished with the “constructive” delivery which occurred on June 1 rather than by the physical transfer of possession from A to B which occurred on September 1. Because of this, the rate of tax is 4 6 and not 5 7 percent.

14.3(4) Conditional sales. A “conditional sale” is no different from an absolute sale, except in the matter of payment. *Hansen v. Kuhn*, 284 N.W. 249, 226 Iowa 794 (1939). A conditional sale has not occurred until delivery under a contract of conditional sale has occurred. *Greenlease-Lied Motors v. Sadler*, 249 N.W. 383, 216 Iowa 302 (1933); *Universal Credit Co. v. Mamminga*, 243 N.W. 513, 214 Iowa 1135 (1932); and *Firestone Tire & Rubber Co. v. Anderson*, 180 N.W. 273, 190 Iowa 439 (1920). See Example C in subrule 14.3(1) for an example of a conditional sales contract in which delivery of the property under the contract occurred long after the making of the contract and after the buyer had made several payments under the contract. As soon as delivery has occurred, tax on all-gross-receipts the sales price of the sale is due to the department. See rules 701—15.1(422) and rule 701—16.47(422 423) for additional ~~material on~~ discussion of conditional sales.

14.3(5) Use tax—changed rate of taxation on the use of tangible personal property and specified digital products. A changed use tax rate applies to the use of tangible personal property and specified digital products in Iowa when the first taxable use occurs on or after the effective date of the legislation which changes the rate of tax. In the following example, assume that the change in the use tax rate is from 4 6 to 5 7 percent and that the legislation which enacts this change is effective as of July 1.

EXAMPLE: On May 24, A and B enter into a contract for A’s purchase of a machine from B. Under the contract, delivery of the machine to A is to occur outside the state of Iowa, F.O.B., Minneapolis, Minnesota. On June 27, A takes delivery of the machine in Minneapolis. A then transports the machine into Iowa on July 2. A’s transport of the machine into Iowa constitutes a use of the machine by A in Iowa for the first time. Under these circumstances, the machine is subject to the 5 7 percent rate since the tax rate in effect at the time of first use, July 2, governs if property is purchased outside of Iowa. *City of Ames v. State Tax Commission*, 246 Iowa 1016, 71 N.W.2d 15 (1955).

14.3(6) *Changed rate for the sales tax on enumerated services.* A changed sales tax rate on enumerated services applies if services are rendered, furnished, or performed in Iowa on or after the effective date of the legislation which changes the rate. The date upon which the parties enter into a service contract is not of importance in determining whether the old rate or new rate is applicable. Nor, for the purpose of computing the sales tax, is it important to know when the product or result of the service is used by the ultimate user. This situation must be distinguished from the application of use tax to services. For use tax purposes, the date when the product or result of the service is used may be important. See subrule 14.3(7). For the purposes of this subrule and subrules 14.3(7), 14.3(8), and 14.3(9) ~~and 14.3(10)~~, assume that the rate of tax is being raised from 4 6 to 5 7 percent and that the effective date of the legislation which increases the rate is July 1.

EXAMPLE A: On June 1, A and B enter into a service contract in which B agrees to provide testing laboratory services to A. B performs these services in Iowa on June 26. The results of these services are forwarded to A on July 8, and A observes those results and makes use of them on that latter day. Under these circumstances, the testing laboratory services were subject to service tax at the rate of 4 6 percent because B rendered, furnished, or performed the services on June 26, which is prior to July 1.

EXAMPLE B: On June 1, B offers to perform testing laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on July 5, and the results forwarded to A on July 8. Under these circumstances, the testing laboratory services are subject to tax at the 5 7 percent rate. The services are subject to that rate because the services were rendered on July 5, and not because the parties entered into the contract for services on July 5. As in Example A above, if a contract had been entered into before July 1, and the services performed after that date, service tax at the 5 7 percent rate would still have been applicable.

EXAMPLE C: On June 7, A enters into a service contract with B for the repair of A's automobile. The contract provides that A shall make installment payments for 12 months. The automotive repairs are extensive. B begins repair of the automobile on June 9 and completes repair on June 27. Since sales tax is due when the service is rendered, furnished, or performed, the tax is 4 6 percent of the contract price. Installment payments made on and after July 1 do not accrue any greater rate of tax. This situation is different from a service contract entered into prior to July 1, which requires periodic payments for continuous services, as set forth under subrule 14.3(8).

EXAMPLE D: A, a civic center, contracts with B, an orchestra, to perform on July 10. The contract is made on May 26. A sells tickets of admission for B's July 10 concert. The tickets are sold in the month of June and from July 1 to and including July 9. All ticket sales in June are subject to tax at the 4 6 percent rate, and all ticket sales in July are subject to tax at the 5 7 percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable events are the sales of admission tickets between A and the purchasers of the tickets. The date when a ticket is delivered to a purchaser controls whether the tax rate is 4 6 or 5 7 percent.

14.3(7) *Changed rate of use tax on services.* If the product or result of a taxable service rendered, furnished, or performed outside of this state is first used in this state on or after July 1, the 5 7 percent use tax rate applies.

EXAMPLE: On June 14, A and B enter into a contract for repair of A's machine, the repair to be done outside of Iowa. On June 28, the machine is delivered to B who performs the taxable service of machine repair and returns the machine to A in Iowa on July 1. Under these circumstances, the product or result of the taxable machine repair service is first used by A on July 1; therefore, the 5 7 percent tax rate applies.

14.3(8) *Service contracts requiring periodic payments.* If parties enter into a service contract prior to July 1, and the contract requires periodic payments, payments made on or after July 1 under the contract are subject to the 5 7 percent sales or use tax rate.

EXAMPLE A: A and B enter into an agreement for the lease of equipment on April 1. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after July 1, the tax rate is 5 7 percent.

EXAMPLE B: On May 1, A joined a private club and paid membership fees for the privilege of participating in athletic sports provided to club members. A must make periodic payments every three

months. These payments are made in January, April, July, and October. Under these circumstances, A's July payment and payments made subsequently are subject to tax at the rate of 5 7 percent.

14.3(9) *Gas, electricity, water, heat, solid waste collection, sewer, pay television, and communication services.* ~~Gross receipts~~ The sales price from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the 5 7 percent rate when the date of billing the customer falls on or after July 1. The ~~gross receipts~~ sales price from the services of solid waste collection and disposal, sewer, and pay television are also treated in this manner.

EXAMPLE A: A is the customer of the B water utility. A receives a bill from B on July 5. The billing date is July 1, and the bill is for water provided during the month of June. Under these circumstances, sales tax should be billed at the rate of 5 7 percent, because the date of billing is July 1.

EXAMPLE B: A is the customer of the B electric utility company. A receives a bill from the B company on July 2. There is no billing date set forth on the bill. The bill was mailed by the B company to A on June 28. Under these circumstances, the billing date is June 28, and the sales tax should be billed at the rate of 4 6 percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., June 26, this latter date (June 26) would be considered the billing date.

EXAMPLE C: A is the customer of the B rural electric cooperative (REC). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Interstate Commerce Commission (ICC), has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on July 1 and the first date of each month thereafter, the sales tax should be paid at the rate of 5 7 percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to June 30 would require payment of sales tax at the 4 6 percent rate.

EXAMPLE D: A is the customer of B telephone company. A receives a bill from B company on July 3, covering intrastate long distance telephone calls in June and local service in July. The billing date on the face of the bill is June 28. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of 4 6 percent.

If, in this example, the billing date on the bill had been July 1, the sales tax should be billed at the rate of 5 7 percent for all telephone services, local and intrastate long distance.

14.3(10) *Vehicles subject to registration.* ~~The 5 percent use tax rate applies to motor vehicles subject to registration when the purchaser of the vehicle registers the vehicle on or after July 1.~~

EXAMPLE A: ~~A purchases a motor vehicle from B and takes possession of the vehicle in Iowa on June 28. On July 1, A drives to the office of the county treasurer, applies for registration of the vehicle, and tenders the amount of Iowa use tax. Under these circumstances, because A registered the vehicle in Iowa on July 1, the use tax rate is 5 percent.~~

EXAMPLE B: ~~A and B enter into a binding contract for A to purchase from B a motor vehicle on June 26. The vehicle cannot be delivered to A until July 3, and A applies to the county treasurer for registration of the vehicle on July 5. Under these circumstances, A first registered the vehicle on July 5 and Iowa use tax is imposed at the 5 percent rate.~~

This rule is intended to implement Iowa Code ~~sections 422.43 and~~ section 423.2.

ITEM 40. Rescind and reserve rules **701—15.1(422)** and **701—15.2(422,423)**.

ITEM 41. Amend rule 701—15.3(422,423), parenthetical implementation statute, as follows:

701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

ITEM 42. Amend subrules 15.3(1) and 15.3(2) as follows:

15.3(1) *General provision.* The ~~gross receipts~~ sales price from the sale of tangible personal property or specified digital products to a purchaser for any exempt purpose are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property or specified digital

products need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

~~a. Prior to July 1, 2004, the sales tax liability for all sales of tangible personal property was upon the seller unless the seller took in good faith from the purchaser a valid exemption certificate stating that the purchase was for an exempt purpose or the tax would be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must have included the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services have been purchased tax-free pursuant to a valid exemption certificate which was taken in good faith by the seller, and the tangible personal property or services were used or disposed of by the purchaser in a nonexempt manner, or the purchaser failed to pay tax to the department under a direct pay permit issued by the department, the purchaser was solely liable for the taxes and must remit the taxes directly to the department.~~

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

~~b. a. As of July 1, 2004, the requirement of "good faith" on the part of a seller is replaced by a different standard. For sales occurring on and after that date, the The sales tax liability for all sales of tangible personal property and all sales of, specified digital products, and taxable services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property, specified digital products, or services are purchased tax-free pursuant to a valid exemption certificate and the tangible personal property, specified digital products, or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.~~

~~e. b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property, specified digital products, or services to buyers for exempt purposes. These exemption certificates must be completed as to the information required on the form in order to be valid.~~

15.3(2) Retailer-provided exemption certificates. Retailers may provide their own exemption certificates. Those exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax-exempt (e.g., resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph "b" cannot be used to make a tax-free purchase of any tangible personal property, specified digital products, or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. to e. No change.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section ~~422.53(5)~~ 423.36.

g. The purchase of tangible personal property, specified digital products, or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property, specified digital products, or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

i. For information regarding the use of exemption certificates for contractors, see 701—Chapter 19.

ITEM 43. Amend paragraph **15.3(3)“a,”** definition of “Fuel consumed in processing,” as follows:
“*Fuel consumed in processing*” includes fuel used in grain drying or providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in “processing” as defined in rules 701—18.29(422,423), 701—18.58(422,423), and 701—230.15(423). See rule 701—17.2(422, 423) for a detailed description of “fuel used in processing.” See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

ITEM 44. Amend rule **701—15.3(422,423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code sections ~~422.42(3), 422.42(13), 422.42(16), 422.47, 422.53 as amended by 1997 Iowa Acts, House File 266, and 423.1(1)~~ 423.3, 423.36 and 423.45.

ITEM 45. Rescind and reserve rules **701—15.4(422,423)** to **701—15.6(422,423)**.

ITEM 46. Amend rule 701—15.8(422,423) as follows:

701—15.8(422,423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the ~~gross receipts~~ sales price.

An allowance shall not be made for the return of any merchandise which (1) is exempt from either sales or use tax; or (2) has not been reported in the taxpayer’s ~~gross receipts and~~ tax previously paid.

This rule is intended to implement Iowa Code sections ~~422.42(6) and 423.1(3)~~ section 423.31.

ITEM 47. Rescind and reserve rules **701—15.9(422)** and **701—15.10(422)**.

ITEM 48. Amend rule 701—15.11(422,423), parenthetical implementation statute, as follows:

701—15.11(422,423) Leased departments.

ITEM 49. Amend rule **701—15.11(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.68(1) and 423.23~~ section 423.25.

ITEM 50. Amend rule 701—15.12(422,423), parenthetical implementation statute, as follows:

701—15.12(422,423) Excise tax included in and excluded from gross receipts.

ITEM 51. Amend rule **701—15.12(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.42(6), 422.43, 423.1,~~ 423.1 and 423.2.

ITEM 52. Amend rule 701—15.13(422,423) as follows:

701—15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

15.13(1) Charges separately stated. When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to

deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the ~~gross receipts derived from sales price of the freight or transportation charges shall not be subject to tax.~~ As of May 20, 1999, this This exemption does not apply to the service of transporting electrical energy. As of April 1, 2000, this exemption does not apply to or the service of transporting natural gas.

15.13(2) Charges not separately stated. When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the ~~gross receipts from sales price of the freight or transportation charges become a part of the gross receipts from sales price of the sale of tangible personal property or a taxable service and are subject to tax.~~ Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice. *Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission*, 252 Iowa 500, 107 N.W.2d 553(1961); *Schemmer v. Iowa State Tax Commission*, 254 Iowa 315, 117 N.W.2d 420(1962); *City of Ames v. Iowa State Tax Commission*, 246 Iowa 1016, 71 N.W.2d 15(1959); *Dain Mfg. Company v. Iowa State Tax Commission*, 237 Iowa 531, 22 N.W.2d 786(1946).

15.13(3) Exemption. Effective July 1, 2001, gross receipts The sales price from charges for delivery of electricity or natural gas are exempt from tax to the extent that the ~~gross receipts sales price~~ from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code ~~chapters 422 and chapter 423.~~ The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

~~The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.~~

Freight and transportation charges include, but are not limited to, the following charges or fees: freight; transportation; shipping; delivery; or trip charges.

EXAMPLE 1. Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption ~~set out in this rule~~ Iowa Code section 423.3(70).

EXAMPLE 2. Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity ~~as well and constitutes separate sales of electricity and transportation services.~~ In these circumstances, amounts which ABC pays DEF for transport of the electricity are taxable gross receipts. ~~This transportation service would ordinarily then be excluded from tax under the exemption set out in this rule; however, separate transportation charges for transportation of electricity are excluded from the exemption (as of May 20, 1999, and are thereafter taxable).~~

EXAMPLE 3. As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the

electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4. In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity as well and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property. See Clarion Ready Mixed and Schemmer, generally, above.

EXAMPLE 6. Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the goods tangible personal property manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections ~~422.43 and 423.2, and section 422.45 as amended by 2001 Iowa Acts, House File 705 and 423.3.~~

ITEM 53. Rescind and reserve rule **701—15.14(422,423)**.

ITEM 54. Amend rule 701—15.15(422) as follows:

701—15.15(422 423) Premiums and gifts. A person who gives away or donates tangible personal property, specified digital products, or taxable services shall be deemed to be a consumer of such property, products, or services for tax purposes. The ~~gross receipts~~ sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer's cost price.

When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections ~~422.42 and 422.43~~ 423.1 and 423.2.

ITEM 55. Rescind and reserve rules **701—15.15(422)** to **701—15.20(422,423)**.

ITEM 56. Rescind and reserve rule **701—17.21(422)**.

ITEM 57. Amend rule 701—30.6(423) as follows:

701—30.6(423) Bracket system to be used by registered vendors. A registered vendor who has occasion to sell tangible personal property or enumerated services rendered, furnished or performed in Iowa or products or results of enumerated taxable services rendered, furnished or performed may use the bracket system ~~specified in 701—14.2(422)~~ maintained by the department, which was adopted under the provisions of the Iowa retail sales tax law. The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results of all enumerated taxable services sold.

~~The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results of all enumerated taxable services sold.~~

This rule is intended to implement Iowa Code sections ~~422.68(1)~~, section 423.2 and 423.23.

ITEM 58. Amend rule 701—40.77(422) as follows:

701—40.77(422) Exclusion of biodiesel production refund. A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule ~~701—12.18(423)~~ 701—250.1(423).

This rule is intended to implement Iowa Code section 422.7 ~~as amended by 2011 Iowa Acts, Senate File 531.~~

ITEM 59. Amend rule 701—53.26(422) as follows:

701—53.26(422) Exclusion of biodiesel production refund. A taxpayer may exclude, to the extent included in federal taxable income, the amount of the biodiesel production refund described in rule ~~701—12.18(423)~~ 701—250.1(423).

This rule is intended to implement Iowa Code section 422.35 ~~as amended by 2011 Iowa Acts, Senate File 531.~~

ITEM 60. Amend subrule 108.2(6) as follows:

108.2(6) Administration of the tax. The local option school infrastructure sales and service tax is to be imposed on the gross receipts of sales of tangible personal property sold within the local option jurisdiction and upon the gross receipts from services rendered, furnished, or performed within the local option jurisdiction. This tax may only be imposed by a county in the manner set forth previously in this rule. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. For further details, see 701—108.5(422E). With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. ~~See rule 701—14.2(422,423) for a tax table setting forth the combined rate for a state sales tax of 5 percent and the local sales tax rate of 1 percent.~~ Frequency of deposits and quarterly reports of local option tax filed with the department of revenue are governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of the filing under Iowa Code section 422.52.

Prior to April 1, 2000, a local option school infrastructure tax cannot be imposed until 40 days after there has been a favorable election to impose the tax. All local option school infrastructure tax must be

imposed January 1, April 1, July 1, or October 1. The tax can be repealed only on March 31, June 30, September 30, or December 31. However, this tax must not be repealed before the tax has been in effect for one year. For imposition and repeal date restrictions on or after April 1, 2000, see subrule 108.2(3).

ITEM 61. Amend rule 701—213.16(423) as follows:

701—213.16(423) Repossessed goods.

213.16(1) *Sale subject to tax.* When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

213.16(2) *Bad debts.* A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price which ultimately constitutes a bad debt. ~~Reference rule 701—15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.~~

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

ITEM 62. Amend rule 701—231.10(423) as follows:

701—231.10(423) Exempt sales of prizes.

231.10(1) *In general.* The sales price from sales of tangible personal property, specified digital products, or services which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. See department of inspections and appeals' 481—Chapters 100 through 106, ~~Iowa Administrative Code,~~ for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which may be lawfully awarded.

231.10(2) *Gift certificates.* A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed. ~~Reference 701—15.16(422,423).~~

This rule is intended to implement 2005 Iowa Code ~~subsection~~ section 423.3(62).

ITEM 63. Amend subrule 231.15(5) as follows:

231.15(5) *Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to \$99.99 or less, the item may qualify for the exemption. For example, a customer buys a \$150 dress and a \$100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is \$135, and the blouse is \$90. The dress is taxable (it is over \$99.99), and the blouse is exempt (it is less than \$99.99). ~~Reference rule 701—15.6(422,423) for a definition of the word “discount” and a description of which retailers’ reductions in price are discounts which reduce the taxable sales price of items and which are not.~~

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer's coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20 off, the final sales price of the shoes is \$90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. ~~Reference 701—subrule 15.6(3).~~

c. No change.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for \$110 and receives a \$12 rebate from the manufacturer. The retailer must collect tax on the \$110 sales price of the sweater. ~~Reference 701—subrule 15.6(2) 212.3(2)~~ for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (reference rule 701—15.13(422,423) for explanation) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

ITEM 64. Amend subrule 231.16(4) as follows:

231.16(4) *Qualifying and nonqualifying usage.*

a. Proration formula. Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations, the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. Reference 701—~~subrules subrule 15.3(4) and 15.4(5)~~ for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. Reference 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

b. Percentage of usage. The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

c. Security lights. Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the sales price including the usage of the security lights is not subject to the phase-out of state sales tax and is subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.