

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to marketable food products for human consumption

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

Legal Authority for Rule Making

This rule making is adopted 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 is adopting 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).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5614C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5720C**. A virtual public hearing was held on July 8, 2021, at 1:30 p.m.

The Department received public comments from the Iowa Taxpayers Association (ITA) and the Iowa Association of Business and Industry (ABI) at each stage of the process: two public hearings and both Administrative Rules Review Committee (ARRC) meetings, at which the Notice and the Amended Notice were reviewed. The Department also received written comments from ITA and ABI, as well as

other interested tax professionals, in the initial public comment period. All comments received opposed the rule as proposed, rooted in a disagreement with the Department’s interpretation. The Department did not amend the rule from its proposed form prior to adoption. The Department understands impacted stakeholders continue to disagree with the Department’s interpretation of this exemption and is willing and interested in working with these stakeholders to bring this issue to a resolution.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on August 18, 2021.

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).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on October 13, 2021.

The following rule-making action is adopted:

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.

[Filed 8/18/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.