

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to golf and country clubs and all commercial recreation**

The Revenue Department hereby amends Chapter 216, “Events, Amusements, and Other Related Activities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted 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 section 423.2.

*Purpose and Summary*

Pursuant to Part IV of Executive Order 10, the Department was directed to propose Notice of Intended Action **ARC 6947C** in light of the significant concerns received after the official public comment period for **ARC 6577C** and the effective date of new rule 701—216.3(423) implementing the taxable service of commercial recreation. The Department is rescinding rule 701—216.3(423) and replacing it with the text previously found in rule 701—26.24(422), with minor updates for consistency with other administrative rules. This allows the Department to consider the newly raised concerns and reevaluate changes to the rule.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 8, 2023, as **ARC 6947C**. A public hearing was held on March 28, 2023, at 10 a.m. in Room 1 NW, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on April 13, 2023.

*Fiscal Impact*

This rule making reverses a recent rule change that had a fiscal impact of a \$4.95 million increase for sales tax and \$0.78 million increase for local option sales tax (LOST) in fiscal year 2024, increasing gradually thereafter due to inflation. Because this rule making reverses that rule change, this rule making will have the inverse fiscal impact, decreasing sales tax revenue by \$4.95 million and LOST revenue by \$0.78 million in fiscal year 2024. The Legislative Services Agency’s fiscal analysis of **ARC 6947C** concurred in part with the Department’s statement above, due to uncertainty regarding tax collected pursuant to rule 701—216.3(423). On January 6, 2023, two days after rule 701—216.3(423) became effective, the Department advised taxpayers to ignore the newly adopted rule 701—216.3(423) and that the Department would issue refunds to anyone who paid tax pursuant to rule 701—216.3(423).

*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 June 7, 2023.

The following rule-making action is adopted:

Rescind rule 701—216.3(423) and adopt the following **new** rule in lieu thereof:

**701—216.3(423) Golf and country clubs and all commercial recreation.** All fees, dues or charges paid to golf and country clubs are subject to tax. “Country clubs” shall include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Recreation” shall include all activities pursued for pleasure, including sports, games and activities that promote physical fitness, but shall not include admissions otherwise taxed under Iowa Code section 423.2.

**216.3(1)** Dance schools are the only schools the services of which are taxable under Iowa Code section 423.2(6). Rule 701—216.2(423) contains information on dance schools and dance studios. The sales price from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

**216.3(2)** If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

*a.* The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink's facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink's facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

*b.* The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be “instruction” are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a “class” with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be thought of as a “classroom,” but the instructor and the persons receiving instruction should be segregated

from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE 1: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE 2: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come, first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

c. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “v.”

[Filed 4/13/23, effective 6/7/23]

[Published 5/3/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/3/23.