

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to electric fuel excise tax**

The Revenue Department hereby amends Chapter 260, “Motor Fuel and Undyed Special Fuel,” renumbers Chapter 262, “Administration of Marijuana and Controlled Substances Stamp Tax,” as Chapter 269 and adopts a new Chapter 262, “Electric Fuel Excise Tax,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 452A.59 as amended by 2019 Iowa Acts, House File 767.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 767, and 2023 Iowa Acts, House File 666.

*Purpose and Summary*

The Department has adopted this rule making to implement the excise tax on electric fuel, enacted by the Iowa Legislature in 2019 Iowa Acts, House File 767, that will become effective July 1, 2023. These rules provide guidance as to what entities need to obtain a license to sell or dispense electric fuel either as a user, dealer, or both. The rules make clear that all administration of this excise tax—license registration, return filing, tax payments, and claims for refunds—will be handled electronically through GovConnectIowa.

The Department shared an early draft of these rules with stakeholders and incorporated many suggested changes into the published Notice.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 22, 2023, as **ARC 6921C**. A public hearing was held on March 14, 2023, at 10 a.m. in Room 1 NW, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa.

The Department received six written comments in response to the published Notice, including one joint statement from four entities, and two people attended the public hearing. Several comments urged the Department to delay the implementation of the tax or phase in the effectiveness based on when certain charging stations were installed. One comment implored the Department to not implement the tax because it will discourage individuals from purchasing electric vehicles. Because these issues relate to provisions enacted by the Legislature in 2019 Iowa Acts, House File 767, and not the Department’s rules, there are no changes the Department can make to address them.

The Department received questions about whether municipally or county-owned entities need licenses. The Department has added a paragraph to subrule 262.2(1) to provide guidance for entities that only dispense nontaxable electric fuel, such as municipal utility companies that own charging stations used to charge public vehicles. The Department has also modified subrule 262.3(4) to clarify how licensed dealers or users with multiple licenses should report the tax due on the tax return.

The most popular topic for comment, both for the preliminary draft and for the published Notice, was the testing of charging stations. Iowa Code section 452A.41(3) as enacted by House File 767 tasked the Department with testing charging stations. After discussions between the Department and the Iowa Department of Agriculture and Land Stewardship (IDALS), which is responsible for testing and regulating motor fuel pumps, IDALS agreed to assume responsibility of charging station testing. 2023 Iowa Acts, House File 666, makes that statutory change. IDALS will test all charging stations

owned by licensed electric fuel dealers and users every two years using standards as provided in House File 666. IDALS will report back to the Department when a charging station does not comply with its standards. IDALS has rule-making authority to further implement its responsibility as needed. The Department has modified subrule 262.4(2) to reflect the statutory change.

*Adoption of Rule Making*

This rule making was adopted by the Department on May 3, 2023.

*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 July 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—260.13(452A) as follows:

**701—260.13(452A) Reduction of refund—sales and use tax.** Under Iowa Code section 423.3(56), the sales price from the sale of motor fuel, ~~and~~ special fuel, and electric fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 423.3 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel, ~~or~~ special fuel, or electric fuel will be reduced by the applicable sales and use tax. ~~See sales tax rule 701—18.37(422,423)~~ Rule 701—220.2(423) contains more information about sales tax. The sales price upon which the sales and use tax will be applied shall include all federal excise taxes; but will not include the Iowa fuel tax.

This rule is intended to implement Iowa Code section 452A.17.

ITEM 2. Renumber **701—Chapter 262** as **701—Chapter 269**.

ITEM 3. Adopt the following new 701—Chapter 262:

CHAPTER 262  
ELECTRIC FUEL EXCISE TAX

**701—262.1(452A) Tax imposed.** Electric fuel excise tax must be remitted to the department by a licensed electric fuel dealer or licensed electric fuel user regardless of whether the licensed electric fuel dealer or licensed electric fuel user sells the fuel or gives the fuel to customers for no charge. This tax shall be calculated based on the kilowatt-hours of electric fuel delivered.

This rule is intended to implement Iowa Code section 452A.41.

**701—262.2(452A) Licensing.**

**262.2(1) License requirements.**

*a. License required.* A person shall not sell or dispense electric fuel within this state at a location other than a residence or otherwise act as a licensed electric fuel dealer or user without a license. The holder of an electric fuel user’s license is authorized to dispense electric fuel, measured in kilowatt-hours, into the batteries or other energy storage devices of electric motor vehicles owned or controlled by the holder.

*b. No license required for residential charging.* A person may dispense electric fuel at a residence without a license. “Residence” is defined in Iowa Code section 452A.40. For purposes of this rule, “residence” includes apartment buildings or other multiresidential facilities and houses regardless of whether the owner lives in the house. “Residence” does not include hotels, including extended-stay hotels, motels, or other facilities rented to transient guests.

EXAMPLE 1: Hotel A owns and operates an electric fuel charging station in its parking lot and offers electric fuel to its guests at no charge. Hotel A also owns an electric vehicle it uses as a shuttle for its guests and charges the vehicle at its charging station. Hotel A must obtain an electric fuel dealer’s license because it dispenses fuel to customers as well as an electric fuel user’s license because it charges its own vehicle at its charging station.

EXAMPLE 2: Hotel B hosts an electric fuel charging station in its parking lot and offers electric fuel to its guests for a fee. Hotel B owns an electric vehicle it uses as a shuttle for its guests and charges the vehicle at the charging station in its parking lot. The charging station in Hotel B’s parking lot is owned by Station Retailer C. Station Retailer C must obtain an electric fuel dealer’s license. Hotel B does not need to obtain an electric fuel license.

EXAMPLE 3: Homeowner D lists Homeowner D’s house on a short-term home rental online platform. Homeowner D has an electric fuel charging station installed in the garage attached to the house. Guest E agrees to rent Homeowner D’s house for a week. Guest E charges an electric vehicle using Homeowner D’s charging station. Homeowner D does not need to obtain an electric fuel license.

EXAMPLE 4: Person F owns ten houses. Person F only resides in one of the houses and uses the other nine as rental properties. Person F does not need to obtain an electric fuel dealer license for any of the ten houses Person F owns.

EXAMPLE 5: Person G operates a motor carrier business as a sole proprietor. Person G owns an electric vehicle and uses the electric vehicle for the business. Person G operates the business from a residence and charges the electric vehicle at Person G’s residence. Because Person G charges the electric vehicle at a residence, Person G does not need to obtain an electric fuel user license.

*c. No license required for entities only dispensing nontaxable electric fuel.* A person that only sells or dispenses electric fuel for which an exemption or refund may be claimed is not required to obtain a license to dispense such fuel.

EXAMPLE 1: Utility A is a municipal utility, wholly controlled by a municipality in Iowa. Utility A owns electric vehicle charging stations and only charges its own fleet of vehicles or other municipally owned vehicles at the charging stations. Utility A does not need an electric fuel user license since such sale or dispensing of electric fuel is not subject to tax pursuant to Iowa Code section 452A.17(1)“a”(3).

EXAMPLE 2: Utility B is a municipal utility, wholly controlled by a municipality in Iowa. Utility B owns electric vehicle charging stations where it charges its own fleet of vehicles. Utility B also allows individuals or private businesses to charge electric vehicles at its charging stations. Because Utility B is

selling or dispensing fuel for nonpublic purposes when individuals or private businesses use its charging stations, Utility B must obtain an electric fuel dealer license.

**262.2(2) License applications.** Applications for a license must be filed electronically via GovConnectIowa and must be complete with all information required under Iowa Code section 452A.42(2). Applications must indicate the date on which the applicant began or plans to begin selling or dispensing electric fuel.

**262.2(3) Electric fuel users.** An electric fuel user's license does not grant authority to the holder of the license to sell or dispense electric fuel to consumers. A person wishing to sell or dispense fuel for vehicles the person owns or controls as well as to a consumer shall obtain both an electric fuel user's license and an electric fuel dealer's license for each location from which electric fuel will be sold or dispensed.

**262.2(4) No fee imposed.** There is no fee to apply for or hold a license to sell or dispense electric fuel.

**262.2(5) License for each place of business or location.** A license is required for each separate place of business or location where electric fuel is placed into the battery or other storage device of an electric vehicle.

**262.2(6) Denial of license application.** The department may deny a license for any of the reasons provided in Iowa Code section 452A.42(4).

**262.2(7) Bonding procedures.** Existing license holders may be requested to post a bond or security when they have had two or more delinquencies in remitting the electric fuel tax or filing returns timely during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' electric fuel tax liability or \$500, whichever is greater. The simultaneous late filing of the return and late payment of the tax will count as one delinquency. However, the late filing of the return or late payment of the tax will not count as a delinquency if the license holder can satisfy one of the penalty waiver conditions set forth in Iowa Code section 421.27. More information regarding waiver of bond is available in 701—paragraph 259.21(1)“e.”

This rule is intended to implement Iowa Code sections 452A.17 and 452A.42.

#### **701—262.3(452A) Filing of returns and payment of tax.**

**262.3(1) Required information on returns.** Licensed dealers and users of electric fuel must file with the department a biannual electric fuel excise tax return showing for each location where electric fuel is placed into the battery or other storage device of an electric vehicle the following information:

- a. The name and license number of the entity that owns the charging facility.
- b. In the case of a sole proprietorship, the individual owner's name.
- c. In the case of a partnership, the names of all partners.
- d. The location of the facility.
- e. Total number of kilowatt-hours delivered or placed into the battery or other storage device of an electric vehicle.

**262.3(2) Return and payment due date.** The electric fuel excise tax return shall be filed with the department no later than the last date of the month following the close of the tax periods prescribed in Iowa Code section 452A.41. The return shall be accompanied by remittance of the tax due for the period of the return.

**262.3(3) Electronic filing required.** Returns must be filed and payments are to be remitted electronically through [govconnect.iowa.gov](http://govconnect.iowa.gov).

**262.3(4) Consolidated return.** A license holder holding more than one license shall file one consolidated return reporting sales made at all locations for which a license is held.

**262.3(5) International Fuel Tax Agreement returns not impacted.** The electric fuel excise tax return is separate and independent from the tax returns required under the International Fuel Tax Agreement.

This rule is intended to implement Iowa Code section 452A.41.

#### **701—262.4(452A) Charging station verification and testing.**

**262.4(1) Reporting of kilowatt-hours.**

a. Licensed dealers and users may rely upon the following methods to determine kilowatt-hours sold for reporting on a return:

- (1) Electric meters on which only electricity sold as electric fuel is measured.
- (2) Software included in a charging station that tracks kilowatt-hours that flow through the station.

b. If neither subparagraph 262.4(1)“a”(1) or 262.4(1)“a”(2) is available, prior to filing any returns, licensed dealers and users shall contact the department for approval of a method to calculate electricity used as electric fuel as determined by an electricity study.

**262.4(2) Testing of charging stations.** The department of agriculture and land stewardship shall test all charging stations owned by licensed dealers and users pursuant to standards set forth in Iowa Code section 452A.41. The department of agriculture and land stewardship will report to the department any charging station that is not compliant with those standards.

This rule is intended to implement Iowa Code section 452A.41.

### **701—262.5(452A) Refunds.**

**262.5(1) Filing of refund claim.** Taxpayers seeking to claim a refund of electric fuel tax must obtain a refund permit pursuant to Iowa Code section 452A.44. Because returns will be filed and tax paid on a biannual basis, refund claims may be filed and will only be processed on a biannual basis after the tax period for which the refund is sought has closed.

**262.5(2) Sales tax.** Electric fuel used in an exempt manner may be subject to sales tax. Rule 701—260.13(452A) contains more information regarding reductions in refunds due to the applicability of sales or use tax on exempt electric fuel sales.

**262.5(3) International Fuel Tax Agreement refunds not impacted.** This refund process is separate and independent from any refund process authorized under 761—Chapter 505 related to the International Fuel Tax Agreement.

This rule is intended to implement Iowa Code section 452A.44.

### **701—262.6(452A) Exemption certificates.**

**262.6(1)** If electric fuel is sold or dispensed for a nontaxable purpose, the purchaser may complete and provide an exemption certificate produced by the department to the license holder. The certificate is to be retained by the license holder consistent with Iowa Code section 452A.43.

**262.6(2)** The exemption certificate must include but not be limited to the following information:

- a. The date.
- b. The license holder’s name.
- c. The license holder’s electric fuel dealer or electric fuel user license number applicable to the sale.
- d. The invoice number covering the fuel sold if it is sold by an electric fuel dealer.
- e. An indication of the use to which the fuel will be put.
- f. The name, address, and signature of the purchaser.

This rule is intended to implement Iowa Code sections 452A.17 and 452A.43.

[Filed 4/27/23, effective 7/1/23]

[Published 5/17/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/17/23.