

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rulemaking related to telecommunication services  
and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 217, “Telecommunication Services,” Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 34A.7B and 423.3(47A).

*Purpose and Summary*

The purpose of the proposed rulemaking is to rescind Chapter 217 and adopt a new Chapter 217. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of telecommunication services. The chapter also contains definitions necessary for the State to maintain compliance with the Streamlined Sales and Use Tax Agreement.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 2023.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 2, 2024. Comments should be directed to:

Nick Behlke  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306-3457  
Phone: 515.336.9025  
Email: [nick.behlke@iowa.gov](mailto:nick.behlke@iowa.gov)

### *Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 3, 2024 9 to 11 a.m.	Via video/conference call
January 3, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 2, 2024, to facilitate an orderly hearing. A video link will be provided to participants prior to the hearing.

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

Any persons who intend to attend a 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 217 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 217 TELECOMMUNICATION SERVICES

**701—217.1(423) Taxable telecommunication service and ancillary service.** The sales price of all telecommunication service and ancillary service are subject to the sales or use tax.

**701—217.2(423) Definitions.**

**217.2(1) Incorporation of definitions.** To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code section 423.1.

**217.2(2) Chapter-specific definitions.** For purposes of this chapter, unless the context otherwise requires:

“800 service” means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live

service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900 service" and any subsequent numbers designated by the Federal Communications Commission.

*"Ancillary services"* means services that are associated with or incidental to the provision of a telecommunication service. "Ancillary services" includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

*"Conference bridging service"* means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include telecommunication services used to reach the conference bridge.

*"Detailed telecommunication billing service"* means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

*"Directory assistance"* means an ancillary service of providing telephone number information and address information.

*"Fixed wireless service"* means a telecommunication service that provides radio communication between fixed points.

*"Home service provider"* means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. §124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

*"International"* means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

*"Interstate"* means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

*"In this state"* means that telecommunication service is provided "in this state" only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is "interstate" in nature and not subject to tax.

*"Intrastate"* means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

*"Mobile telecommunication service"* means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. §124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. More information is contained in Iowa Code section 423.2(9).

*"Mobile wireless service"* means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

*"Paging service"* means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

*"Pay telephone service"* means a telecommunication service provided through any pay telephone. "Pay telephone service" also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

*"Private communication service"* means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

*“Residential telecommunication service”* means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

*“Sales price from the sale of telecommunication service”* or *“sales price”* means all charges to any person that are necessary for the end user to secure the service, except those charges that are in the nature of a sale for resale (more information is contained in subrule 217.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state, even though payment of the charge may also be necessary to secure other services.

*“Telecommunication service”* means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. *“Telecommunication service”* does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer’s premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising;
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. §522.6 and audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 CFR §20.3;
8. Ancillary services;
9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

*“Value-added non-voice data service”* means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

*“Vertical service”* means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

*“Voice mail service”* means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

This rule is intended to implement Iowa Code section 423.2(9).

#### **701—217.3(423) Imposition of tax.**

**217.3(1) Taxable telecommunication service and ancillary service.** The sales price of the sale of telecommunication service and ancillary service are subject to Iowa sales or use tax. The following is a nonexclusive list of taxable telecommunication services:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;

- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

**217.3(2) Other taxable services and circumstances.** The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce that are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Sales price of services performed by another company.* The sales price collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable sales price of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. *Directory assistance.* Charges for directory assistance service rendered in this state are subject to tax.

d. *Electrical and electronic installation and repair.* The sales price of the installation or repair of any inside wire that provides electrical current that allows an electronic device to function is subject to tax. The sales price is from the enumerated service of electrical and electronic repair and installation. The sales price of inside wire maintenance charges for services performed under a service or warranty contract is also subject to tax. Depending upon the circumstances, the sales price is for the enumerated service of electrical and electronic repair and installation or is incurred under an optional service or warranty contract for an enumerated service. In either event, the receipts are subject to tax.

e. *Electrical and electronic installation and repair: billing methodology.* The sales price of the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, is subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs, including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. *Nonitemized taxes and charges.* Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

g. *Rental of tangible personal property.* The sales price of the rental of any device for home or office use or to provide a telecommunication service to others is taxable as the rental of tangible personal property. The sales price of rental includes rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device that is included in the sales price of the rental of the device is also subject to tax.

h. *Sales of tangible personal property.* The sale of any device, new or used, is subject to tax both when the device is in place on the customer’s premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. More information is contained in Iowa Code section 423.3. Other exemptions may be applicable, as well.

*i. Mandatory charges or fees.* Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the sales price of the sale of the property itself and therefore subject to tax.

*j. Deposits.* Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of the sales price.

*k. Municipal utilities.* Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. More information is contained in subrule 217.4(5).

*l. Fax.* The service of sending or receiving any document commonly referred to as a “fax” from one point to another within this state is subject to sales tax.

EXAMPLE A: Company A is located in Des Moines, Iowa. Company A charges a customer \$2 to transmit a fax to Dubuque, Iowa. The \$2 is a taxable sales price. Midwest Telephone Company charges Company A \$500 per month for the intrastate communication service on the company’s dedicated fax line. The \$500 is also a sales price from a taxable communication service.

EXAMPLE B: The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing that is attributable to expenses for faxing. For example, “bill to John Smith for \$1,000 for legal services performed, fax expenses that are part of this billing—\$30.” The \$30 is not a sales price for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

This rule is intended to implement Iowa Code section 423.2(9).

**701—217.4(423) Exempt from the tax.** This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

**217.4(1)** Detailed communications billing service.

**217.4(2)** Internet access fees or charges.

**217.4(3)** Value-added non-voice data service.

**217.4(4)** Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

*a.* Fees and charges for securing only interstate telecommunication services.

*b.* Federal taxes.

*c.* Fees and charges for only interstate directory assistance.

**217.4(5)** Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

**217.4(6)** Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

**217.4(7)** 911 surcharge. A 911 emergency telephone service surcharge is a surcharge for a service that routes a 911 call to the appropriate public safety answering point and automatically displays a name,

address, and telephone number of an incoming 911 call at that answering point. A surcharge for 911 emergency telephone service is not subject to sales tax if:

- a.* The amount is no more than \$1 per month per telephone access line; and
- b.* The surcharge is separately identified and separately billed.

**217.4(8)** Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

**217.4(9)** Resale exemption. A service or facility furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualifies for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

**217.4(10)** Online services. Any contracted online service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted online services, as long as they provide access to information through a computer server.

**217.4(11)** New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. More information is contained in 701—Chapter 219.

This rule is intended to implement Iowa Code section 423.3.

**701—217.5(423) Bundled transactions in telecommunication service.** More information on general rules on bundled transactions is contained in 701—Chapter 206. In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

**217.5(1)** If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider’s books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

**217.5(2)** If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate, unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider’s books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

This rule is intended to implement Iowa Code section 423.2(8).

**701—217.6(423) Sourcing telecommunication service.**

**217.6(1)** The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services, unless the service falls under one of the exceptions set forth in subrule 217.6(2).

**217.6(2)** Exceptions. The following telecommunication services and products are sourced as follows:

*a.* Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

*b.* The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1) “*e*” shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer’s website. No items are delivered. The sale would be sourced to the consumer’s Iowa billing address.

EXAMPLE 4: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller's website. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer's billing address in Iowa.

EXAMPLE 5: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller's website. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

*c.* A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

*d.* The sale of Internet access service is sourced to the customer's place of primary use.

*e.* The sale of an ancillary service is sourced to the customer's place of primary use.

*f.* A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

(1) The seller's telecommunication system; or

(2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

*g.* The sale of telecommunication service sold on a call-by-call basis is sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

*h.* The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

*i.* The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

This rule is intended to implement Iowa Code section 423.20.

**701—217.7(423) General billing issues.** This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.



**217.7(1) Retailers liable for collecting and remitting tax.** A retailer that sells taxable telecommunication service and ancillary service is liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

**217.7(2) Billing date and tax period.** A company that bills the company's subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in the company's sales price. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the sales price stated in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

**217.7(3) Permitting business offices.** A company must have a permit for each business office that provides telecommunication service in this state. The company must collect and remit tax upon the sales price of the operation of each office.

**217.7(4) Credit.** A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

**217.7(5) Direct pay permit not applicable to telecommunication services.** The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

**217.7(6) Guaranteed amounts for coin-operated telephones.** If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable sales price collected.

This rule is intended to implement Iowa Code section 423.36.

#### **701—217.8(34A) Prepaid wireless 911 surcharge.**

**217.8(1) Definitions.** The definitions in rule 701—217.2(423) apply to this rule. The following definitions are also applicable to this rule:

*“Consumer”* means a person who purchases prepaid wireless telecommunications service in a retail transaction.

*“Department”* means the department of revenue.

*“Prepaid wireless 911 surcharge”* means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

*“Provider”* means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

*“Retail transaction”* means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include but are not limited to prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“*Seller*” means a person who sells prepaid wireless telecommunications service to another person.

**217.8(2) Registration.** Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

**217.8(3) Collecting, filing, and remitting.**

*a.* Each seller is responsible for collecting the applicable 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service in paragraph 217.6(2) “*b.*” More information is also contained in Iowa Code sections 34A.7B(4), 423.15 and 423.20.

*b.* The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

*c.* The prepaid wireless 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers as provided in paragraph 217.8(3) “*a.*” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

*d.* The amount of the prepaid wireless 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

*e.* The seller must complete a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

*f.* The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

*g.* The seller may deduct and retain 3 percent of prepaid wireless 911 surcharges that are collected by the seller from consumers.

*h.* The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

**217.8(4) Audit, appeal, and enforcement.**

*a.* The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. More information is contained in Iowa Code sections 421.10 and 421.60.

*b.* Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. More information is contained in Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

**217.8(5) Procedures for documenting that a sale is not a retail transaction.** The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

**217.8(6) Procedures for remitting the surcharge to the treasurer.** The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

**701—217.9(423) State sales tax exemption for central office equipment and transmission equipment.** Central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by certain providers enumerated in Iowa Code section 423.3(47A) "a."

**217.9(1) Definitions.** The following definitions are applicable to this rule:

"Central office equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(1).

"Transmission equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(4).

**217.9(2) Central office equipment or transmission equipment.** The following are central office equipment or transmission equipment:

a. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

b. Peripheral equipment used to support the transmission of communications over the network, such as emergency power equipment, lightning arrestors, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

c. Circuit equipment that utilizes the message path to carry signaling information or that utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

d. Radio equipment, including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

**217.9(3) Not central office equipment or transmission equipment.** The following are not central office equipment or transmission equipment:

a. Telecommunications towers. These towers are structures and, as such, constitute real property. Real property is outside the scope of "equipment."

b. Equipment shelters or enclosures erected on concrete or other foundations. These shelters or enclosures are structures and, as such, constitute real property. Real property is outside the scope of "equipment."

c. Fencing erected around the telecommunications towers and equipment shelters or enclosures.

This rule is intended to implement Iowa Code section 423.3(47A).