

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to miscellaneous nontaxable transactions and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 221, “Miscellaneous Nontaxable Transactions,” 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 chapter 455C and sections 423.1, 423.3 and 423.5.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 221. 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 Department also moved rules from other chapters that fit with the topic of this chapter. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the exemption of miscellaneous nontaxable transactions that do not fit under any other chapter.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 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 December 1, 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 16, 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

Public Hearing

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

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 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 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number 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 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 221 and adopt the following **new** chapter in lieu thereof:

CHAPTER 221 MISCELLANEOUS NONTAXABLE TRANSACTIONS

701—221.1(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of \$200. Customer A purchases a sweater for \$50 from ABC Clothing Company. ABC Clothing Company will debit A's card \$52.50 ($\50×1.05) for the state tax rate of 5 percent or \$53 ($\50×1.06) if one local option tax rate of 1 percent is applicable.

Charges for returning tangible personal property after the agreed-upon date that are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—221.2(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date that are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

701—221.3(423) Beverage container deposits. Tax does not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—221.4(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

221.4(1) In general. A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons, or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property.

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as “agency”) shall act as follows:

- a.* The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.
- b.* The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.
- c.* The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency’s services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

221.4(2) Scope. The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

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

701—221.5(422,423) Films and other media, exempt rental and sale.

221.5(1) *Exempt rental.* The sales price from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard or read shall not be taxable if the lessee either:

a. Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or

b. Broadcasts the contents of the media for public viewing or listening.

The sales price from lessees who are film exhibitors or who rent video tapes and discs would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of criteria “*a*” or “*b*” above will occur. The rental of films, video tapes and video discs for home viewing is not exempt from tax.

221.5(2) *Exempt sale.* Sales price from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media that can be seen, heard, or read are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(41).