

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

The proposed amendment adds new rule 701—230.11(423) to implement Iowa Code Supplement section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1. Rule 701—230.11(423) provides a new exemption from sales and use tax on purchases made of specified property and services by a qualifying web search portal business.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities that contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 10, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 28, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 29, 2008.

This amendment is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

The following amendment is proposed.

Adopt the following new rule 701—230.11(423):

**701—230.11(423) Web search portal business and its exemption.** Effective on or after July 1, 2008, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria can obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

**230.11(1) Definitions.** For the purpose of this exemption, the following definitions apply:

"*Affiliate*" means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

“Control” means any of the following:

1. In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.
2. In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.
3. In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

“Web search portal business” means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the Internet, including research and development to support capabilities to organize information; or to provide Internet access, navigation, or search functionalities.

**230.11(2) Criteria to claim exemption.** The following governs whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

*a. Requirements.* All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the Internet, including but not limited to research and development to support capabilities to organize information and to provide Internet access, navigation, and search functionality.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

*b. Aggregation to meet requirements.* A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.11(2)“a”(1) to (4) by aggregating various Iowa investments and other requirements with its business affiliates.

*c. Failure to meet investment qualifications.* If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

**230.11(3) Exempt purchases.** Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

*a.* Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

*b.* All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;

*c.* All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;

*d.* All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;

*e.* All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to exterior dedicated business-owned power substations; and back-up power generation systems, battery systems, and related infrastructure;

*f.* All equipment used in the racking system, including cabling and trays;

*g.* Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs “*a*” to “*f*.” This includes the fuel used in the back-up generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and

*h.* Electricity purchased for use in operating the web search portal business.

**230.11(4) *Limitation of exemption.*** The purchases or lease of the items listed in subrule 230.11(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

**230.11(5) *Initial date of exemption.*** The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.