

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

#### **Proposing rulemaking related to miscellaneous taxable sales and providing an opportunity for public comment**

The Revenue Department hereby proposes to rescind Chapter 213, “Miscellaneous Taxable Sales,” 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 423.1, 423.2, 423.3 and 423.5.

#### *Purpose and Summary*

The purpose of this proposed rulemaking is to rescind Chapter 213 and adopt a new Chapter 213. 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 miscellaneous types of sales. These proposed rules reduce uncertainty about what is subject to tax and what is exempt.

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](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 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 4:30 p.m. on January 16, 2024, to facilitate an orderly hearing. A video link 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 213 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 213 MISCELLANEOUS TAXABLE SALES

##### **701—213.1(423) Conditional sales contracts.**

**213.1(1) Definition.** A “conditional sale” is a sale in which the vendee receives the right to the use of the goods that are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

**213.1(2) Factors used to determine a conditional sale.** Conditional sales are evidenced by the facts supporting the nature of the vendor's business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee.

A conditional sales contract would exist where:

- a. The vendee/lessee has total control over the property and is responsible for all losses or damages;
- b. The transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's “lease” agreements, except in cases of default; and
- c. The vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale.

In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

**213.1(3) *Taxability of conditional sales.*** When a conditional sale exists, the seller bills the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property that is the subject of the contract. No further tax is due on the periodic payments. Interest and finance charges are not considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(50) and 423.2(1).

**701—213.2(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc.** Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes are taxable.

**213.2(1)** When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

**213.2(2)** If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes an application for a refund of the motor vehicle fuel tax.

**213.2(3)** The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment that might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

**701—213.3(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value.** Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales prices are subject to tax.

**213.3(1)** The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors is subject to tax.

**213.3(2)** Stamps that are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government are not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price is not subject to either sales or use tax.

**213.3(3)** The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency is subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale is subject to tax for the face value alone.

EXAMPLE 1: Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2: Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

**701—213.4(423) Consignment sales.**

**213.4(1)** When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

**213.4(2)** The sales price of sales of tangible personal property by an agent or consignee for another person is exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

**701—213.5(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions.** The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions is subject to tax when sold to users or consumers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

**701—213.6(423) Sales on layaway.**

**213.6(1)** The sales price from a layaway sale is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside “on layaway” and is not available for sale to the general public. This option to purchase is exercised by the customer’s making one or more “layaway payments.” The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

**213.6(2)** A sale on layaway should not be confused with a “conditional sale.” The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sale situation, physical possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

**701—213.7(423) Memorial stones.**

**213.7(1)** The sales price of memorial stones is subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from the sale is taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

**213.7(2)** The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax.

This rule is intended to implement Iowa Code section 423.2(1).

**701—213.8(423) Creditors and trustees.**

**213.8(1)** Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor’s interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

**213.8(2)** The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

**701—213.9(423) Sale of pets.** Sales of pets are tangible personal property subject to tax. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

**701—213.10(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale.** When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

**701—213.11(423) Repossessed goods.**

**213.11(1) Sale subject to tax.** When tangible personal property that has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

**213.11(2) Bad debts.** A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price that ultimately constitutes a bad debt.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

**701—213.12(423) Tangible personal property made to order.** When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials that have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

**701—213.13(423) Used or secondhand tangible personal property.** The sales price on the sale of used or secondhand tangible personal property is subject to tax in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

**701—213.14(423) Carpeting and other floor coverings.** The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

**213.14(1)** The sales price of floor coverings other than carpeting that are shaped to fit a particular room or area and that are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials that are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

**213.14(2)** The sale of carpeting is not to be treated as the sale of a “building material.” The sales price of rugs, mats, linoleum, and other types of floor coverings that are not attached but that are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

**213.14(3)** The sale of “carpeting” to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. “Carpeting” is any floor covering made of fabric,

usually of wool or synthetic fibers. For purposes of this rule, “carpeting” also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

**213.14(4)** The sales price of carpeting, with installation, is taxable in the following manner:

- a. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.
- b. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.
- c. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

**213.14(5)** In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C’s home. Whether or not A will purchase the carpeting from B for A’s own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A: A contracts with C to install carpeting in C’s home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A’s resale of the carpet to C, but not upon A’s charges for carpet installation, a nontaxable service.

EXAMPLE B: A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C: A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1) “b.”

#### **701—213.15(423) Goods damaged in transit.**

**213.15(1)** If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed.

**213.15(2)** If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

This rule is intended to implement Iowa Code section 423.2.

#### **701—213.16(423) Sales of engraved, bound, printed, and vulcanized materials.**

**213.16(1)** *Engraving.* Engraving includes the business of engraving on wood, metal, stone, or any other material. The engraved material is tangible personal property, the sales price of which is subject to tax.

**213.16(2)** *Binding.* Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of tangible personal property, the sales price of which is subject to tax.

**213.16(3)** *Printing.* Printing includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of printed tangible personal property that are subject to tax: printing of pamphlets, leaflets,

stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

**213.16(4) *Vulcanizing.*** “Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubberlike material with a chemical and subjecting it to heat in order to increase its strength and elasticity. The item produced after vulcanizing is tangible personal property, the sales price of which is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(1)“a.”

**701—213.17(423) Premiums and gifts.** A person who gives away or donates tangible personal property, specified digital products, or taxable services is deemed to be a consumer of such property, products, or services for tax purposes. The sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes is subject to tax.

**213.17(1)** When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer’s cost price.

**213.17(2)** When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

**701—213.18(423) Webinars.**

**213.18(1) *In general.*** Webinars are generally taxable as specified digital products. Specifically, webinars fall into the “other digital products” category as a news or information product. Purchasing access to a live or pre-recorded webinar, even if the webinar’s purpose is educational or otherwise, is not treated as purchase of a service.

**213.18(2) *Nontaxable live webinars with virtual participation.*** Purchases of access to a live webinar, meaning access to viewing a presentation occurring in real time, are not always subject to sales tax. Attending a presentation in person, if it is not an admission to an amusement, is generally not taxable under Iowa law. Similarly, purchasing access to a live webinar is not taxable if the live webinar allows for a level of participation that is substantially similar to an in-person presentation.

**213.18(3) *Exemptions.*** Since purchases of webinars are taxable as specified digital products, any sales tax exemptions that apply to specified digital products may also apply to webinars.

**EXAMPLE 1:** A person purchases access to a live webinar to view on the person’s computer or mobile device. The in-person presentation, which can be viewed by people with access to the live webinar, allows for in-person attendees to ask questions throughout the presentation. Persons viewing the presentation through the live webinar on their computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is not substantially similar. The purchase of access to view this live webinar is subject to sales tax.

**EXAMPLE 2:** A person purchases access to a live webinar to view on the person’s computer or mobile device. The in-person presentation, which is viewable by people with access to the live webinar, does not allow in-person attendees to ask questions throughout the presentation. The person viewing the presentation through the live webinar on the person’s computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is substantially similar. The purchase of access to view this live webinar is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.1(55B).