

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to exemption certificates

The Revenue Department hereby amends Chapter 202, “Filing Returns and Payment of Tax,” and Chapter 204, “Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement”; adopts Chapter 209, “Exemption Certificates”; and rescinds Chapter 288, “Determination of a Sale and Sale Price,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted 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 423.2, 423.3, 423.31, 423.45 and 423.51.

Purpose and Summary

The purpose of this rulemaking is to rescind and reserve 701—Chapter 288. 701—Chapter 288 contained a number of rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language and that should be rescinded. Further, the Department determined that rules on returned merchandise, freight and other transportation charges, and premiums and gifts were better suited to be included in 701—Chapters 202, 204, and 213, which align more with those rules’ subject matters.

Additionally, the Department determined that the rule that described the Department’s interpretation of the underlying statutes relating to the use of exemption certificates would be better suited in a chapter solely on that topic, so the Department is readopting the rule and moving it into 701—Chapter 209, which was previously reserved, in order to make it more easily accessible to the public. The Department made revisions to that rule in order to provide for better organization and clarity and to remove unnecessary, obsolete, and duplicative statutory language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7196C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers’ Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers’ Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. Paragraph 209.1(1)“c” states exemption certificates are valid for up to three years, which may be confusing when an exemption certificate is used for a single transaction. The Department agreed and did not adopt paragraph 209.1(1)“c.” The Department also made changes to subrule 209.1(4), which now states blanket exemption certificates remain effective until canceled by the purchaser or until 12 months elapse with no purchases between the same purchaser and seller. The Department will consider changes to the exemption certificate during its annual forms review.

2. The elimination of the administrative burden of obtaining new exemption certificates from an “entity-based” organization, such as a utility company obtaining new exemption certificates for federal, state, and local governments and public schools every three years was supported for both the seller and the purchaser. The commenter also suggested allowing a taxpayer to list a Federal Employer Identification Number (FEIN) or a Taxpayer Identification Number (TIN) on the exemption certificate or

attaching a copy of the Internal Revenue Service Determination Letter. The Department has determined the expanded use of blanket exemption certificates in subrule 209.1(4) will address some of these concerns. The Department will consider additional changes to the exemption certificate during its annual forms review.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

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).

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).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** rule 701—202.17(423):

701—202.17(423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the sales price. No allowance is to be made for the return of any merchandise that (1) is exempt from either sales or use tax, or (2) has not been reported in the taxpayer's tax previously paid.

This rule is intended to implement Iowa Code section 423.31.

ITEM 2. Adopt the following **new** rule 701—204.8(423):

701—204.8(423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges are subject to sales or use tax is dependent upon the terms of the sale agreement.

204.8(1) Charges separately stated. When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the sales price of the freight or transportation charges is not subject to tax. This exemption does not apply to the service of transporting electrical energy or the service of transporting natural gas.

204.8(2) Charges not separately stated. When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the sales price of the freight or

transportation charges become a part of the sales price of the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such a charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice.

204.8(3) Exemption. The sales price from charges for delivery of electricity or natural gas are exempt from tax to the extent that the sales price from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapter 423. The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples that explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

204.8(4) Applicable charges. Freight and transportation charges include but are not limited to the following charges or fees: freight, transportation, shipping, delivery, or trip charges.

204.8(5) Examples.

EXAMPLE 1: Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption in Iowa Code section 423.3(70).

EXAMPLE 2: Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long-distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity and constitutes separate sales of electricity and transportation services. In these circumstances, amounts that ABC pays DEF for transport of the electricity are taxable.

EXAMPLE 3: As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF, which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4: In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity that it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5: Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for

transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount that ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property.

EXAMPLE 6: Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas that is transported to its plant in processing the tangible personal property manufactured there. The receipts that EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

ITEM 3. Adopt the following **new**701—Chapter 209:

CHAPTER 209 EXEMPTION CERTIFICATES

701—209.1(423) Exemption certificates.

209.1(1) General provisions. A valid exemption certificate, whether furnished by the department or a seller, must be fully completed, dated, and signed if a paper certificate is used.

a. A fully completed exemption certificate must include the following information:

- (1) Name of both the purchaser and seller.
- (2) The purchaser's address and type of business (e.g., retailer, manufacturer).
- (3) Reason for tax-exempt purchase (e.g., resale, processing).
- (4) When required, purchaser's identification number (e.g., Iowa-issued sales and use tax permit, another state's issued sales tax identification number, and Federal Employer Identification Number).

b. Either a fully completed exemption certificate or capture of the data elements listed in paragraph 209.1(1) "a" must be obtained at the time of sale or within 90 days subsequent to the date of sale.

209.1(2) Liability. The sales tax liability is on both the seller and purchaser; however, a seller is relieved of the liability if the seller obtains a fully completed exemption certificate or captures all the data elements listed in paragraph 209.1(1) "a."

a. If no exemption certificate or the data elements are obtained within 90 days of the sale, a seller obligated to collect tax from a purchaser is relieved of liability if the seller obtains a fully completed exemption certificate taken in good faith or provides proof the transaction was not subject to tax within 120 days of the department's request for substantiation.

b. No liability relief is available for sellers who do any of the listed activities in Iowa Code section 423.51(2).

c. The purchase of tangible personal property, specified digital products, or services that are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the purchaser of the responsibility for tax if at some later time the transaction is determined to be taxable.

d. A person who is selling tangible personal property, specified digital products, or services, but who does not make any taxable sales at retail, is not required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services were purchased for the purpose of resale.

209.1(3) Other acceptable forms. Purchasers may also use a Multistate Tax Commission's Uniform Sales & Use Tax Resale Certificate, available at mtc.gov, or a Streamlined Sales Tax Agreement Certificate of Exemption, available on the department's website or at streamlinedsalestax.org, as an alternative to a department-issued certificate.

209.1(4) Blanket certificates. Sellers and purchasers with a recurring business relationship, as described in Iowa Code section 423.51(3)“d,” may use blanket exemption certificates covering more than one transaction. Blanket exemption certificates remain effective until canceled by the purchaser or until 12 months elapse with no purchases between the same purchaser and seller.

This rule is intended to implement Iowa Code sections 423.45 and 423.51.

701—209.2(423) Fuel exemption certificates.

209.2(1) Use of fuel exemption certificates. The use and acceptance of fuel exemption certificates must comply with Iowa Code section 423.45(5). For purposes of this subrule, terms mean the same as defined in Iowa Code section 423.45(5).

209.2(2) Necessary information. A fuel exemption certificate, as defined in Iowa Code section 423.45(5), must be dated and contain the following information, including but not limited to:

- a. The seller’s name and address;
- b. The purchaser’s name and address;
- c. The type of fuel purchased, such as electricity or propane;
- d. Description of the purchaser’s business, such as farmer or manufacturer;
- e. A general description of the type of processing in which the fuel is consumer, such as grain drying, raising livestock, generating electricity, or the manufacture of tangible personal property;
- f. Claimed exemption percentage.

209.2(3) Additional documentation. The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate, which is reasonably necessary to support the claim of exemption for fuel consumed in processing; however, additional documentation is not required under the circumstances listed in Iowa Code section 423.45(5)“f.” In the absence of separate metering, documentation reasonably necessary to support a claim for exemption must consist of either an electrical consultant’s survey or of a document prepared by the purchaser in accordance with the requirements of subrule 209.2(5).

209.2(4) Exemption determination. When the amount of the exemption is modified pursuant to Iowa Code section 423.45(5)“d,” a purchaser must notify the seller of any change in percentage.

209.2(5) Determining percentage of electricity used in processing. When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations that support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory that is exempt by virtue of its being used in processing. Paragraph 209.2(5)“e” provides information on alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. The immediately previous 12-month period is used because it is a span of time that is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

EXAMPLE 1: Farmer A files a fuel exemption certificate for the period beginning January 1, 2022. The year 2021 had a very mild winter, a relatively cool summer, and a very dry autumn. Farmer A uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Farmer A must use a 12-month period that is more representative of his usual exempt electrical consumption than that of January through December 2021.

EXAMPLE 2: Company A manufactures its product in a factory that has no windows and is heavily insulated. The factory always runs 40 hours per week, 52 weeks per year. Because of these and other

circumstances, Company A's electrical usage does not vary significantly from month to month, and it is easy enough to document this. Company A can calculate its percentage of exempt use of electricity based on a one-month, rather than a 12-month, period.

EXAMPLE 3: Company B manufactures widgets. The "economic cycle" for widget production is, on average, 36 months long. During this economic cycle, there are times when, for months at a time, the factory will operate three shifts. At other times, for weeks at a time, the entire factory will be shut down and its personnel laid off. The only accurate way to determine the exempt percentage of electricity used is to calculate electrical use over the entire economic cycle. Therefore, 36 months, rather than 12 months, would be the base period.

b. Calculating kilowatts used per hour by various electrical devices. The first step in computing the percentage of exemption is to determine the number of kilowatts used per hour for each device in the farm or factory. If kilowatts consumed per hour of a device's use is not listed on the device or otherwise readily obtainable, formulas can be used to determine this information.

(1) Lights. For incandescent bulbs, add rated wattages and divide by 1,000. For fluorescent lights, add rated wattages plus an additional 20 percent of rated wattages, then divide by 1,000.

Incandescent Lights:

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

Fluorescent and Other High Intensity Lights:

$$\frac{\text{Watts} + .20 (\text{Watts})}{1,000} = \text{Kilowatts Per Hour}$$

(2) Devices other than lights. For these devices, use the wattage rating given by the manufacturer and divide by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

If an appliance does not list a watt rating, tables provided by Iowa State University Cooperative Extension Service can be used, especially by farmers who are attempting to compute their exempt percentage of electricity used. Persons using a table are reminded to convert watts to kilowatts before proceeding to further calculations.

c. The average number of kilowatts consumed per hour of operation for any one device must next be multiplied by the total number of hours that the device is operated during the base period. A person may use intermediate calculations.

(1) EXAMPLE 1: Assume that a machine used in processing consumes 20 kilowatts per hour of operation. The machine is operated, during a 12-month base period, 40 hours per week during 50 weeks. The machine is not placed in operation when the factory is closed for two weeks' vacation. Exempt use is calculated as follows:

$$\begin{array}{ccccc} \text{Kilowatts} & & & & \text{Weeks operated in 12-month} \\ \text{per hour} & \times & \text{Hours operated} & \times & \text{period equals number of} \\ & & \text{per week} & & \text{exempt kilowatt hours} \end{array}$$

In this example, $20 \times 40 \times 50 = 40,000$ exempt kilowatt hours.

(2) EXAMPLE 2: Assume that a grain dryer uses 30 kilowatts per hour of operation. During a 12-month base period, the grain dryer is used in processing 200 hours per month, for 3 months. The calculation for total number of kilowatt hours of exempt use for the 12-month period is as follows:

$$\begin{array}{ccccc} \text{Kilowatts} & & & & \text{Number of months of exempt} \\ \text{per hour} & \times & \text{Hours operated} & \times & \text{use equals total number of} \\ & & \text{per month} & & \text{exempt kilowatt hours} \end{array}$$

In this example, $30 \times 200 \times 3 = 18,000$ exempt kilowatt hours.

(3) EXAMPLE 3: The following is a very simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

d. *Example worksheet.* The following is a simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

	Kilowatts Per Hour of Operation	Average Hours of Operation Per 12-Month Base Period	Average Kilowatt Hours Per 12-Month Base Period	Total
All Exempt Usage				
Production Machine #1	10	1000	10000	
Production Machine #2	10	1000	10000	
Other	10	1000	10000	
Total Exempt Usage				30000(A)
All Taxable Usage				
Air Conditioners	10	3000	30000	
General Lighting	10	3000	30000	
Office Equipment	10	3000	30000	
Space Heaters	10	3000	30000	
Other	10	3000	30000	
Total Taxable Usage				150000(B)
Total—All Usages				180000(C)
$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$				

The number actually used in the base period can be determined by reference to billings for the base period. If the number of kilowatt hours calculated to have been used does not approximate the number actually used in the base period, the calculations are deficient and should be performed again. Once the precise percentage of exemption has been calculated, that percentage must be applied during any period for which a purchaser is requesting exemption. Any substantial and permanent change in the amount of electricity consumed or in the proportion of exempt and nonexempt use of electricity is an occasion for recomputing the exempt percentage and for filing a new exemption certificate.

e. *Alternative methods.* The following are nonexclusive alternatives to the above method of determining the percentage of electricity, which is exempt because it is used in processing.

(1) If currently only one meter exists to measure both exempt and nonexempt use of electricity, the most accurate method of determining exempt and nonexempt use may be separate metering of these two uses. This possibility is especially practical if all exempt use results from the activities of one machine, however large.

(2) If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using an energy consultant's service is impractical, it may be possible to secure, from the manufacturer of a machine used in processing, the number of kilowatts that a machine uses per hour of operation. Often, these manufacturer's studies give a more accurate measure of a machine's use of electricity than the formulas set out in paragraph 209.2(5) "b" above. This circumstance is especially true with regard to large electric motors.

(3) If a business is new, and no historical data exists for use in calculating exempt and nonexempt percentages of electricity or other fuel consumed, any person calculating future exempt use must make the best projections possible. If calculating future exempt use with no past historical data to serve as a basis for the calculations, it is suggested that conservative estimates of exempt use be made. Using these conservative estimates can avoid future liability for sales tax on the part of the purchaser of the electricity. Possibly, in calculating exempt use of fuel for a new business, historical data from existing similar businesses can be used if available from persons not in direct competition with the person

claiming the exemption. The calculation and the exemption certificate must be updated once data from an accurate 12-month cycle, or other appropriate cycle, is available.

209.2(6) *Applicability.* The provisions of subrule 209.2(5) explaining the determination of the percentage exemption for electricity also apply to other types of fuel, such as natural gas, LP, etc., when used for exempt purposes.

This rule is intended to implement Iowa Code section 423.45.

701—209.3(423) Special certificates of beer and wine wholesalers. Beer or wine purchased from a wholesaler holding a Class A or F permit has been purchased for resale if the purchaser provides the wholesaler with a retail beer or wine permit or liquor license number. A wholesaler’s record of account with an individual retailer is a complete and correct exemption certificate for the purposes of beer or wine sales and provides all the protection that the usual exemption certificate, as described in rule 701—209.1(423), provides if the record of account contains the retailer’s beer or wine permit or liquor license number and all other information concerning the account is taken in good faith by the wholesaler. For the purposes of this rule, the words “beer,” “permit,” “retailer,” “wholesaler,” and “wine” mean the same as defined in Iowa Code section 123.3.

This rule is intended to implement Iowa Code section 423.45.

ITEM 4. Rescind and reserve **701—Chapter 288.**

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.