REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 225
"Resale and Processing Exemptions Primarily of Benefit to Retailers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42

State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1(24), 423.1(39), 423.1(46), 423.1(54), 423.1(55), 423.2(1), 423.3(2), 423.3(50), 423.3(98), 423.3(104), and 423.15(2)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 25, 2023 9 a.m. to 12 noon	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 225. This chapter provides the Department's interpretation of the underlying statutes and how those statutes apply to retailers who qualify for a resale or other sales or use tax exemptions on certain purchases in order to aid retailers' understanding of the underlying statutes and reduce uncertainty about the application of certain exemptions to retailers' purchases. The Department proposes adding to the rules to add clarification and removing portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to those changes and for organizational reasons. A citation in subrule 225.5(5) to rule 701—221.5(423) refers to a rule that will be adopted in a future rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rules do not create costs for any class of persons beyond what is imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public, especially retailers, will benefit from this proposed rulemaking because it provides guidance about the scope and applicability of specific exemptions on certain purchases.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with the proposed rulemaking beyond what is contained in statute.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about the applicability of certain exemptions related to resale and processing. Failure to adopt the rules would lead to confusion, questions to the Department, and potential collection of tax for an exempt purchase.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the rules provide clarification about certain exempt sales, making it less likely that tax will be collected on what is an exempt sale.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to provide clarification and to remove unnecessary, obsolete, and duplicative statutory language. The benefit of the proposed rulemaking is to provide additional certainty and reduce confusion about the applicability of exemptions to certain purchases by retailers.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive, and its purpose is to provide guidance on the applicability of specific exemptions on certain purchases made by retailers. The Department considered the option of not adopting rules. However, the Department determined the rules provide helpful guidance and useful clarification to retailers and the public.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not adopting rules. However, the Department determined the rules provide helpful guidance and useful clarification to retailers and the public beyond what is provided by the underlying statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that proceeding without rules would lead to confusion about whether certain purchases by retailers are exempt from sales or use tax.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business because it does not make any distinctions based on the size of a business. The rules do not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 225 and adopt the following **new** chapter in lieu thereof:

CHAPTER 225
RESALE AND PROCESSING EXEMPTIONS PRIMARILY
OF BENEFIT TO RETAILERS

701—225.1(423) Paper or plastic plates, cups, and dishes; paper napkins; wooden or plastic spoons and forks; and straws. When paper or plastic cups, plates, and dishes, paper napkins, and wooden or plastic spoons, forks, and other utensils are sold with food or other items to a buyer, and the buyer uses or consumes the utensils, sales of those utensils to retailers are considered sales for resale. The sales price from the sale of such items by retailers to consumers or users is subject to tax.

When these articles are transferred in connection with a service or sold for free distribution by retailers apart from a retail sale, the transaction is deemed to be a retail sale to the retailer and therefore is taxable.

Sales of reusable placemats to retailers that sell meals are also subject to tax.

EXAMPLE 1: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.2(423) Services used in the repair or reconditioning of certain tangible personal property. Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type that is normally sold in the regular course of the retailer's business and that is held for sale by the retailer.

EXAMPLE 1: A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

EXAMPLE 2: B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

EXAMPLE 3: C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

EXAMPLE 4: XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling televisions subject to sales tax. However, in this instance, XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 423.1(55) and 423.3(50).

701—225.3(423) Tangible personal property purchased by a person engaged in the performance of a service.

225.3(1) *In general.*

a. Tangible personal property purchased by a person engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Tangible personal property that is not sold in the manner set forth in paragraph 225.3(1)*"a"* above is not purchased for resale and thus is subject to tax at the time of purchase by a person engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service, and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE 1: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity that is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a "resale" of the item.

EXAMPLE 2: An automobile repair shop purchases solvents that are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvents because the solvents are not sold to the customer and because, in this case, the items are not transferred to a customer in a form or quantity that is capable of a fixed or definite price value. Thus, the solvents are deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE 3: A retailer purchases television picture tubes tax-free and makes a separate charge for the picture tube to the customer. Since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value, the retailer may purchase the picture tube exempt from tax for subsequent resale.

EXAMPLE 4: A beauty shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty shop purchases such items from its supplier because the customers of the beauty shop are not separately billed for the items and because the items are not transferred to the customer in a form or quantity capable of a fixed or definite price value. The items are consumed by the beauty shop.

EXAMPLE 5: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas, and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the items.

EXAMPLE 6: An accounting firm purchases plastic binders that are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, because there is no sale to the customer.

EXAMPLE 7: A meat locker purchases materials, such as wrapping paper and tape, that it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE 8: A jeweler purchases materials, such as main springs and crystals, to be used in the performance of a service. These items are purchased by the jeweler for resale when they are transferred to the customer in a form or quantity capable of a fixed or definite price value, and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE 9: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers that are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....$60"; "Fertilizer...50 lbs....$100"; and "Materials applied to lawn...4 bushel...$40." The following are examples of information placed upon an invoice that would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...$30" or "Fifty pounds of fertilizer was applied to this lawn."

225.3(2) *Purchases made by automobile body shops or garages with body shops.* Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

a. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. More information is contained in Iowa Code section 423.3(2).

b. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two conditions is not met, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items that will be resold (detailed list below) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax permit or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" that such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

Abrasives

Battery water
Body filler or putty
Body lead
Bolts, nuts and washers
Brake fluid
Buffing pads
Chamois
Cleaning compounds
Degreasing compounds
Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sanding discs
Sandpaper
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts:

Accessories
Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Door guards
Door handles
Doors
Engine parts
Fenders
Floor mats
Grilles
Headlamps
Hoods
Hubcaps
Radiators
Rocker panels

Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies that are generally not transferred to the body shop's customer during the course of the repair and, therefore, could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer. Therefore, the body shop must pay tax to the vendor at the time of purchase:

Air compressors and parts
Body frame straightening equipment
Brooms and mops
Buffers
Chisels
Drill bits
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Signs
Spreaders for putty
Washing equipment and parts
Welding equipment and parts

Because of the nature of the body shop business and the formulas devised by the insurance industry to reimburse a body shop for cost of "materials," it is possible for a body shop, in the body shop's invoices to customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shop, and some of such individual materials are not even transferred by the body shop to the body shop's customers. Therefore, the body shop is generally the "consumer" of "materials" and does not purchase those materials for resale. Thus, the body shop should pay tax to retailers on all materials purchased and consumed by the body shop. If materials are purchased from non-Iowa retailers that do not collect Iowa tax from the body shop, such a body shop should remit consumer use tax to the department of revenue on such materials.

A body shop must collect sales tax on the taxable service of repairing motor vehicles. More information is contained in rule 701—218.2(423). However, due to the nature of the insurance formulas, it is possible for the body shop to itemize that portion of the body shop's billing that would be for repair services and that portion relating to consumed "materials." It is also possible for the body shop to itemize that portion of the body shop's charges for parts that the body shop purchases for resale to the body shop's customers. A body shop does not and cannot resell the tools and supplies previously listed in this rule; the body shop's purchases of such items are taxable.

Therefore, as long as a body shop separately itemizes on the body shop's invoices to the body shop's customers the amounts for labor, parts, and "materials," the body shop should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, and polishes. In the body shop's invoice to the customer, the labor is separately listed at $600, the part (fender) is separately listed at $600, and the category of "materials" is separately listed for a lump sum of $200, for a total billing of $1,400. The Iowa sales tax computed by the body shop should be on $1,200, which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for the taxable "sales price," as defined in Iowa Code section 423.1(51), which is taxable under Iowa Code section 423.2.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or parts charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at the time of purchase.

This rule is intended to implement Iowa Code sections 423.1(39) and 423.3(2).

701—225.4(423) Maintenance or repair of fabric or clothing. Sales of chemicals, solvents, sorbents, or reagents directly used and consumed in the maintenance or repair of fabric or clothing are exempt from tax. This rule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances that do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing, but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethlyene (also known as "perch") or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt from tax. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).

701—225.5(423) The sales price from the leasing of all tangible personal property subject to tax.

225.5(1) *Leases.* The rental of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because "leases" and "rentals" of tangible personal property are taxable retail "sales" of that property. The rental of tangible personal property is not a taxable enumerated service. The resale exemption in favor of sales for resale of tangible personal property is applicable to sales and leases of tangible personal property for subsequent rental or lease.

EXAMPLE A: ABC buys blowers, hand tools, ladders, plumbers' snakes, sanders, and tillers for subsequent short-term rental to various customers. ABC's purchases of these items of equipment are purchases for resale and are exempt from tax.

EXAMPLE B: In addition to its purchases of equipment for subsequent rental, ABC leases from retailers, long-term, items of heavier equipment, such as backhoes, forklifts, manlifts, tractors, and trenchers, again for subsequent leasing to various customers. Since the leasing of tangible personal property is now a purchase of that property, ABC's leasing for later sublease is a purchase of tangible personal property and is exempt from tax at the time of purchase as the purchase of tangible personal property for subsequent resale.

225.5(2) *Distinguishing leases and rentals of tangible personal property from the furnishing of nontaxable services.* In order to determine whether a particular fee is charged for the rental of tangible personal property or for the furnishing of a nontaxable service, the department looks at the substance, rather than the form, of the transaction. When the possession and use of tangible personal property by the recipient is merely incidental as compared to the nontaxable service performed, all of the sales price is derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of tangible personal property, no sales price is derived from the rental of tangible personal property. When the nontaxable service is merely incidental to the possession and use of the tangible personal property by the recipient, all of the sales price is derived from the furnishing of tangible personal property rental and, unless a separate fee or charge is made for the nontaxable service, no sales price is derived from the nontaxable service. When a tangible personal property

rental agreement contains separate fee schedules for rent and for nontaxable service, only the sales price derived from the tangible personal property rental is subject to tax. This rule is not to be so construed as to be at variance with Iowa Code sections 423.2(6)*"bf"* and 423.2(8) concerning transportation services and bundled service contracts, respectively.

225.5(3) *Rental of real property distinguished from rental of tangible personal property.* If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided that allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

225.5(4) *Rental of tangible personal property and rental of fixtures.* The rental of tangible personal property that shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property that is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis.

225.5(5) *Rental of tangible personal property embodying intangible personal property rights—transactions taxable and exempt.* Under the law, the sales price from rental of tangible personal property includes royalties and copyright and license fees. The rental of all property that is a tangible medium of expression for the intangible rights of royalties and copyright and license fees is subject to tax. Therefore, the sales price from the rental of films, videodiscs, videocassettes, and computer software that are the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible personal property is subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. More information is contained in rule 701—221.5(423) for an exemption from the requirements of this subrule for rental of films, videotapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees that broadcast the contents of these media for public viewing or listening.

225.5(6) *Deposits and additional fees.* Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit required. A deposit subject to forfeiture for the lessee's failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable rental and are subject to tax. Such deposits may include a deposit of the first rental payment that is applied to the rental receipts.

When tangible personal property is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable.

225.5(7) *Leasing of tangible personal property moving in interstate commerce.*

a. In the case of a lease or rental that requires recurring periodic payments, the first periodic payment is taxed to Iowa if the property was delivered to the lessee in Iowa. Periodic payments made subsequent to the first payment may be taxed only by the state in which the property is primarily located for the period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. Where a nonresident lessor leases tangible personal property to a resident or nonresident lessee and the lessee uses the property in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments if Iowa is the primary location of the property, provided the lessor is a retailer maintaining a place of business in this state as defined in Iowa Code section 423.1(48). Whether the lease agreement is executed in Iowa or not is irrelevant.

c. Where a lessee rents equipment sourced to Iowa and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee rents tangible personal property, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.14, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside Iowa and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa, uses it in Iowa, and Iowa becomes the primary location of the property, Iowa use tax applies to subsequent rental payments.

e. If sales or use tax has already been paid to another state on the sales price of tangible personal property prior to the use of that property in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given.

This rule is intended to implement Iowa Code sections 423.1(24), 423.1(43), 423.1(46), 423.1(54), 423.2(1), and 423.15(2).

701—225.6(423) Certain inputs used in taxable vehicle wash and wax services. The sales price from the sale of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) is exempt from tax.

225.6(1) *Definitions.* For the purposes of this rule, terms mean the same as defined in Iowa Code section 423.1 and 701—Chapter 200. Additionally, the following definitions apply:

"Secondary vehicle wash and wax facility" means a vehicle wash and wax facility whose primary purpose is to sell tangible personal property or services other than vehicle wash and wax services, but which also provides vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). Examples of "secondary vehicle wash and wax facilities" include but are not limited to vehicle dealerships, convenience stores, service stations, and wholesale and retail fuel marketing locations that provide taxable vehicle wash and wax services in addition to their primary business purpose. A facility that provides vehicle wash and wax services that also sells tangible personal property or other services is presumed to be a "secondary vehicle wash and wax facility" unless it can prove otherwise.

"Stand-alone vehicle wash and wax facility" means a vehicle wash and wax facility whose primary purpose is to provide vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). A vehicle wash and wax facility is considered a "stand-alone vehicle wash and wax facility" although it sells a de minimis amount of products and services related to vehicle wash and wax services. Nonexclusive examples of products and services related to vehicle wash and wax services include coin-operated vacuum stations and air fresheners and vehicle wipes that are sold out of vending machines.

"Vehicle" means the same as defined in Iowa Code section 321.1.

"Vehicle wash and wax facility" means any retailer that provides vehicle wash and wax services.

"Vehicle wash and wax services" or *"vehicle wash and wax"* means washing and waxing services performed inside or outside of the vehicle or both whether the services are performed by hand, machine, or coin-operated devices.

"Water" means water directly consumed or used in providing the taxable vehicle wash and wax service. "Water" does not include, for example, charges or fees for storm water, sanitary sewer, or solid waste services since these are not fees for water directly used or consumed in providing the taxable vehicle wash and wax service.

225.6(2) *Purchases made by a stand-alone vehicle wash and wax facility.* Purchases of water, electricity, chemicals, solvents, sorbents, or reagents by a stand-alone vehicle wash and wax facility are presumed to be 100 percent exempt from sales tax. The stand-alone vehicle wash and wax facility is not required to provide the retailers of such items with an exemption certificate.

225.6(3) *Purchases made by a secondary vehicle wash and wax facility.*

a. Sales price of electricity and water. The exemption for the sales price of electricity and water purchased by secondary vehicle wash and wax facilities applies only to the sales price from the sale of electricity and water directly consumed or used in providing vehicle wash and wax services, as distinguished from electricity and water used and consumed for other purposes not related to vehicle wash and wax services (e.g., electricity to operate office equipment or lighting; water used for cleaning the inside of a gas station or for irrigation).

(1) Separately metered electricity and water. Ideally, a secondary vehicle wash and wax facility will have separate meters to measure its nonexempt electricity and water usage and its exempt electricity and water used for providing taxable vehicle wash and wax services. A secondary vehicle wash and wax facility that separately meters its exempt and nonexempt electricity and water usage and does not use the exempt electricity and water for any other purpose than providing a taxable vehicle wash and wax service does not have to file an exemption certificate with the retailers. The retailer should not charge

tax on the charges associated with the meters that measure electricity and water used solely for providing the taxable vehicle wash and wax services.

However, if water or electricity that is measured by the meter that separately measures the vehicle wash and wax facility is used for both taxable vehicle wash and wax services and nonexempt purposes (e.g., consumed in performance of its business operations), the secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this rule, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate shall indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentage of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service facility's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentage of exempt electricity or water usage may forego the exemption. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

(2) Exempt and nonexempt usage measured by the same meter. When electricity and water are purchased for vehicle wash and wax services as well as for taxable uses, and the use of the electricity or water is recorded on a single meter, a secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this subparagraph, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate must indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentages of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service provider's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentages of exempt electricity and water usage may either forego the exemption or install a separate meter. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

Exemption statutes are strictly construed against the taxpayer in favor of taxation. The secondary vehicle wash and wax facility has the burden of proof regarding the exempt percentages and is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the electricity or water retailer in writing of the percentage of exempt usage, if required.

b. Sales price of chemicals, solvents, sorbents, or reagents. The sales price of chemicals, solvents, sorbents, or reagents sold to a secondary vehicle wash and wax facility to be used in providing a taxable vehicle wash and wax service is presumed to be 100 percent exempt from sales tax if the secondary vehicle wash and wax facility's primary business does not consume or sell the same chemicals, solvents, sorbents, or reagents that are used in providing taxable vehicle wash and wax services. If the secondary vehicle wash and wax facility's primary business does not use or sell the same products used in providing the taxable vehicle wash and wax service, the facility does not have to provide the retailer with an exemption certificate. However, if the secondary vehicle wash and wax facility may consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services, the secondary vehicle wash and wax facility shall either:

(1) Purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax to the department at the time such items are consumed in the operation of the primary business. The secondary vehicle wash and wax facility shall provide to the retailer an exemption certificate that indicates that not all items will be used in providing a taxable vehicle wash and wax service and the tax on such items will be remitted at a later date; or

(2) Pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the facility's returns.

EXAMPLE A: An automobile dealership offers a taxable drive-through vehicle wash and wax service in addition to its primary business purpose of selling vehicles. The automobile dealership is a "secondary vehicle wash and wax facility" because the taxable vehicle wash and wax service is offered secondarily to its primary purpose of selling and servicing vehicles. In addition to providing vehicle wash and wax services to the general public (a taxable vehicle wash and wax service), the automobile dealership uses its vehicle wash and wax facility to wash and wax its inventory. Using the vehicle wash and wax facility to wash or wax inventory is not a taxable vehicle wash and wax service because the vehicle wash and wax service is not sold to customers; the service is "consumed" in performance of the automobile dealership's business operations.

The automobile dealership has electricity and water meters that each separately measure the electricity and water used and consumed in using the vehicle wash and wax facility. Although the automobile dealership separately meters electricity and water, the separate meters do not measure only taxable vehicle wash and wax services. Therefore, to claim the exemption, the automobile dealership shall provide the electricity and water retailers with an exemption certificate that states the percentages of water and electricity used in providing taxable vehicle wash and wax services. The electricity and water retailers shall separately state and bill for the taxable and exempt amounts.

The automobile dealership also uses some of the chemicals, solvents, sorbents, or reagents while washing and waxing its inventory, so the automobile dealership may either (1) purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax at the time such items are consumed in the operation of the primary business, or (2) pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the dealership's returns.

The exemption is available for the quantity of items used in providing the taxable vehicle wash and wax services even though the automobile dealership does not separately itemize on its receipts the amounts of electricity, water, chemicals, solvents, sorbents, or reagents used in providing the taxable vehicle wash and wax services.

EXAMPLE B: A gas station that also sells vehicle wash and wax services does not separately meter the electricity or water used and consumed in providing the taxable vehicle wash and wax services. With the exception of providing vehicle wash and wax services, the gas station does not provide any other additional services. The gas station wants to claim the exemption. To obtain the exemption for electricity or water under this rule, the gas station shall calculate, and has the burden of proving, the amount of exempt electricity or water it uses in providing taxable vehicle wash and wax services. The gas station shall furnish to the electricity or water retailer an exemption certificate that indicates what percentage of the electricity or water is exempt.

Additionally, because the gas station only sells gasoline and taxable vehicle wash and wax services, it is unlikely that the gas station will consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services. Therefore, the sales price of the chemicals, solvents, sorbents, or reagents that the gas station purchased for use in providing taxable vehicle wash and wax services is 100 percent exempt from sales tax. The gas station does not have to provide the retailers of the chemicals, solvents, sorbents, or reagents with an exemption certificate.

EXAMPLE C: Same facts as Example B, except the gas station does not believe it is feasible to accurately determine the amount of electricity or water usage that can be attributed to the vehicle wash and wax facility. The gas station also does not believe it is economically beneficial to install separate meters to measure the usage of electricity or water for the sole purpose of claiming the exemption. Therefore, the gas station does not claim the exemption and pays sales tax on the full sales price of water or electricity.

This rule is intended to implement Iowa Code section 423.3(98).

701—225.7(423) Exemption for certain purchases by commercial enterprises.

225.7(1) *Exemption.* The sales price from the sale of specified digital products and of prewritten computer software sold, and of enumerated services described in Iowa Code section 423.2(1)*"a"*(5) or 423.2(6)*"bq," "br," "bs,"* and *"bu"* furnished to a commercial enterprise for use exclusively by a commercial enterprise is exempt from tax.

225.7(2) *Commercial enterprise as purchaser.* A purchaser seeking this exemption must be a commercial enterprise as defined in Iowa Code section 423.3(104)*"b"*(1). For purposes of Iowa Code section 423.3(104)*"b"*(1). For purposes of Iowa Code section 423.3(104)*"b"*(1), the following definitions apply:

a. Insurance company. "Insurance company" means the same as defined in Iowa Code section 423.3(47)*"d."* Excluded from the definition of "insurance company" is the following nonexhaustive list of entities: benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B.

b. Occupation. "Occupation" means the principal business of an individual, such as the business of farming.

c. Profession. "Profession" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation.

225.7(3) *Exclusive use by a commercial enterprise.* A commercial enterprise must be the exclusive user of the product. Use in the ordinary course of a commercial enterprise's business constitutes exclusive use by a commercial enterprise. Uses by all other users, including entities other than commercial enterprises, do not constitute uses by a commercial enterprise.

a. Examples of exclusive uses. The following are examples of exclusive uses by a commercial enterprise in the normal course of business:

(1) Word processing software loaded onto employees' work computers.

(2) Software that displays a menu on a tablet used by customers at a restaurant.

(3) Information services used by temporary employees of a commercial enterprise in the ordinary course of business.

b. Examples of disqualifying nonexclusive uses. The following are examples of uses that are not exclusive uses by a commercial enterprise or uses in the ordinary course of business:

(1) Software shared by a commercial enterprise with an entity that is not a commercial enterprise.

(2) Video games that customers may purchase on a tablet that is provided at a restaurant for customers to use while waiting for service.

225.7(4) *Noncommercial purposes.* "Noncommercial purposes" means purposes that are outside of carrying out the business purpose of a commercial enterprise or purposes outside of the ordinary course of business of a commercial enterprise. The following are examples of uses for noncommercial purposes:

a. Personal and recreational use.

b. Holding a product for future use for a noncommercial purpose.

225.7(5) *De minimis.* "De minimis" means an amount of use of a product for noncommercial purposes that, when considering the product's value and the frequency with which the use for noncommercial purposes occurs during the product's total use time, is so small as to make accounting for that use unreasonable or impractical. Whether a use is de minimis is a fact-based determination that shall be made on a case-by-case basis.

This rule is intended to implement Iowa Code section 423.3(104).