

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 207
“Remote Sales and Marketplace Sales”

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 section 423.14A

Public Hearing

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

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

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:

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Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
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Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 207 and adopt new Chapter 207 with a few revisions to remove unnecessary restrictive terms and provide additional clarity. These rules describe the Department’s interpretation of the underlying statute to help the public understand requirements for remote and marketplace sellers. These rules reduce uncertainty about who must collect and remit Iowa sales tax. Citations to rule 701—213.10(423) in rule 701—207.11(423) refer 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.

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

The public will benefit from clarity on the collection obligations of remote and marketplace sellers and the limitations of exemptions.

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 from the proposed rules.

- Qualitative description of impact:

The proposed rules reduce uncertainty about the collection obligations of remote and marketplace sellers. Failing to adopt them would lead to confusion, questions to the Department, and potential collection errors.

3. Costs to the State:

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

There are no costs to the Department related to implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the proposed rules clarify the collection responsibilities of remote and marketplace sellers, making it more likely that the correct amount of tax will be collected.

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

There are no costs related to the proposed rules. The benefit of the rules is to provide clarity on the collection responsibilities of remote and marketplace sellers.

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. The purpose of the rules is to provide clarification on the collection requirements for remote and marketplace sellers.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules on this topic but determined that the proposed rules provide useful guidance to the public beyond what is provided by the statutes.

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

Proceeding without these proposed rules would lead to confusion about the tax collections and remittance obligations of remote and marketplace sellers.

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. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

- ITEM 1. Rescind 701—Chapter 207 and adopt the following **new** chapter in lieu thereof:

CHAPTER 207
REMOTE SALES AND MARKETPLACE SALES

701—207.1(423) Definitions.

207.1(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code sections 423.1 and 423.14A and rule 701—200.1(423).

207.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“*Gross revenue from sales*” means all revenue from Iowa sales.

“*Iowa sales*” means the same as defined in Iowa Code section 423.14A(1) “a” and includes all retail sales, whether taxable or exempt, and other sales of tangible personal property, specified digital products, or services otherwise sold into Iowa or for delivery into Iowa, including wholesale or sale for resale. “Iowa sales” includes sales made through a marketplace.

“*Marketplace*” means any physical or electronic place, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property, or specified digital products, or where services are offered for sale into Iowa regardless of whether the tangible personal property, specified digital product, marketplace seller, or marketplace has a physical presence in Iowa.

“*Physical presence in Iowa*” means the activities described in Iowa Code section 423.1(48) “a”(1).

“*Remote seller*” means a retailer that does not have a physical presence in Iowa but that makes sales of tangible personal property, specified digital products, or services that are sourced to Iowa.

“*Retailer*” means the same as defined in Iowa Code section 423.1(47). “Retailer” includes a marketplace facilitator that meets or exceeds the sales threshold and includes a remote seller.

“*Sales threshold*” means the revenue level that triggers collection and remittance obligations for Iowa sales tax and local option tax as described in Iowa Code section 423.14A(3): \$100,000 or more in gross revenue from Iowa sales into Iowa in either the current or immediately prior calendar year.

701—207.2(423) Administration; incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.3(423) Filing returns; payment of tax; penalty and interest; incorporation of 701—Chapter 202. Except as otherwise stated in this chapter, the filing requirements of 701—Chapter 202 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.4(423) Permits; incorporation of 701—Chapter 201. Except as otherwise stated in this chapter, the permit requirements of 701—Chapter 201 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit Iowa sales tax and applicable local option sales tax under this chapter.

701—207.5(423) Retailers with physical presence in Iowa.

207.5(1) *Sales threshold inapplicable.* The sales threshold does not apply to any seller, marketplace facilitator, or other retailer that has physical presence in Iowa. A seller, marketplace facilitator, or other retailer with physical presence in Iowa must collect and remit Iowa sales tax and any applicable local option sales tax pursuant to Iowa Code section 423.14 even if the sales threshold is not met.

207.5(2) *Mixed marketplace and nonmarketplace sales.* A retailer with physical presence in Iowa who makes both marketplace and nonmarketplace sales must do the following:

a. Collect Iowa sales tax and any applicable local option tax on any taxable sales on which the marketplace does not collect tax.

b. Report on its Iowa sales tax return its gross revenue from all Iowa sales, including any marketplace sales on which the marketplace facilitator collected Iowa sales tax and applicable local option tax, regardless of whether the sales threshold is met.

EXAMPLE: Seller X is an Iowa-based business, with property and personnel located in Iowa. Seller X has \$80,000 in gross revenue from Iowa sales. Seller X makes \$10,000 of gross revenue from Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax. The remaining \$70,000 in gross revenue comes from Iowa sales made at Seller X’s storefront in Iowa. Seller X must collect and remit Iowa sales tax and applicable local option sales tax on the \$70,000 in nonmarketplace sales. On its Iowa sales tax return, Seller X should report \$80,000 in gross revenue from sales. Seller X may take a deduction on its Iowa sales tax return of \$10,000 for sales on which the marketplace collected Iowa sales tax and applicable local option sales tax.

701—207.6(423) Remote sellers—registration and collection obligations.

207.6(1) *Combined Iowa sales from all sources.* The sum of the total amount of Iowa sales through marketplace and nonmarketplace Iowa sales determines whether remote sellers meet the sales threshold.

207.6(2) Remote sellers with Iowa sales solely through marketplaces. If a remote seller meets the sales threshold but only makes retail sales in Iowa through marketplaces, the remote seller's registration and collection obligations depend on whether all of the marketplace facilitators through which the remote seller makes Iowa sales are registered to collect Iowa sales tax and applicable local option tax.

a. Registered marketplace facilitators. If all the marketplace facilitators used by the remote seller to make taxable Iowa sales collect Iowa sales tax and applicable local option sales tax, the remote seller does not have to collect the tax. The marketplace facilitator will report and pay Iowa sales tax and applicable local option sales tax on a sales tax return filed by the marketplace facilitator.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X makes all of its Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax on sales. Seller X does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. The marketplace facilitator will report the Iowa sales tax and applicable local option sales tax on the marketplace facilitator's Iowa sales tax return.

b. Nonregistered marketplace facilitators. If a marketplace facilitator is not required to or fails to register and collect tax in Iowa, remote sellers who exceed the sales threshold must obtain an Iowa sales tax permit, collect Iowa sales tax and applicable local option sales tax, and file Iowa sales tax returns for sales made on that marketplace.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X has \$2,000 in gross revenue from sales on Marketplace Y and \$198,000 in gross revenue from sales on Marketplace Z. Marketplace Y meets the sales threshold and is registered to collect and remit Iowa sales tax and applicable local option sales tax in Iowa. Marketplace Z, however, has very few low-cost Iowa sales, meets neither the gross revenue nor volume of sales threshold, and is therefore not required to and does not collect tax on Iowa sales. Seller X must collect Iowa sales tax and applicable local option sales tax on retail sales sourced to Iowa that are made on Marketplace Z.

207.6(3) Remote sellers making both marketplace and nonmarketplace sales. A remote seller that exceeds the sales threshold and makes nonmarketplace Iowa sales, such as through the remote seller's own website, must obtain an Iowa sales tax permit. The remote seller must report on its Iowa sales tax return its gross revenue from all Iowa sales. The remote seller would be able to deduct the amount of gross sales made through any marketplaces registered to collect tax in Iowa on the remote seller's sales tax return. A remote seller making Iowa sales through a marketplace operated by an unregistered marketplace facilitator must collect and remit Iowa sales tax and applicable local option sales tax on those sales.

701—207.7(423) Marketplace facilitators—registration and collection obligations. A marketplace facilitator that meets the sales threshold must collect and remit Iowa sales tax and applicable local option sales tax on all taxable sales made through the marketplace facilitator's marketplace that are sourced to Iowa. A marketplace facilitator must collect Iowa sales tax on all taxable Iowa sales, regardless of the location or sales volume of a marketplace seller that makes sales on a marketplace facilitator's marketplace.

EXAMPLE: M is a marketplace facilitator that meets the sales threshold and therefore collects Iowa sales tax and applicable local option sales tax on Iowa sales facilitated through M's marketplace. Seller S lists soccer balls for sale on M's marketplace. A purchaser in Iowa buys a soccer ball listed by S on M's marketplace. The soccer ball is delivered to the purchaser's home address in Iowa. M must collect Iowa sales tax and applicable local option sales tax on the sale of the soccer ball. The outcome is the same regardless of whether S is located in Iowa and regardless of S's Iowa sales volume.

701—207.8(423) Advertising on a marketplace. A marketplace seller does not sell or offer to sell tangible personal property, a specified digital product, or a service on a marketplace when merely advertising that product on a marketplace.

701—207.9(423) Commencement of collection obligation and sales tax liability.

207.9(1) Commencement of collection obligation. If a remote seller or marketplace facilitator without physical presence in Iowa did not exceed the sales threshold for the prior year and therefore does not collect sales tax in the current year, and exceeds the sales threshold in the current year, the remote seller or marketplace facilitator must collect Iowa sales tax and applicable local option sales tax starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller or marketplace facilitator first exceeded the sales threshold. The remote seller or marketplace facilitator must collect tax through the end of the calendar year in which the sales threshold was met or exceeded as well as the entire next calendar year.

EXAMPLE: Company S, a remote seller, did not exceed the sales threshold in 2018. On September 15, 2019, S exceeds the sales threshold for the first time. S must register to collect Iowa sales tax and must begin collecting Iowa sales tax and

applicable local option sales tax on November 1, 2019. S must continue to collect through at least December 31, 2020. S's sales volume in 2020 and later years will determine whether S must collect Iowa sales tax and applicable local option sales tax after December 31, 2020.

207.9(2) Commencement of sales tax liability. If a remote seller or marketplace facilitator without physical presence in Iowa exceeds the sales threshold as described in subrule 207.9(1), the remote seller or marketplace facilitator without physical presence in Iowa is not liable for any Iowa sales tax and applicable local option sales tax not collected beginning on January 1 of the current year through the day prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect the tax as described in subrule 207.9(1). A purchaser will be liable for any use tax that accrues prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

207.9(3) Permit registration. If a remote seller or marketplace facilitator without physical presence in Iowa that makes taxable sales exceeds the sales threshold, the remote seller or marketplace facilitator without physical presence in Iowa must register for a sales and use tax permit under 701—Chapter 201 prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

701—207.10(423) Retailers registered and collecting who fail to meet or exceed sales threshold. If a retailer is registered to collect Iowa sales tax and applicable local option sales tax and collects in year 1 and fails to meet or exceed the sales threshold in year 2, the retailer must still collect all applicable sales taxes in year 2. If the retailer does not meet or exceed the sales threshold at any point in year 2, the retailer is not required to collect and remit Iowa sales tax or applicable local option sales tax in year 3. However, if a retailer is registered to collect, the retailer must continue collecting regardless of the impact of the sales threshold. A retailer that falls under the sales threshold may either submit sales tax returns demonstrating it did not collect tax until a time in the future when the retailer meets or exceeds the sales threshold or cancel its sales tax permit if it wishes to cease collecting. If the retailer meets or exceeds the sales threshold at any point thereafter, the retailer would need to register again in accordance with 701—Chapter 201 and begin collecting in accordance with this chapter.

EXAMPLE: Company S, a remote seller, exceeds the sales threshold on June 25, 2019. S must collect Iowa sales tax and applicable local option sales tax beginning August 1, 2019, and must collect for all of 2020. S does not meet or exceed the sales threshold in 2020; therefore, S is not obligated to collect sales tax on January 1, 2021. S may cease collection and cancel its sales tax permit effective January 1, 2021.

701—207.11(423) Coupons; incorporation of rule 701—213.10(423). Coupons and other discounts offered by marketplace facilitators and remote sellers are retailers' discounts, which reduce the sales price and thus the taxable amount of a sale. The requirements of rule 701—213.10(423) apply to marketplace facilitators and remote sellers in the same manner that those requirements apply to retailers.

701—207.12(423) Customer returns marketplace purchase directly to marketplace seller.

207.12(1) If a marketplace facilitator collects Iowa sales tax and applicable local option sales tax on the sale and the customer returns the item directly to the marketplace seller, either the marketplace facilitator or marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator, upon acknowledgement of receipt of the item by the marketplace seller.

207.12(2) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator. The marketplace seller shall seek reimbursement of Iowa sales tax and applicable local option sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the returned Iowa sales tax and applicable local option sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the tax in conjunction with a return made directly to the marketplace seller. The marketplace facilitator may claim a credit for the return of Iowa sales tax and local option sales tax on its Iowa sales tax return.

207.12(3) Nothing in this rule requires a marketplace seller to accept a return as described in this rule. Nothing in this rule requires a marketplace facilitator to allow returns to be made directly to a marketplace seller.

701—207.13(423) Exempt and nontaxable sales.

207.13(1) Exempt sales. A retailer required to collect and remit Iowa sales tax and applicable local option sales tax in accordance with Iowa Code section 423.14A and this chapter is responsible for correctly applying exemptions for tangible personal property, specified digital products, and services. As a member of the streamlined sales tax governing board, the department maintains a taxability matrix to describe whether various items are taxable or exempt. See rule 701—204.6(423) for an explanation of the liability relief provided to retailers that rely on the taxability matrix in determining whether to collect tax on an item.

207.13(2) Nontaxable sales. A retailer, including an Iowa retailer with a physical presence in Iowa, a remote seller, or a marketplace facilitator, that makes or facilitates only nontaxable sales, such as sale for resale or wholesale transactions, is not required to register for a sales tax permit.

207.13(3) Exemption certificates submitted to a marketplace facilitator. An exemption certificate as described in rule 701—288.3(423) that identifies the marketplace facilitator as the seller may be used by the purchaser for sales made or facilitated by the marketplace facilitator.

701—207.14(423) Other taxes for marketplace sales and items not subject to sales/use tax. A marketplace facilitator is not obligated to collect tax on a product sold through a marketplace it operates that is not subject to Iowa sales and use tax.

EXAMPLE: A marketplace facilitator allows marketplace sellers to list for sale vehicles subject to registration under Iowa Code chapter 321, including the fee for new registration imposed in accordance with Iowa Code section 321.105A. Because the fee for new registration is not imposed under Iowa Code chapter 423, the marketplace facilitator is not obligated to collect the fee for new registration.

These rules are intended to implement Iowa Code section 423.14A.