

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 215
“Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing”

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 423.3(47) through 423.3(53), 423.3(82), 423.3(92), 423.3(93), 423.3(95), 423.4(7), and 423.4(8)

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: 1.262.864.1688
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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Purpose and Summary

The purpose of this proposed rulemaking is to rescind and readopt Chapter 215, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the taxability and exemption provisions and processes that are primarily applicable to taxpayers engaged in processing and manufacturing. The Department proposes revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other changes and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.

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

The public, especially those taxpayers engaged in processing and manufacturing, 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 processing and manufacturing, and the failure to adopt the rules would lead to confusion, questions to the Department, and the potential collection of tax on exempt purchases.

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 leading to a lower likelihood that tax will be collected and remitted on exempt sales.

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 purchases by the public, especially those taxpayers engaged in processing and manufacturing.

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 to aid the public, with a focus on those that are engaged in processing and manufacturing. The Department considered the option of not readopting Chapter 215 and determined that the rules provide guidance and useful clarification to the public, especially those that are engaged in processing and manufacturing.

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 readopting Chapter 215; however, it 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 and the possibility of the overcollection of tax on exempt sales.

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 since it does not make any distinctions and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 215 and adopt the following **new** chapter in lieu thereof:

CHAPTER 215

EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS ENGAGED IN PROCESSING

701—215.1 Reserved.

701—215.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of “processing” is allowed to manufacturers of food or food ingredients using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

215.2(1) “Food or food ingredients” means the same as defined in Iowa Code section 423.3(49)“b.” This means that for purposes of this exemption, “food or food ingredients” means the same as “food and food ingredients” as defined in Iowa Code section 423.3(57)“d” and implemented by rule 701—220.3(423) but also includes tangible personal property that could be sold for ingestion or chewing by humans but is sold for another use.

EXAMPLE 1: Manufacturer A produces gelatin that qualifies as a food or food ingredient. Manufacturer A only sells the gelatin to a cosmetics manufacturer. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer A to produce the gelatin is exempt from sales tax even though the gelatin was not sold for human consumption.

EXAMPLE 2: Manufacturer B produces two types of gelatin products. Product 1 is manufactured at a quality such that it may be used for technical purposes, such as an ingredient in wood glue, but humans could not consume Product 1 safely. Product 2 is manufactured at a quality such that humans could safely eat it, though it can also be sold for technical purposes like Product 1. Product 1 is not a food or food ingredient. Product 2 is a food or food ingredient.

EXAMPLE 3: Manufacturer C produces alcohol, all of which qualifies as a food or food ingredient. Manufacturer C sells one-third of its product to vodka Manufacturer V, one-third to fuel ethanol Manufacturer F, and one-third to perfume Manufacturer P. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer C to produce the alcohol is exempt from sales tax regardless of whether Manufacturer C sells the alcohol to Manufacturer V, F, or P.

Manufacturer V’s product is food-grade vodka sold at grocery and convenience stores. Manufacturer V may claim exemption for the same inputs used in producing its vodka as Manufacturer C.

Manufacturer F’s product is only sold to be used in motor vehicles and is harmful to humans if consumed. Manufacturer F cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its ethanol fuel. Manufacturer F may qualify for exemptions provided under other Iowa Code sections.

Manufacturer P’s product is only sold for cosmetic purposes and is harmful to humans if consumed. Manufacturer P cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its perfume. Manufacturer P may qualify for exemptions provided under other Iowa Code sections.

a. Certain entities eligible. An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, who will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

b. Determination. The burden is on the taxpayer seeking to claim this exemption to establish that a product is a food or food ingredient for purposes of this exemption. The department’s determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine and the orange juice are both food or food ingredients for purposes of this exemption.

215.2(2) The following activities constitute processing when performed by a manufacturer to create food or food ingredients. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce the food or food ingredient. Washing, sorting, and grading of fruits or vegetables; washing, sorting, and grading of eggs; repairing or replacing defective or broken-down machinery and equipment; and the mixing or agitation of liquids are examples of activities that do not qualify as “processing.”

b. Maintenance of the quality or integrity of the food or food ingredient and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food or food ingredient in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating that holds the food or food ingredient at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or food ingredient or to hold the food or food ingredient in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food or food ingredient. Also, processing of food or food ingredients does not cease when the food or food ingredient is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the food or food ingredient marketable is exempt from tax.

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food or food ingredient is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of the food or food ingredient. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment that cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food or food ingredient samples for testing would be exempt from tax. Finally, electricity used to power “bug lights” or other insect-killing equipment used in areas where food or food ingredients are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for food or food ingredients is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from tax if the plastic bottles will be used to hold the food or food ingredient, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food or food ingredient into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food or food ingredients into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material that will become a food or food ingredient or used to move the food or food ingredient itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or the food or food ingredient and taxable services used in door openers that open doors for forklifts or other devices moving the material or the food or food ingredient. Any loading dock that is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food or food ingredient to a loading dock is exempt from tax. If the food or food ingredient is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement Iowa Code section 423.3(49).

701—215.3(423) Services used in processing.

215.3(1) Electricity, steam, or any taxable service is used in processing only when used in any operation that subjects raw material to some special treatment that changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

a. The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants; warehouses; or offices is subject to tax. Also subject to tax is the sales price of any taxable services used to repair or replace defective or broken-down machinery and equipment.

b. The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax.

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its sales price would be subject to tax.

215.3(2) Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam that is consumed for taxable purposes. When practical, electricity or steam consumed as power or used in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam that is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment, or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(50).

701—215.4(423) Chemicals, solvents, sorbents, or reagents used in processing.

215.4(1) Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail are exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers’ guides are considered to be retail sales. The terms “chemical,” “solvent,” “sorbent,” and “reagent” are defined in rule 701—200.1(423).

215.4(2) For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

215.4(3) To qualify for this exemption, all of the following conditions must be met:

- a.* The item must be a chemical, solvent, sorbent, or reagent.
- b.* The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing.
- c.* The processing must be performed on tangible personal property intended to be sold ultimately at retail.
- d.* The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

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

701—215.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases that are similar to argon. An “inert gas” is any gas that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases that are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for use in “processing,” as those terms are defined in Iowa Code section 423.3(47) “*d.*”

This rule is intended to implement Iowa Code section 423.3(52).

701—215.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, that is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, “river” means a natural body of

water or waterway that is commonly known as a river. “Well,” for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain water.

This rule is intended to implement Iowa Code section 423.3(53).

701—215.7 Reserved.

701—215.8(423) Exempt sales or rentals of core-making and mold-making equipment, and sand-handling equipment.

215.8(1) *Exempt sales and rentals of machinery and equipment.* The sales price from sales or rentals of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used by a foundry in the mold-making process is exempt from tax. For the purposes of this rule, a “foundry” is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment that may be exempt includes sand storage tanks, conveyors, patterns, mallor controllers, and sand mixers. A nonexclusive list of items that would not be exempt includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold-making process are not exempted from tax by this rule. Subrule 215.14(2) provides definitions of “directly used,” “equipment,” and “machinery.” Iowa Code section 423.3(47) “d” provides definitions of “replacement part” and “supplies.”

215.8(2) *Exempt sales of fuel and electricity.* The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

215.8(3) *Exempt design and installation services.* The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(82).

701—215.9(423) Chemical compounds used to treat water. Chemical compounds placed in water that is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water that is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds that are used to treat water that is not sold at retail or that are not used directly in processing are subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, is exempt from tax.

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

701—215.10(423) Exclusive web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.10(1) *Definitions.* For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(92) “e.”

215.10(2) *Claiming the exemption.* Iowa Code section 423.3(92) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(92) “d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.10(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

- a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;
- b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.10(3)“b”;

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

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

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

g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs 215.10(3)“a” through “f.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and

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

215.10(4) Limitation of exemption. The purchases or leases of the items listed in subrule 215.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

a. Electricity not used for operation or maintenance, such as in the office or employee break room;

b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;

c. Building materials that become part of real property, such as concrete, steel or roofing; and

d. Tangible personal property that becomes part of real property, such as a dishwasher.

215.10(5) Initial date of exemption. The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3(92).

701—215.11(423) Web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.11(1) Definitions. For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(93)“e.”

215.11(2) Claiming the exemption. Iowa Code section 423.3(93)“b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(93)“d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.11(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

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

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

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.11(3)“b”;

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

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

- f. All equipment used in the racking system, including cabling and trays;
- g. Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs 215.11(3)“a” through “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and
- h. Electricity purchased for use in operating the web search portal business.

215.11(4) Limitation of exemption. The purchase or lease of the items listed in subrule 215.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(93)

701—215.12(423) Large data center business exemption. A data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

215.12(1) Definitions. For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95)“e.”

215.12(2) Claiming the exemption. Iowa Code section 423.3(95)“b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95)“d,” the data center business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.12(3) Exempt purchases. Paragraphs 215.11(3)“a” through “h” are incorporated in full by this reference.

215.12(4) Limitation of exemption. The purchase or lease of the items listed in subrule 215.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

- a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.
- b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales and use tax.

This rule is intended to implement Iowa Code section 423.3(95).

701—215.13(423) Data center business sales and use tax refunds. Data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales and use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

215.13(1) Definitions. For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95)“e.”

“*Refund year*” means the year beginning with the date of initial site preparation of the data center facility.

“*Rehabilitation*” means a process of substantial repair, remodeling, or alteration, which may include but is not limited to upgrading mechanical systems, plumbing, roofing, wiring, windows, and heating and cooling systems, and performing significant interior or exterior structural modification. Although they may be included as part of an overall rehabilitation project, singular actions such as the installation of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute a rehabilitated building.

215.13(2) Basis and criteria for refunds. The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

a. Investment of \$136 million to \$200 million. Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

b. Investment of \$10 million to \$136 million—new construction. Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

c. Investment of \$5 million to \$136 million—rehabilitation. Data center businesses which make investments of \$5 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

d. Investment of \$1 million to \$10 million—new construction. Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

e. Investment of \$1 million to \$5 million—rehabilitation. Data center businesses which make investments of \$1 million to \$5 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

215.13(3) Purchases eligible for refunds. Paragraphs 215.11(3) “a” through “h” are incorporated in full by this reference.

215.13(4) Sustainable design standards. In order to claim the refunds detailed in paragraphs 215.13(3) “a” through “h,” data center businesses must comply with the sustainable design and construction standards as required by 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

215.13(5) Failure to meet investment qualifications. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95) “d,” the data center business loses the right to claim the refund and the business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

215.13(6) Limitation of refunds.

a. Use in operation or maintenance. The purchase or lease of the items listed in subrule 215.13(3) is only eligible for a refund of sales and use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales and use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales and use tax.

b. State sales tax only. Refunds issued under this rule may not exceed 6 percent of the sales price of computers and equipment listed in subrule 215.13(3) and the fuel used to create heat, power and steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

c. Qualifying dates for fuel and electricity refund. To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

(1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;

(2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and

(3) The delivery of the fuel used for purposes of commercial energy.

215.13(7) Form and filing requirements.

a. Form. The owner of a data center business seeking a refund of sales and use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

b. Due date. The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund

for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

c. Date required. The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

d. Affidavit. In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be approved by the department before a refund claim can be reviewed. The following format must be used for the affidavit:

Iowa Department of Revenue
Sales Tax Refund Affidavit

NAME OF AFFIANT	}	AFFIDAVIT FOR DATA CENTER BUSINESS
ADDRESS OF AFFIANT		

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(7) or 423.4(8);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at _____; with total square footage of _____;
3. The data center business will make an investment of (check only one):
 - \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
 - \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
 - \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
 - \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
 - \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;
5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was _____; and
6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

Name of Affiant

Date

Position of Affiant

This rule is intended to implement Iowa Code section 423.4(7) and 423.4(8).

701—215.14(423) Exemption for the sale of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes. The sales price of computers,

computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt when used for an exempt manufacturing purpose. Rule 701—215.21(423) exempts the purchase of fuel used in such computers, computer peripherals, machinery, and equipment. Rule 701—215.22(423) exempts the service of designing or installing new industrial machinery and equipment.

215.14(1) Generally. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

- a. Directly and primarily used in processing by a manufacturer (as described in rule 701—215.15(423)).
- b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (as described in rule 701—215.16(423)).
- c. Directly and primarily used in research and development of new products or processes of processing (as described in rule 701—215.17(423)).
- d. Directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).
- e. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (as described in rule 701—215.20(423)).
- f. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, computer peripherals, machinery, or equipment used in an exempt manner described in paragraph 215.14(1) “a,” through “e,” (as described in rule 701—215.21(423)).

215.14(2) Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.

a. *Computers and computer peripherals.* “Computer” and “computer peripheral” mean the same as defined in Iowa Code section 423.1.

b. *Machinery.* “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. “Machinery” also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery. “Machinery” does not include tangible personal property that becomes a structure or a part of real property after installation.

c. *Equipment.* In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Exempt “equipment” under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer. “Equipment” does not include tangible personal property that becomes a structure or a part of real property after installation.

d. *Replacement parts.* “Replacement part” means the same as defined in Iowa Code section 423.3(47) “d.”

e. *Supplies.* “Supplies” means the same as defined in Iowa Code section 423.3(47) “d.”

f. *Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.* “Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies” means tangible personal property that is incorporated into a computer, computer peripheral, machinery, equipment, replacement part, or supply when the computer, computer peripheral, machinery, equipment, replacement part, or supply is constructed or assembled.

g. *Exclusions.* Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—215.14(423) through 701—215.20(423), regardless of how the property is used.

- (1) Land.
- (2) Intangible property.
- (3) Hand tools. “Hand tool” means a tool that can be held in the hand or hands and is powered by human effort.
- (4) Point-of-sale equipment, computers, and computer peripherals. “Point-of-sale equipment, computers, and computer peripherals” means input, output, and processing equipment, computers, and computer peripherals used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at

the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment, computers, and computer peripherals do not include equipment, computers, and computer peripherals used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, computers, and computer peripherals. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—215.14(423) through 701—215.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

h. Examples. When used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423), the following items may be exempt computers, computer peripherals, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

- (1) Coolers, including coolers that do not change the nature of materials stored in them.
- (2) Equipment that eliminates bacteria.
- (3) Palletizers.
- (4) Storage bins.
- (5) Property used to transport raw, semifinished, or finished goods.
- (6) Vehicle-mounted cement mixers.
- (7) Self-constructed machinery and equipment.
- (8) Packaging and bagging equipment, including conveyor systems.
- (9) Equipment that maintains an environment necessary to preserve a product's integrity.
- (10) Equipment that maintains a product's integrity directly.
- (11) Quality control equipment.
- (12) Water used for cooling.

215.14(3) *Leased and rented property.* The exemptions under rules 701—215.14(423) through 701—215.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, computer peripherals, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—215.14(423) through 701—215.20(423). Additionally, a lessor's purchase of computers, computer peripherals, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

215.14(4) *Recordkeeping.* Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—215.14(423) through 701—215.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47).

701—215.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement

parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer.

215.15(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2);

d. Used in processing as described in subrule 215.15(3); and

e. Used by a manufacturer as described in subrule 215.15(4).

215.15(2) Directly and primarily used.

a. Directly used.

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;

2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and

3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.

2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.

3. Property used by administrative, accounting, or personnel departments.

4. Property used by security, fire prevention, first aid, or hospital stations.

5. Property used in communications or safety.

b. Primarily used. The primary use of property is the activity or activities for which the property is used more than half of the time.

215.15(3) Processing.

a. Generally. “Processing” and “receipt or producing of raw materials” mean the same as defined in Iowa Code section 423.3(47) “d.” With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. The beginning of processing. Processing begins with a processor’s receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. The completion of processing. Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor’s packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances, Example C demonstrates the middle stages of processing, and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A’s employees cut the trees, transport the logs to Company A’s facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A’s sawmill. The walnut trees are real property while they are growing. Thus, no “production of raw materials” has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A’s factory. However, if the transport vehicles are “vehicles subject to registration,” the vehicles are not exempt from the fee for new registration under this rule (as described in subparagraph 215.14(2) “g”(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

215.15(4) Manufacturer.

a. *Generally.* Iowa Code section 423.3(47) "d"(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. *Definitions.*

"Construction contracting" means engaging in or performing a construction contract as described in rule 701—219.8(423).

"Manufacturer" means the same as defined in Iowa Code section 423.3(47).

"Transporting for hire" means the service of moving persons or property for consideration, including but not limited to the use of a "personal transportation service" as that term is described in Iowa Code section 423.2(6) and rule 701—211.51(423).

c. *Primarily engaged in an excluded activity.* A person is not considered a manufacturer if the person is "primarily engaged" in any of the activities listed in Iowa Code section 423.3(47) "d"(4)(c). A person is "primarily engaged" in an activity if the person generates more than 50 percent of the person's gross revenue from its operating business from, or spends more than 50 percent of the person's time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in "repairing tangible personal property or real property" (Iowa Code section 423.3(47) "d"(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) "d"(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B's production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) "d"(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) "d"(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

215.15(5) Manufacturing.

a. *Activities commonly understood to be manufacturing.* "Manufacturing" means the same as defined in Iowa Code section 423.3(47).

b. *Premises primarily used to make retail sales.*

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are "premises primarily used to make retail sales":

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.

6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. *Rebuttable presumption.* In addition to the premises listed in paragraph 215.15(5) “b,” a premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1) “a.”

(1) For purposes of paragraph 215.15(5) “c”:

“*Attributable to the premises*” means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

“*Premises*” means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or its affiliates for a common business purpose. A “common business purpose” means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1) “a” and the location is not one of those listed in paragraph 215.15(5) “b,” the business shall determine whether a specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1) “a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

$$\frac{\text{Retail sales sourced to the premises}}{\text{Gross sales attributable to the premises}}$$

If the result is less than or equal to 0.5 (or 50 percent), the premises is not primarily used to make retail sales. If the result is greater than 0.5, the premises is presumed to be primarily used to make retail sales.

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 215.15(5) “c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month

period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A's use of the molding machine satisfies all other requirements of the exemption, Company A's activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be included in Company A's gross sales attributable to the premises. The premises will be presumed to be primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

EXAMPLE 4: Company A owns premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40 of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

215.15(6) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47) "a"(1).

701—215.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

215.16(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2));

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2);

d. Used by a manufacturer as described in subrule 215.15(4); and

e. Used to maintain:

(1) A manufactured product's integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, computer peripherals, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

215.16(2) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

215.16(3) *Example of property directly and primarily used to maintain integrity or unique environmental conditions.* A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47) “a”(2).

701—215.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing.

215.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrules 215.15(2) and 215.17(3);

c. Primarily used as described in subrule 215.15(2); and

d. Used in research and development as described in subrule 215.17(2) of:

(1) New products; or

(2) Processes of processing.

215.17(2) “Research and development” means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

215.17(3) Property is used “directly” in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

215.17(4) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement

part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

215.17(5) Examples.

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

This rule is intended to implement Iowa Code section 423.3(47) “a”(3).

701—215.18 Reserved.

701—215.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products.

215.19(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2); and

d. Used in:

(1) Recycling of waste products as described in subrule 215.19(2); or

(2) Reprocessing of waste products as described in subrule 215.19(2).

215.19(2) Recycling and reprocessing.

a. “Recycling” is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. “Reprocessing” is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another nonwaste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

215.19(3) Replacement parts and supplies.

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

215.19(4) Examples.

a. Computers, computer peripherals, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “c”(24) and 423.3(47) “a”(5).

701—215.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer. The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer.

215.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Pollution-control equipment as described in subrule 215.20(2); and

b. Used by a manufacturer as described in subrule 215.15(4).

215.20(2) “Pollution-control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency

of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment. However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “a”(6).

701—215.21(423) Exemption for the sale of fuel or electricity used in exempt property. The sales price of fuel or electricity consumed by computers, computer peripherals, machinery, or equipment that is exempt from sales and use tax under rule 701—215.14(423), 701—215.15(423), 701—215.16(423), 701—215.17(423), 701—215.19(423), or 701—215.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, computers, or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—215.14(423) through 701—215.20(423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer’s power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “b.”

701—215.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

215.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service as described in subrule 215.22(2);
- b. Of new as described in subrule 215.22(3); and
- c. Industrial machinery or equipment as described in subrule 215.22(4).

215.22(2) Design or installation services include electrical and electronic installation. “Design or installation” services do not include any repair service.

215.22(3) “New” means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

215.22(4) Industrial machinery or equipment.

a. *Generally.* “Industrial machinery or equipment” means machinery or equipment, as defined in subrule 215.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

- (1) Property used directly and primarily in processing by a manufacturer as described in rule 701—215.15(423).
- (2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer’s product or to maintain unique environmental conditions for computers, computer peripherals, machinery, or equipment as described in rule 701—215.16(423).
- (3) Property used directly and primarily in research and development of new products or processes of processing as described in rule 701—215.17(423).
- (4) Property used directly and primarily in recycling or reprocessing of waste products as described in rule 701—215.19(423).
- (5) Pollution-control equipment used by a manufacturer as described in rule 701—215.20(423).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

- (1) Computers or computer peripherals as described in Iowa Code section 423.1.
- (2) Replacement parts as described in Iowa Code section 423.3(47) “d.”
- (3) Supplies as described in Iowa Code section 423.3(47) “d.”
- (4) Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in paragraph 215.14(2) “f.”

215.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).