

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 202
“Filing Returns and Payment of Tax”

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 421.9A, 421.26, 421.28, 423.1, 423.14, 423.22, 423.31, 423.32, 423.33, 423.36, 423.45 and 423.47

Public Hearing

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

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

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

Public Comment

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

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Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 270 and adopt a new Chapter 270. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also proposes new language to provide additional clarity. The chapter describes the procedures for filing sales and use tax returns. The rules are intended to help the public understand the process for filing sales and use tax returns.

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 create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
Anyone who is required to file a sales and use tax return will benefit from clarification on the procedures and requirements.

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 of the proposed rulemaking.
 - Qualitative description of impact:
These proposed rules provide clarification on the procedures for filing sales and use tax returns. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

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

There are no costs to the agency of implementing the proposed rules beyond those that would otherwise be required to administer the statute. The Department is required by law to establish forms and rules for the filing of returns. The Department must have processes in place to receive those returns and process the information on those returns.

- Anticipated effect on state revenues:

Having rules for the filing of returns allows the Department to more easily collect the proper amount of sales and use tax.

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

The Department is required by law to establish procedures for the filing of returns by rule. The cost of inaction would be confusion about how to file sales and use tax returns and inconsistent filing and administration as a result.

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

The proposed rulemaking is not costly or intrusive. The Department is required by law to establish forms and rules for the filing of returns.

6. Alternative methods considered by the agency:

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

The Department did not seriously consider any alternatives because it is required by law to establish forms and rules for the filing of returns.

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

Failing to adopt these rules would leave the Department out of compliance with the statute. However, the Department did think carefully about the proposed rules and make revisions to remove language that was outdated, unnecessary, or obsolete.

Small Business Impact

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

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

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

The proposed rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses beyond what is already contained in statute.

Text of Proposed Rulemaking

- ITEM 1. Rescind 701—Chapter 202 and adopt the following **new** chapter in lieu thereof:

CHAPTER 202
FILING RETURNS AND PAYMENT OF TAX

701—202.1(423) Sales and use tax return filing.

202.1(1) *In general.* A retailer owing \$1,200 or more in sales or use tax per calendar year shall file a sales and use tax return once per month. This monthly return is due on or before the last day of the month following the end of the month in which the tax was collected. A retailer owing less than \$1,200 in sales or use tax per calendar year shall file a sales and use tax return at least once per annual year, due on or before January 31 for the prior calendar year. A retailer otherwise expected to file a return annually may file a return on a monthly basis if the retailer prefers to do so. Every return shall be signed and dated.

202.1(2) *New retailers.* A retailer who has never held an Iowa sales or use tax permit and has never collected or accrued sales or use tax in Iowa shall indicate at the time the retailer registers for its permit whether it expects to file a return monthly or annually.

202.1(3) *Changes to filing frequency.* A retailer registered to file an annual sales and use tax return should update its return filing frequency as needed. The department may adjust a retailer's filing frequency if the retailer has remitted \$1,200 or more in its first year of operation in Iowa and the department has notified the retailer that it meets or exceeds the filing threshold.

202.1(4) *Calculating the \$1,200 filing frequency threshold.* The threshold for determining whether a retailer should file a monthly or an annual sales and use tax return shall be calculated by adding sales and use taxes due in a calendar year. Other excise taxes should not be included in the calculation, even though they may be reported on the sales and use tax return.

202.1(5) *Electronic filing requirement and exception.* Retailers required to file a monthly sales and use tax return shall file the return through GovConnectIowa. A retailer who is unable to file a return electronically may request permission from the director to file a paper return. A retailer requesting such permission shall provide proof of its inability to file electronically.

202.1(6) *Simplified electronic return due date.* A retailer registered to collect Iowa tax through the Streamlined Sales Tax Registration System shall file a simplified electronic return on or before the twentieth day of each month following the end of the month in which the tax was collected. Any other retailer using the simplified electronic return shall file the return on or before the last day of the month following the end of the month in which the tax was collected.

This rule is intended to implement Iowa Code section 423.31.

701—202.2(423) Reporting sales or use taxes. A taxpayer with a reporting obligation for either sales tax or use tax but not both shall affirmatively indicate on the sales and use tax return that the taxpayer has no tax to report for the appropriate tax type. A taxpayer does this by making the appropriate indication on an electronic return or by entering a zero on the taxable amount line in the tax section of a paper return for which the taxpayer does not have tax to report. A taxpayer who fails to do so will be treated as not reporting for that tax type.

This rule is intended to implement Iowa Code section 423.31.

701—202.3(423) Sales and use tax remittance. Sales or use tax owed by a retailer shall accompany the sales and use tax return for the period in which the tax became due. Retailers filing a monthly sales and use tax return electronically shall remit tax electronically. Retailers filing a paper return may remit tax by mail, payable to the Iowa Department of Revenue. Remittances transmitted electronically are considered to have been made on the date the remittance is completed in GovConnectIowa.

This rule is intended to implement Iowa Code section 423.31.

701—202.4(423) Due dates, weekends, and holidays. Due dates that fall on a Saturday, Sunday, or holiday shall be treated in accordance with Iowa Code section 421.9A. Iowa Code section 421.9A contains a definition of "holiday."

This rule is intended to implement Iowa Code section 421.9A.

701—202.5(423) Consolidated returns. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made, and the second is certain affiliated corporations.

202.5(1) *Permit holders with multiple locations.* A permit holder procuring more than one permit may file a separate return for each permit or, if a request to consolidate pursuant to Iowa Code section 423.31(4) has been approved by the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

202.5(2) *Affiliated corporations.* Any group consisting of a parent corporation and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property, specified digital products, or taxable services, may make an application to the director for permission to file a consolidated Iowa sales tax return. The application shall:

- a. Be in writing.
- b. Be signed by an officer of the parent company.
- c. Contain the business name, address, federal identification number, and Iowa sales and use tax permit number of every corporation seeking the right to file a consolidated return.

- d. State the initial tax period for which the right to file a consolidated return is sought.
- e. Be filed no later than 90 days prior to the beginning of the identified initial tax period.
- f. Contain any additional relevant information that the director may, in individual instances, require.

202.5(3) Requirements common to returns filed under this rule. The following provisions apply to permit holders filing consolidated returns pursuant to either subrule 202.5(1) or 202.5(2):

- a. *Proper form.* Taxpayers shall file consolidated returns through GovConnectIowa.
- b. *Working papers.* All working papers used in the preparation of the information required to complete the returns must be available for examination by the department.
- c. *Offsetting collections among affiliates.* Undercollections of sales tax at one or more locations or by one or more affiliates shall not be offset by overcollections at other locations or by other affiliates.

This rule is intended to implement Iowa Code section 423.31.

701—202.6(423) Direct pay permits and negotiated rate agreements.

202.6(1) Direct pay permits in general. Qualified purchasers, users, and consumers of tangible personal property, specified digital products, or taxable services pursuant to Iowa Code chapter 423 may remit tax owed directly to the department instead of having the tax collected and remitted by the seller. A qualified purchaser, user, or consumer shall not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department or personnel authorized by the director.

a. *Qualifications for a direct pay permit.* To qualify for a direct pay permit, an applicant will meet all of the following criteria:

- (1) Be a purchaser, user, or consumer of tangible personal property, specified digital products, or taxable services.
- (2) Have an accrual of sales and use tax liability of more than \$8,000 in a month. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of \$8,000 in sales and use tax liability in a month to qualify if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer will need to indicate which locations will be utilizing the direct pay permit at the time of application.

(3) Remit tax and file returns pursuant to Iowa Code section 423.36. Paragraph 202.6(1)“d” contains further details.

b. *Nonqualifying purchases or uses.* The granting of a direct pay permit is not allowed for any of the imposed taxes listed in Iowa Code section 423.36(9)“b.”

c. *Application and permit information.* To obtain a direct pay permit, a purchaser, user, or consumer will fully and properly complete an application form prescribed by the director and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department or vendors over the last two years prior to application, an average of \$8,000 in a month. Upon approval, the director or personnel authorized by the director will issue a direct pay permit to qualifying applicants. The direct pay permit will contain direct pay permit identifying information, including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—288.3(423).

d. *Remittance and reporting.* Direct pay permit holders shall remit and report sales, use, and local option sales tax on a monthly basis. Remittance of tax due under a direct pay permit will begin with the first month after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit shall be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a monthly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 423.35. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 421.27.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the department. A direct pay permit is not transferable and cannot be assigned to a third party. The department may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 423.36(9). If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit will retain possession of the direct pay permit and keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(423).

(2) Vendor. A vendor will retain a valid exemption certificate under rule 701—288.3(423) that is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—288.3(423).

202.6(2) Negotiated rate agreements.

a. In general. Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in paragraph 202.6(1) "b," and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

b. Required information. All negotiated rate agreements shall contain the following information or an explanation for its omission:

(1) The name of the taxpayer who has entered into the agreement with the department.

(2) The name and title of each person signing the agreement and the name, telephone or fax number, and email or physical address of at least one person to be contacted if questions regarding the agreement arise.

(3) The period during which the agreement is in effect, the renewal or extension rights (if any) of each party, and the effective date of the agreement.

(4) The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items that will be excluded from the agreement, and any circumstances that will result in a changed rate or rates or changed composition of classes to which rates are applicable.

(5) Actions or circumstances that render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.

(6) Rights, if any, of the parties to resort to mediation or arbitration.

(7) An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.

(8) The conditions by which the agreement may be terminated and the effective date of the termination.

(9) The methodology used to determine the negotiated rate and any schedules needed to verify percentages.

(10) Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code section 423.36.

701—202.7(423) Regular permit holders responsible for collection of tax. A permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the permit holder shall be required to have a form, either in possession or in the vehicle, that authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 423.14 and 423.36.

701—202.8(423) Sale of business.

202.8(1) Final return due. A retailer selling the business shall file a return within the succeeding month and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser, and the tax becomes delinquent one month after the sale.

202.8(2) Record retention. A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. 701—subrule 285.28(2) provides for possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code section 423.33.

701—202.9(423) Bankruptcy, insolvency, or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 423.31.

701—202.10(423) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return that includes the sales price from sales from all machines or devices operated by the retailer in Iowa during the tax period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the sales price.

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

701—202.11(423) Claim for refund of tax.

202.11(1) Eligibility for refund; filing claims. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare and file the claim on Form IA 843, Refund Return, with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based.

202.11(2) Denial of refund claim—appeal. If the claim for refund is denied, and the person wishes to appeal the denial, the department will consider an appeal to be timely if filed no later than 60 days following the date of denial. Rule 701—7.9(17A) contains more information on appeals.

202.11(3) Request for abeyance. When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 423.47. The claim must be filed requesting that it be held in abeyance pending the outcome of any action that will have a direct effect on the tax, penalty, or interest involved. Nonexclusive examples of such action would be court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE 1: X, an Iowa sales tax permit holder, is audited by the department for the period from July 1, 2014, to June 30, 2017. A \$10,000 tax, penalty, and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 2023.

X, on October 1, 2023, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 2017. The claim will be totally denied as beyond the three-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 2017, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of its audit liability if the decision in Y's case was also applicable to X.

EXAMPLE 2: X is audited by the department for the period from July 1, 2015, to June 30, 2018, and assessed July 31, 2018. X pays the assessment on December 31, 2018. No protest was filed, and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 2020, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision that makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 2017, through June 30, 2018, will be allowed since this is the only portion within the three-year statute of limitations set forth in Iowa Code section 423.47. If the claim had been filed on or before December 31, 2019, then the entire audit period could have been considered for refund since the claim would have been filed within one year of payment.

202.11(4) Refund of use tax. A taxpayer will need to file an amended return in order to claim a refund of use tax. A taxpayer cannot use Form IA 843, Refund Return, to claim this refund.

This rule is intended to implement Iowa Code sections 423.45 and 423.47.

701—202.12(423) Immediate successor liability for unpaid tax. To ensure all sales or use tax due is paid, Iowa Code section 423.33(2) applies to a retailer selling the retailer's business or stock of goods or ceasing the retailer's business and the immediate successor. For the purpose of this rule, "retailer" includes all persons liable for tax under Iowa Code sections 421.26 and 423.33.

202.12(1) Immediate successors having a duty to withhold.

a. An immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price to pay the delinquent tax, penalty, or interest, if necessary. "Immediate successor" includes but is not limited to the following examples:

(1) An entity resulting from the action of a sole proprietor who organizes a business in which the sole proprietor is the only or the controlling stakeholder.

(2) A sole proprietorship established from an entity of which the sole proprietor was the exclusive, majority, or controlling stakeholder.

b. Reserved.

202.12(2) More than one immediate successor. If a retailer sells a business or stock of goods to two or more persons, the following requirements apply:

a. Sale to two or more persons. If a retailer sells a substantial portion of the business or the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person or persons are immediate successors that are jointly and severally liable.

b. Purchase of differing places of business. If one retailer owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

202.12(3) Sale of a retailer's business. Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an immediate successor and liable for tax.

EXAMPLE: A is a furniture dealer. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

202.12(4) Good faith. An immediate successor to a licensee's, retailer's, or seller's business or stock of goods has purchased the licensee's, retailer's, or seller's business or stock of goods in good faith that no delinquent tax, interest, or penalty was due and unpaid if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists.

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid. Immediate successors shall not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor may request a certified statement from the department on forms provided by the department.

(1) Prior to issuing a certified statement, the department may contact both the immediate successor and the licensee, retailer, or seller regarding the request for a certified statement from the department.

(2) A certified statement provided by the department will be recognized by the department as valid as of the issuance of the statement.

(3) A certified statement provided by the department is the preferred evidence that a purchase of a business or stock of goods was made in good faith and that no delinquent tax, interest, or penalty was due and paid.

b. The immediate successor has taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase.

(1) A “certified statement” from a licensee, retailer, or seller is a statement the truth of which is attested to before a notary public. A certified statement from a licensee, retailer, or seller will not be recognized by the department as valid unless it includes all of the following:

1. The name of the business being purchased or a description of the stock of goods being purchased.
2. The names of the licensee, retailer, or seller and the prospective purchaser(s).
3. The tax identification numbers of both the licensee, retailer, or seller and prospective purchaser(s). Entities shall include a federal employer identification number (FEIN). Individuals shall include a social security number (SSN) or individual tax identification number (ITIN).
4. An attestation signed by the licensee, retailer, or seller attesting that no delinquent tax, interest, or penalty of the retailer is unpaid as of the date of the closing of the sale.

(2) A certified statement has been taken from a licensee, retailer, or seller “in good faith” if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer’s statement was false or no reason to question the truth of the retailer’s statement.

This rule is intended to implement Iowa Code sections 421.28 and 423.33.

701—202.13(423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person’s liability for failure to pay tax.

202.13(1) *Personal liability—how determined.* There are various criteria that can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws.
- b. The duties that various officers have assumed in practice.
- c. Which officers are empowered to sign checks for the corporation.
- d. Which officers hire and fire employees.
- e. Which officers control the financial affairs of the corporation.

(1) An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation’s bills should or should not be paid and when bills that had been selected for payment will be paid.

(2) “Final control” means a significant control over which bills should or should not be paid, rather than exclusive control.

(3) The observations in paragraph 202.13(1) “e” are applicable to partnerships as well as corporations.

202.13(2) *“Accounts receivable” described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An “account receivable” is a contractual obligation owing upon an open account. An “open account” is one that is neither finally settled nor finally closed but is still running and open to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an account receivable. The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a “note receivable” rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

This rule is intended to implement Iowa Code section 421.26.

701—202.14(423) Sales tax or use tax paid to another state.

202.14(1) *Equal or greater tax paid to another state.* When a person has already paid to any other state of the United States a state sales, use, or occupational tax on specifically identified tangible personal property or taxable services on its sale or use, prior to bringing the property into Iowa, and the tax is equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax is due to the state of Iowa by such person.

202.14(2) *Less tax paid to another state.* If the amount of tax already paid by such person to any other state of the United States on specifically identified tangible personal property or taxable services prior to bringing the property into Iowa is less than the current rate of tax imposed by Iowa law, use tax shall be due to the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

202.14(3) *Claiming exemption for tax paid.* When a person claims exemption from payment of use tax on the grounds that the tax has already been paid to any other state of the United States with respect to the sale or use of the property or service in question prior to bringing the property into Iowa, the burden of proof is upon that person to show the department, county treasurer, or motor vehicle division of the Iowa department of transportation, by document, that the tax has been paid.

202.14(4) *Credit not allowed against Iowa tax.* Credits shall not be allowed for sales, use, or occupational tax already paid in any state of the United States against the Iowa use tax relating to the acquisition cost of property being brought into this state when such tax already paid was paid on the sales price of lease or rental payments of tangible personal property used in another state.

This rule is intended to implement Iowa Code section 423.22.

701—202.15(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the tax period during which the sale was made.

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

701—202.16(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property that has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on the retailer's sales and use tax return for the tax period in which the goods were repossessed, in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchaser on the unpaid balance.

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