

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 216
“Events, Amusements, and Other Related Activities”

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 99F.10, 423.2(1), 423.2(3)“m,” “v,” and “j,”
and 423.3(63)

Public Hearing

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

November 21, 2023
9 to 11 a.m.

Via video/conference call:
meet.google.com/pmv-smfj-zwf
Or dial: 413.369.1186
PIN: 243 048 107#

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:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to rescind Chapter 216 and adopt new Chapter 216. The Department proposes amendments 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 additional rules to be included in this chapter that were previously found in other chapters because the Department has determined that the subject matter of those rules more closely aligns with the subject matter of this chapter. The purpose of the chapter is to provide guidance on the Department’s interpretation of the underlying statute to help the public understand exemptions relating to events and amusements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about exemptions relating to events and amusements.

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 rules.
 - Qualitative description of impact:
The rules reduce uncertainty about exemptions relating to events and amusements. 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 rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There are no costs associated with the proposed rules. The benefit of the rules is reducing confusion about exemptions relating to events and amusements.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on exemptions relating to events and amusements.

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 implementing the rules, but determined that the rules provide helpful guidance and useful clarification to the public on exemptions relating to events and amusements.

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

The Department determined that proceeding without these rules would lead to confusion about exemptions relating to events and amusements.

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 rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 216 and adopt the following **new** chapter in lieu thereof:

CHAPTER 216

EVENTS, AMUSEMENTS, AND OTHER RELATED ACTIVITIES

701—216.1(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, is subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—216.2(423) Dance schools and dance studios.

216.2(1) *In general.* The sales price from the services sold by dance schools or dance studios are subject to sales tax. This includes all activities, such as acrobatics, exercise, baton-twirling, tumbling, or modeling taught in dance schools or dance studios.

216.2(2) *Definitions.* For purposes of this rule:

“*Dance school*” means any institution established primarily for the purpose of teaching one or more types of dancing.

“*Dance studio*” means any room or groups of rooms in which any one or more types of dancing are taught.

This rule is intended to implement Iowa Code section 423.2(6) “*m.*”

701—216.3(423) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. “Country clubs” include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the sales price of which are subject to tax. “Recreation” includes all activities pursued for pleasure, including sports, games and activities that promote physical fitness, but does not include admissions otherwise taxed under Iowa Code section 423.2.

216.3(1) Dance schools are the only schools the services of which are taxable under Iowa Code section 423.2(6). Rule 701—216.2(423) contains information on dance schools and dance studios. The sales price from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

216.3(2) If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

a. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink’s facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink’s facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

b. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be “instruction” are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a “class” with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be thought of as a “classroom,” but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE 1: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE 2: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come, first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

c. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity that would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “*v.*”

701—216.4(423) Campgrounds.

216.4(1) *In general.* Persons engaged in the business of renting campground sites are selling a service subject to sales tax, regardless of the duration of the rental. This includes the sales price for the operation of a campground and the use of a campground site.

216.4(2) *Definition.* For purposes of this rule:

“*Campground*” is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer, or motorhome. “*Campground*” does not include any hunting, fishing, or other type of camp where accommodations are provided, though such camps are likely subject to sales tax as commercial recreation under rule 701—216.3(423).

216.4(3) *Related charges.* The sale price of charges, whether mandatory or optional, imposed on persons using a campground site that are subject to sales tax include but are not limited to entry fees, utility (electric, water, sewer) fees, fees for the use of swimming pools or showers, and fees for extra persons or vehicles.

216.4(4) *Public parks.*

a. The sales price for the use of a state park as a campground is subject to sales tax; however, the sales price for the use of a county or municipal park as a campground is not subject to sales tax.

b. The sales price of vehicle entry fees into any state, county, or municipal park, commonly called “park user fees,” is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “j.”

701—216.5(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements is taxable. Such rentals include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

701—216.6(423) Exempt sales by excursion boat licensees.

216.6(1) The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax:

a. Charges for admission to excursion gambling boats, and

b. The sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

216.6(2) The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games that do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10.

701—216.7(423) Tangible personal property, specified digital products, or services given away as prizes.

216.7(1) *In general.* The sales price from the sale of tangible personal property, specified digital products, or services that will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. The rules issued by the Department of Inspections, Appeals, and Licensing in 481—Chapters 100 through 106 further describe the games of skill, games of chance, raffles, and bingo games that are lawful and may be lawfully awarded.

216.7(2) *Gift certificates.* A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code section 423.3(63).