

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 210
“Purchases by Businesses”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99F.10(6) and 423B.5
State or federal law(s) implemented by the rulemaking: Iowa Code section 423.2 and 423.3

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: 1.413.369.1186
PIN: 243 048 107#
tel.meet/pmv-smfj-zwf?pin=4428711103686

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 repromulgate Chapter 210.

The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete or unnecessary or that duplicate statutory language. This chapter also includes rules that were previously in other chapters that the Department has determined are more closely related to the subject matter of this chapter. This chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of purchases by businesses.

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 classes of persons.

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

The public, particularly businesses, will benefit from clarification about the taxability of purchases by businesses.

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:

These rules reduce uncertainty about the taxability of purchases by businesses. 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. However, the rules clarify the taxability of purchases by businesses, making it more likely that the correct amount of tax will be collected.

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

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the taxability of purchases by businesses.

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 taxing purchases by businesses and when exemptions apply.

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.

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

Proceeding without these rules would lead to confusion about the taxability of purchases by businesses.

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 210 and adopt the following **new** chapter in lieu thereof:

CHAPTER 210
PURCHASES BY BUSINESSES

701—210.1(423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by the purchaser or in the purchaser's business and not for resale are considered retail sales and subject to tax, even if sales are made at wholesale prices or in wholesale quantities.

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

701—210.2(423) Materials and supplies sold to retail stores. The sales price of materials and supplies sold to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items

as fuel, cash registers, adding machines, typewriters, stationery, display fixtures and numerous other commodities that are not sold by the store to its customers.

This rule is intended to implement Iowa Code section 423.2.

701—210.3(423) Tangible personal property and specified digital products purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property or specified digital products who takes merchandise from stock for personal use, consumption, or gifts shall report these items as “goods consumed” on the sales and use tax return and remit sales tax and any applicable local option sales tax on the purchase cost of the items. This rule does not authorize purchase for resale of items intended to be used by the retailer.

This rule is intended to implement Iowa Code section 423.2.

701—210.4(423) Property furnished without charge by employers to employees. When an employer furnishes tangible personal property, including meals, or specified digital products to employees without charge or uses merchandise for gifts or consumption, the cost to the employer of the tangible personal property or specified digital products shall be subject to sales tax and any applicable local option sales tax and reported on the employer’s return as “goods consumed” if the employer has not previously paid tax to a retailer. However, the food purchased by the employer for meals prepared for employees is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.5(423) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

210.5(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas, or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas, or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the sales price of the sale of such service. When the building owners or operators purchase all of the electric current, gas, or other services for resale and consume a portion in the operation of the building, they shall be liable for sales tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

210.5(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

210.5(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

210.5(4) When a building manager makes sales of tangible personal property, specified digital products, or taxable services at retail, the manager shall be required to procure a permit and collect and remit tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.6(423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished tangible personal property from raw materials and sells such property at retail, tax shall apply on the total charge which includes the fabrication labor. Rule 701—211.28(423) contains information on the taxable service of machine operation.

This rule is intended to implement Iowa Code section 423.2.

701—210.7(423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

This rule is intended to implement Iowa Code section 423.2.

701—210.8(423) Out-of-state truckers selling at retail in Iowa. Truckers or persons engaged in the sale of tangible personal property at retail in Iowa based outside of Iowa by means of hauling the tangible personal property into the state shall collect and remit Iowa sales tax. To ensure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

This rule is intended to implement Iowa Code section 423.2.

701—210.9(423) Iowa dental laboratories.

210.9(1) Sales by dental laboratories. Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

210.9(2) Purchases not subject to tax. Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property that form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or would be exempt if purchased directly by the dentist's patient.

210.9(3) Purchases subject to tax. Iowa dental laboratories are the final user or consumer of all tangible personal property, including tools, office supplies, equipment, and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and collects sales or use tax for the state.

This rule is intended to implement Iowa Code sections 423.2 and 423.33.

701—210.10(423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property that will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or would be exempt if sold directly to an individual.

This rule is intended to implement Iowa Code section 423.2.

701—210.11(423) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors that are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The sales price of such sales shall be subject to sales tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.12(423) Magazine subscriptions by independent dealers. The sales price of the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa that secure such subscriptions as independent dealers or distributors shall be subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.13(423) Sales by finance companies. A finance company that repossesses or acquires tangible personal property or specified digital products in connection with its finance business and sells tangible personal property or specified digital products at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the sales price of such sales at retail in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—210.14(423) Bowling.

210.14(1) Pinsetters. The rental of automatic pinsetters by bowling alley operators is subject to the imposition of sales tax since the pinsetters are not resold to patrons. Therefore, the operator of the alley is considered the consumer of the pinsetter rental.

210.14(2) Shoes. The rental of bowling shoes is subject to the imposition of sales tax as equipment rental.

210.14(3) Score sheets. The sales of bowling score sheets to operators of bowling establishments are subject to the imposition of sales tax since the operators are the consumers of such score sheets.

This rule is intended to implement Iowa Code section 423.2.

701—210.15(423) Various special problems relating to public utilities.

210.15(1) Late payment charges. The amount of any charge, commonly called a "late payment charge," imposed by a public utility on its customers shall not be subject to tax if the charge is in addition to any charge for the utility's sale of its commodity or service and is imposed solely for the privilege of deferring payment of the purchase price of the commodity or service and furthermore is separately stated and reasonable in amount.

210.15(2) Due dates. The date of the billing of charges for a public utility's sales shall be used to determine the period in which the utility shall remit tax upon the amount charged. The utility shall remit tax upon the sales price of any bill during the period that includes the billing date. Thus, if the date of a billing is March 31 and the due date for payment of the bill

without penalty is April 20, tax upon the sales price contained in the bill shall be included in the return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a deposit.

210.15(3) Franchise fees. In general, the amount of any franchise fee that a public utility pays to a city for the privilege of operating and that is directly or indirectly passed on to the utility's customers shall be included in sales price subject to tax. This will be true even if the amount of the franchise fee is computed as a percentage of other sales price subject to tax and is separately stated and separately charged to the immediate consumer of the commodity or service. However, if, in the future, it becomes lawful for a city to impose a sales or use tax and such tax is imposed upon the customers of public utilities in the guise of a franchise fee, the amount of this city excise tax shall not be subject to Iowa tax if the tax imposed by the city is separately stated and separately billed.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.16 Reserved.

701—210.17(423) Communication services furnished by hotel to its guests. When a hotel purchases telephone communication services from telephone companies and furnishes those services to guests, tax shall apply to the entire charge which the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service which it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.18(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.19(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.20(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent.

This rule is intended to implement Iowa Code section 423.1(50).

701—210.21(423) Mergers which do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one business to another pursuant to a statutory merger, the transfer is not a "sale" in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute; (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging business to a surviving business and not for any consideration; and (3) the merging business is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. The sales price of A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal

property, and the sales price of the sale may be subject to Iowa sales tax. However, 701—subrule 18.28(2) contains more information concerning a casual sale exemption applicable to the liquidation of a business.

701—210.22(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad property which is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefore shall be exempt from tax. This exemption includes maintenance-of-way equipment which is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(71).