

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 280, 281, and 282
“Receipts Subject to Use Tax Depending on Method of Transaction”

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 423.5(1), 423.6(3), 423.6(6), 423.6(8), 423.6(10), 423.15(5), and 423.17

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#

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 this proposed rulemaking is to rescind and reserve Chapters 280 and 281 and to rescind and readopt Chapter 282. Chapters 280 and 281 describe the Department’s interpretation of the underlying statutes in order to assist and aid the public’s understanding of what is subject to use tax and what is exempt. Chapter 282 describes the Department’s interpretation of the underlying statutes and provides clarity on how use tax may be imposed depending on the transaction.

After review, the Department has determined that there is no benefit to retaining Chapters 280 and 281 and proposes to rescind and reserve those chapters, but it determined that two rules from Chapter 280 will be repromulgated as rules 701—282.1(423) and 701—282.2(423). Additionally, two rules from Chapter 281 will be repromulgated as rule 701—218.12(423) and new content in rule 701—219.7(423). These two rules are contained within the regulatory analyses for Chapters 218 and 219 and are published herein (11/1/23 IAB). The Department proposes further revisions to Chapter 282 to provide clarification and to remove obsolete, unnecessary, and duplication of statutory language. The Department also renumbered some rules in Chapter 282 due to other edits and for other organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs to the proposed rulemaking beyond those that are imposed by the underlying statutes.

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

The public will benefit from the proposed rulemaking and the elimination of Chapters 280 and 281. Because those chapters are no longer necessary, their elimination will reduce confusion about the relevance of those rules, and the proposed Chapter 282 provides guidance on the imposition of use tax.

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 will reduce uncertainty about the application of use tax because the proposed revisions will add clarity and obsolete and unnecessary language and rules will be eliminated.

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 underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the revision of rules and elimination of rules that are no longer necessary or are obsolete will provide clarification to the public, making it less likely that tax will be collected on what is an exempt sale or overcollected on what is a taxable sale.

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

There are no benefits to retaining Chapters 280 and 281. The Department determined that some rules in those chapters would be better suited and more aligned by being placed into other chapters and that the remaining rules in those chapters are no longer necessary or are obsolete. Further, the cost of inaction would be failing to update Chapter 282 to remove unnecessary and obsolete language and language that duplicates statutory language. The benefits of the proposed rulemaking are to eliminate language and rules that could cause confusion about the imposition of use tax on transactions and to amend the remaining rules to provide clarity to the public.

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 is to provide guidance about the imposition of use tax. The Department considered the option of not implementing rules and determined that revising and retaining some rules while eliminating others will provide helpful guidance and useful clarification to the public and reduce confusion.

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 rules; however, it determined that retaining and revising some rules while eliminating others will provide guidance and clarification to the public beyond what is provided in the underlying statutes.

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

The Department determined that retention of revised rules while eliminating other rules will reduce confusion about the imposition of use tax on transactions.

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 substantial impact on small businesses since it does not make any distinctions based on the size of a business and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **701—Chapter 280**.

ITEM 2. Rescind and reserve **701—Chapter 281**.

ITEM 3. Rescind 701—Chapter 282 and adopt the following **new** chapter in lieu thereof:

CHAPTER 282

RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

701—282.1(423) Transaction consummated outside this state. Iowa use tax applies to purchases of tangible personal property, specified digital products, and services as described in Iowa Code section 423.5 on which sales tax was not collected. This would most commonly occur if the good or service was purchased from a retailer that does not have nexus with Iowa.

This rule is intended to implement Iowa Code section 423.5(1).

701—282.2(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property, specified digital products, or a taxable enumerated service for use in Iowa from the federal government or any of its agencies is liable for the payment of Iowa use tax and shall report and remit the tax due on a sales and use tax return furnished by the department.

This rule is intended to implement Iowa Code section 423.5(1) “c.”

701—282.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail is exempt from sales and use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used is subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property which is to be used for processing and is, therefore, exempt. The certificate shall also show the cost of the property which is not to be used in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due.

This rule is intended to implement Iowa Code section 423.6(3) “b.”

701—282.4(423) Taxation of Native Americans.

282.4(1) Definitions.

“*Native Americans*” means all persons who are descendants of and who are members of any recognized tribe.

“*Settlement*” means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

282.4(2) Use tax. Out-of-state purchases made by Native Americans which are purchased for use on a recognized settlement where delivery occurs on a settlement to Native Americans who are members of the tribe located on that settlement are exempt from tax. Out-of-state purchases made by Native Americans where delivery occurs off a recognized settlement are subject to tax even though purchased for use on a recognized settlement.

More information on purchases that may be subject to sales tax is found in rule 701—285.8(423).

This rule is intended to implement Iowa Code section 423.6(6).

701—282.5(423) Property used to manufacture certain vehicles to be leased. Tangible personal property which becomes an integral part of a vehicle as described in Iowa Code section 423.6(8) is exempt from use tax, subject to the limitations

provided in Iowa Code section 423.6(8). However, this rule does not exempt the sale of the tangible personal property used from the imposition of sales tax under Iowa Code section 423.2 if that property is otherwise subject to sales tax.

This rule is intended to implement Iowa Code section 423.6(8).

701—282.6(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. The rental of vehicles, which do not meet the definition of transportation equipment as defined in Iowa Code section 423.15(5), will be sourced for tax purposes as described in Iowa Code section 423.17.

This rule is intended to implement Iowa Code sections 423.15(5) and 423.17.

701—282.7(423) Sales of mobile homes, manufactured housing, and related property and services.

282.7(1) Sales of mobile homes, manufactured housing, and related property and services for one package price. This rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by rule 701—Chapter 219 which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—282.8(423).

When a customer purchases a mobile home or manufactured housing from a dealer, the customer often wants the dealer to prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing “ready to move into” a dealer may sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house which a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

- a. Connect the electricity.
- b. Connect the water.
- c. Connect sewer system lines.
- d. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.
- e. Build and install steps for a door.
- f. Build a deck.
- g. Do minor repairs.
- h. Install and sell a foundation upon which to place the mobile home or manufactured housing.
- i. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a “ready-to-move-into” basis usually sells that home or housing and the services and additional property necessary to render them livable for one “package price.” The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer’s package price broken down to indicate any of the expenses which are components of the package price either in the dealer’s sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer’s contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser’s electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the “purchase price” of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed

to render the home or house livable. The entire amount of the package price, reduced by 80 percent, as explained in rule 701—219.7 (423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

282.7(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 282.7(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the “purchase price” of a home or house, that price will not be reduced by 80 percent as required under rule 701—219.7(423), in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the sales price of the following services sold are subject to Iowa sales tax under Iowa Code section 423.2(6):

- a. Electrical hookup and air conditioning installation (electrical installation).
- b. Water and sewer system hookup (plumbing).
- c. Skirting installation and building and installation of steps and decks (carpentry).
- d. Nearly all “minor repairs” would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the sales price is subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves “new construction” and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab. More information is contained in rule 701—Chapter 219.

282.7(3) *Dealer purchases of tangible personal property and services for resale.* Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer’s or other retailer’s purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase “for resale” and thus exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.6(10).

701—282.8(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. Tax is imposed on the use of “manufactured housing” in Iowa.

282.8(1) *Definition.*

“Manufactured housing” means the same as defined in Iowa Code section 321.1.

282.8(2) *Tax treatment of manufactured housing which is similar to the tax treatment of mobile homes:*

- a. Manufactured housing is subject to Iowa use tax to the extent provided in Iowa Code section 423.6(10) and shall be paid as provided in Iowa Code section 423.26A.
- b. The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.
- c. The taxation of manufactured housing which is sold in the form of tangible personal property is similar to the taxation of mobile homes which are sold in the form of tangible personal property. More information is contained in rule 701—282.7(423).

282.8(3) *Taxable use of manufactured housing in the form of real estate.* Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. If a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user’s part.

EXAMPLE: Company A buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Company A then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Company A then develops the land,

installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Company A then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. Installed purchase price. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing. Installed purchase price means the same as defined in Iowa Code section 423.1(23). Use tax is due on 20 percent of the amount of the installed purchase price.

(1) Included in the installed purchase price. Included within the meaning of "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" as described in subrule 282.7(1); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items which become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

(2) Exclusions from installed purchase price. Excluded from the meaning of "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances which remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances which remain tangible personal property is subject to Iowa sales or use tax.

b. The exemption in favor of taxable services performed on or in connection with new construction as described in Iowa Code section 423.3(37) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code section 423.6(10).