

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 219
“Sales and Use Tax on Construction Activities”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, 423.42

State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2, 423.2(1)“b” and “c,” 423.2(6), 423.3, 423.3(31), 423.3(37), 423.3(45), 423.3(64), 423.3(80), 423.3(85), 423.4(1), 423.5, 423.5(1)“b,” 423.5(2), 423.6(9), and 423.6(10)

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#

More phone numbers: [tel.meet/pmv-smfj-zwf?pin=4428711103686](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:

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Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
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Purpose and Summary

The purpose of this proposed rulemaking is to rescind and readopt Chapter 219, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes that are primarily applicable to taxpayers engaged in construction activity. The Department proposes revisions to the rules to provide clarification and to remove language that is obsolete, unnecessary, and duplicative of statute. Included within the revisions is an addition to rule 701—219.7(423) from rule 701—281.3(423). The Department determined that Chapter 281 was no longer necessary and should be rescinded since many of the rules in that chapter were unnecessary, obsolete, or duplicative of statutory language. The Department determined that it would retain and repromulgate rule 701—281.3(423) on mobile homes and manufactured housing and add that to rule 701—219.7(423) with revisions since the subject matters of these rules are similar and would allow the public an easier means to find the information. The Regulatory Analysis on Chapter 281 is also published herein (IAB 11/1/23). The Department also renumbered some rules due to other edits and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

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

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

The public, especially those engaged or associated with construction activities, will benefit from the proposed rulemaking since it provides guidance about the applicability of the imposition of sales or use tax or the exemption from tax on various construction-related purchases.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed rulemaking does not create costs for any class of persons beyond what is imposed by the underlying statutes.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about the applicability and scope of exemptions related to construction purchases. Failure to adopt the proposed rulemaking would lead to confusion and the potential collection of tax on what is an exempt purchase.

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 is otherwise required to administer the underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the proposed rulemaking provides clarification about the taxability and exemption from tax of various construction-related sales, making it less likely tax will be collected on what is an exempt purchase.

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 unnecessary or obsolete language or language that duplicates statute and failing to provide clarification to the public about these types of purchases. The benefits of the proposed rulemaking are to provide additional certainty and to reduce confusion about the taxability of construction-related purchases and when those purchases may be exempt from tax.

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

The proposed rulemaking is not costly or intrusive, and its purpose is to aid and provide guidance to the public about the taxability of construction-related purchases. The Department considered the option of not implementing the proposed rulemaking; however, it determined the rules provide helpful assistance and useful guidance to the public on these types of purchases.

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 on this topic; however, it determined that the proposed rulemaking provides guidance and clarification to the public about construction-related purchases beyond what is provided for in the underlying statutes.

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

The Department determined that proceeding without the proposed rulemaking would lead to confusion about the taxability of construction-related purchases, leading to the possibility of the overcollection of tax.

Small Business Impact

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

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

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

The proposed rulemaking does not have a substantial impact on small business since it does not make any distinction based on the size of a business and does not impose any requirements on business beyond what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 219 and adopt the following **new** chapter in lieu thereof:

CHAPTER 219 SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

701—219.1(423) General information and definitions.

219.1(1) Definitions. For purposes of this chapter, terms mean the same as defined in Iowa Code section 423.1 and as defined here.

“Building equipment” means any vehicle, machine, tool, implement, or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding, or remodeling property of others which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work.

“Building materials” means materials used in construction work, and is not limited to materials used in a construction contract. The term may also include any type of materials used for reconstruction, alteration, expansion, or remodeling of the premises or anything essential to the completion of a building or other structure for the use intended. Building materials generally consist of items which are incorporated into real property, lose their identity as tangible personal property, and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract.

“Building supplies” means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor, or builder and which is used or consumed in the course of completing the project. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor which is performed on it.

“Construction contract” means an agreement between a contractor and a sponsor under the terms of which the contractor agrees to provide labor, materials, supplies, and equipment to build a structure for the sponsor.

“Fabricated cost” means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site.

“Prefabricated structure” means any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor.

“Repair” means the same as mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property which has become imperfect and constitutes the restoration to a good and sound condition.

“Structure” means that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds.

219.1(2) Classification and obligations. The classification of people and business determines their obligations to pay or collect sales or use tax or claim an exemption on the sales price from sales of building materials, supplies, equipment, other tangible personal property, and labor.

a. Classification types. People and businesses can be classified as an owner, contractor, contractor-retailer, retailer, or repairperson.

b. Classification. A specific classification must be chosen and once chosen should not be changed unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be.

c. Assessment for new businesses. It can be difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair; however, any reasonable assessment of a new business’s status will be honored by the department.

d. Prohibited. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

e. Example. A business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive. If, after two years' operation, half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status.

This rule is intended to implement Iowa Code chapter 423.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute.

219.2(1) *Inapplicability of resale exemption.* A contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts or contracts for reconstruction, alteration, expansion, or remodeling.

219.2(2) *Bidding considerations.* When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity. The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

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

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders, or owners. Suppliers or dealers that sell materials, and supplies, and equipment to contractors, subcontractors, builders, or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 219.23(4), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies, and equipment without paying sales tax to the vendor, unless the building materials, supplies, or equipment are purchased for resale. Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter that the materials are delivered into the state.

219.3(1) *Examples of building materials and supplies.* The following is a nonexhaustive list of typical items that are building materials and supplies:

- Asphalt
- Bricks
- Builders' hardware
- Caulking material
- Cement
- Central air conditioning
- Cleaning compounds
- Conduit
- Doors
- Ducts
- Electric wiring, connections, and switching devices
- Fencing materials
- Flooring¹
- Glass
- Gravel
- Insulation
- Lath
- Lead
- Lighting fixtures
- Lime
- Linoleum¹
- Lubricants
- Lumber
- Macadam

Millwork
Modular and mobile homes
Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Plates and rods used to anchor masonry foundations
Plumbing supplies
Polyethylene covers
Power poles, towers, and lines
Putty
Reinforcing mesh
Rock salt
Roofing
Rope
Sand
Sheet metal
Steel
Stone
Stucco
Tile
Wallboard
Wall coping
Water conditioners
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

219.3(2) *Examples of building equipment.* Building equipment includes, but is not limited to, such items as:

Compressors
Drill presses
Electric generators
Forms
Hand tools
Lathes
Replacement parts for equipment
Scaffolds
Tools
Vehicles including grading, lifting and excavating vehicles

219.3(3) *Taxability of equipment.* Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment which is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. Rule 701—219.21(423) provides an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

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

701—219.4(423) Contractors, subcontractors, or builders who are retailers. In some instances, contractors, subcontractors, and builders are in a dual business which includes reselling to the general public on a recurring over-the-counter basis the same type of building materials and supplies which are used by the contractors, subcontractors,

and builders in their own construction work. A person operating in such a manner is referred to in this chapter as a contractor-retailer.

219.4(1) *Determination of contractor-retailer or contractor.* Any person who is engaged in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer.

219.4(2) *Taxability of sales by contractor-retailers.* A sale by a contractor-retailer of building materials, supplies, or equipment to owners is a retail sale and subject to sales tax. Contractors, subcontractors, or builders that purchase building materials, supplies, or equipment to be used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling are also retail sales and subject to sales tax. Contractors, subcontractors, or builders who purchase building materials, supplies, or equipment to be used in the performance of a job, which does not rise to the level of a new construction, reconstruction, alteration, expansion, or remodeling, are acting as retailers and not as contractors and must charge and collect from their customers sales tax on the sales price charged for materials, supplies, or equipment used in completing the job and on the sales price charged for any taxable service labor used in completing the job or on the entire charge, if materials and labor are not separately invoiced.

219.4(3) *Withdrawals from inventory.* When a contractor-retailer withdraws from inventory building materials, supplies, or equipment to be used in a construction contract performed by the contractor-retailer or in a contract for reconstruction, alteration, expansion, or remodeling performed by the contractor-retailer, the contractor-retailer must pay use tax on the cost of the materials, supplies, or equipment withdrawn from inventory. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced.

219.4(4) *Characteristics of contractor-retailer.* The following is a list of the characteristics of the usual contractor-retailer:

a. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling of structures. In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

b. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

c. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule.

d. A contractor-retailer purchasing construction material which will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

e. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

f. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa.

g. The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

219.4(5) *Examples.* The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1: Company A operates a retail outlet that sells lumber and other building materials and supplies. Company A is also a contractor which builds residential and commercial structures. Company A would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the

performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2: Company B is a mechanical contractor and has no retail outlets. Company B rarely sells any of its inventory to other persons or to other contractors. Company B would not be considered a contractor-retailer under this rule. However, Company B would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, Company B should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3: Company C is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet, but they frequently make sales of building materials which are in their inventory to local residents. Company C would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items which are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4: Company D is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Company D would not be considered a contractor-retailer under this rule. Rather, Company D would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Company D should have a sales tax permit. However, Company D can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5: Company E places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Company E also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Company E is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner.

EXAMPLE 6: Company F has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

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

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) Use by manufacturer.

a. *Outside of Iowa.* The use of building materials, supplies, or equipment in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event.

b. *Within Iowa.* The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production.

219.5(2) Use by contractor-retailer outside of Iowa. A contractor-retailer's withdrawal of materials from inventory for use in construction contracts or contracts for reconstruction, alteration, expansion, or remodeling outside this state is not a taxable event.

219.5(3) Use by contractor in and outside of Iowa. A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract or a contract for reconstruction, alteration, expansion, or remodeling is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) Purchase by manufacturer. A manufacturer's purchase of tangible personal property consumed as building materials in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts or contracts

for reconstruction, alteration, expansion, or remodeling within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. The purchase of tangible personal property consumed by a manufacturer as building materials in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside Iowa is not subject to tax.

219.5(5) Purchases from and used outside of Iowa. Building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside this state is exempt from use tax.

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

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of such contract in Iowa.

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

701—219.7(423) Prefabricated structures.

219.7(1) Basic concepts. Prefabricated structures include modular homes, mobile homes, manufactured housing, sectionalized housing, precut housing packages, and panelized construction.

219.7(2) Taxability.

a. Sales or use tax on the full purchase price is due when prefabricated structures are sold to or used by owners, contractors, subcontractors, or builders, or delivered under a contract for sale or sold for use in Iowa.

b. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable on the purchase price charged to a consumer or user by the seller at the time of retail sale.

219.7(3) Exceptions. The following are exceptions to the general taxability rule described above, applicable to modular and mobile homes and manufactured housing.

a. *Modular homes.* Modular homes, as defined in Iowa Code section 435.1, cannot be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles. Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. This 60 percent rule is applicable only to structures that meet the definition of "modular home" and not to other types of prefabricated structures which do not meet the definition of the term "modular home" such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. *Mobile homes and manufactured housing.*

(1) Use tax. Mobile homes and manufactured housing, as defined in Iowa Code section 321.1, are subject to use tax at the rate of 20 percent of the purchase price. All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park. See Iowa Code section 423.26A on the collection of use tax and certificates of title for manufactured housing.

(2) Exemption. To be eligible for the use tax exemption provided in Iowa Code section 423.6(9), the purchaser of a mobile home or manufactured housing must provide sufficient documentation to the county treasurer which verifies the Iowa use tax under Iowa Code section 423.5 has been previously imposed and paid.

(3) Trade-in allowance. A trade-in allowance will result in a reduction in the price of mobile homes and manufactured housing subject to tax if all the conditions found in Iowa Code section 423.3(59) are met.

1. The property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and

2. The retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A manufactured housing dealer receives from the factory a new manufactured home that has a sales price of \$20,000. The dealer sells it and takes the purchaser's old manufactured home worth \$5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

Sales price	\$20,000
Trade-in value	\$5,000
Buyer's price (Sales price minus trade-in)	\$15,000
Amount subject to tax (Full sales price multiplied by 20%)	\$4,000
Use tax due (5%)	\$200

Because the manufactured home will not be ultimately sold at retail or used to manufacture a like item, the trade-in value does not result in a reduction of the price subject to tax.

EXAMPLE 2: Same facts as Example 1; however, instead of keeping the traded-in manufactured housing, the dealer intends to and lists the trade-in for sale.

Sales price	\$20,000
Trade-in value	\$5,000
Buyer's price (Sales price minus trade-in)	\$15,000
Amount subject to tax (Full sales price multiplied by 20%)	\$3,000
Use tax due (5%)	\$150

In this example, the trade-in value does result in a reduction of the price subject to tax because the dealer intends to sell the traded-in manufactured housing at retail.

219.7(4) Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of subrule 219.4(5).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 701—219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 219.7(5) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract, and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(5) Manufacturers who perform construction contracts. When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. Rule 701—219.6(423) provides a description of the sales tax treatment of this sort of transaction. The 60 percent rule, as described in subrule 219.7(3) above, is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(6) Examples. The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a contractor in erecting the home. The incidence

of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement, and whether or not a sale for resale has occurred.

EXAMPLE 1: The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer's factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2: The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on the manufacturer's own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property, so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3: The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4: The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5: The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 423.2(1) "b" exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6: The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7: The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

This rule is intended to implement Iowa Code sections 423.2(1) "b," 423.3(64), 423.5(1) "b," 423.6(9), and 423.6(10).

701—219.8(423) Types of construction contracts.

219.8(1) *Types of construction contracts.* Construction contracts include lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design-built contracts; and turnkey contracts.

219.8(2) *Scope.* A contract for the installation of one or more of the items listed below does not necessarily transform that contract into a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Thus, for example, hiring a contractor to install a light fixture in an existing building is not, without more, a construction contract or a contract for reconstruction, alteration, expansion, or remodeling.

219.8(3) Examples. The following is a nonexhaustive list of activities and items which could fall within the scope of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure. This list should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual.

- Ash removal equipment (installed as distinguished from portable units)
- Automatic sprinkler systems (fire protection)
- Awnings and venetian blinds which become attached to real property
- Boilers (installed as distinguished from portable units)
- Brick work
- Builder's hardware
- Burglar alarm and fire alarm fixtures
- Caulking materials work
- Cement work
- Central air conditioner installation
- Coal handling equipment (installed as distinguished from portable units)
- Concrete work
- Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
- Drapery installation
- Electric conduit work and items relating thereto
- Electric distribution lines
- Electric transmission lines
- Floor covering which is permanently installed. Subrule 219.3(3) provides information on an exception to this regarding carpeting
- Flooring work
- Furnaces, heating boilers and heating units
- Glass and glazing work
- Gravel work (excluding landscaping)
- Installation of modular homes on foundations
- Lathing work
- Lead work
- Lighting fixtures
- Lime work
- Lumber and carpenter works
- Macadam work
- Millwork installation
- Mortar work
- Oil work
- Paint booths and spray booths (installed as distinguished from portable units)
- Painting work
- Paneling work
- Papering work
- Passenger and freight elevators
- Piping valves and pipe fitting work
- Plastering work
- Plumbing work
- Prefabricated cabinets, counters, and lockers (installed as opposed to portable units)
- Putty work
- Refrigeration units (central plants installation as distinguished from portable units)
- Reinforcing mesh work
- Road construction (concrete, bituminous, gravel, etc.)
- Roofing work
- Sheet metal work
- Sign installation (other than portable sign installation)

Steel work
Stone work
Stucco work
Tile work—ceiling, floor and walls
Underground gas mains
Underground sewage disposal
Underground water mains
Vault doors and equipment
Wallboard work
Wall coping work
Wallpaper work
Water heater and softener installation
Weather stripping work
Wire net screen work
Wood preserving work
This rule is intended to implement Iowa Code sections 423.2(1)“c” and 423.3(37).

701—219.9(423) Machinery and equipment sales contracts with installation.

219.9(1) *Machinery and equipment sales with installation.* Machinery and equipment sales contracts with installation are transactions which are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment which remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that “sales tax is included in the contract price.”

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

219.9(2) *Taxable services sales with installation.* Certain services which are enumerated in Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. Examples of enumerated services include electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE: Company B contracts with Company A to furnish and install a portable conveyor unit in Company A’s new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, separately itemized on the billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

This rule is intended to implement Iowa Code sections 423.2(6), 423.3, and 423.5.

701—219.10(423) Contracts with equipment sales (mixed contracts). Construction contracts or contracts for reconstruction, alteration, expansion, or remodeling with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor, as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment.

219.10(1) *Out-of-state supplier.* As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier.

219.10(2) *When machinery and equipment do not become real property.* Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE: Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies which lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building which maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units which retain their identity as tangible personal property. The installation charges for the units which remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

219.10(3) *Lump-sum amount.* In a mixed contract, the elements of the contract should be separated for sales tax purposes. When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

219.10(4) *Permits.* Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales and use tax permit.

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

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract or a contract for reconstruction, alteration, expansion, or remodeling does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment are tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, does not bear the weight of the structure, and does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) *Examples of tangible personal property that remains tangible personal property after installation.* Under normal conditions, the following nonexclusive list remains tangible personal property after installation.

a. Furniture, including office furniture and equipment, washers and dryers, portable lamps, home freezers, portable appliances, and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment, and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors, and others performing a processing function with the items.

d. Radio and television sets and antennas, including radio, television, and cable television station equipment, but not broadcasting or telecommunications towers.

e. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens.

Therefore, sales of items that remain tangible personal property after installation are subject to sales tax. If the installation of such items involves the performance of one or more enumerated services, the labor charges are also subject to sales tax, unless an exemption applies.

219.11(2) *Examples of tangible personal property that becomes realty after installation.*

a. Under normal conditions, the following nonexhaustive list becomes a part of realty.

(1) Boilers and furnaces.

(2) Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.

(3) Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts,

sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

- (4) Fixed (year-round) wharves and docks.
- (5) Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. Rule 701—214.10(423) provides more information on drainage tile.
- (6) Mobile and modular homes installed on foundations.
- (7) Planted nursery stock.
- (8) Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).
- (9) Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).
- (10) Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- (11) Silos and grain storage bins.
- (12) Storage tanks constructed on the site.
- (13) Swimming pools (wholly or partially underground (except portable pools)).
- (14) Truck platform scale foundations.
- (15) Walk-in cold storage units that become a component part of a building.

b. Exception for installation of new or replacement items. Sales of items that become a part of a structure to contractors, subcontractors, or builders for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure are retail sales subject to sales tax to be paid by the contractor, subcontractor, or builder. However, a contract for installation of new or replacement items in an existing structure is not necessarily a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of that structure.

EXAMPLE: A homeowner hires a contractor to replace the existing garbage disposal in the homeowner's house. This is not a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of the house. Therefore, the contractor must charge the homeowner sales tax on the full sales price of the garbage disposal. Additionally, because the installation of the garbage disposal involves the performance of enumerated services, the installation labor charges are also subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(6) and 423.3(37).

701—219.12(423) Tangible personal property which becomes structures. Items which are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis.

219.12(1) Criteria to determine if tangible personal property has become a structure. The following are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction:

- a.* The degree of architectural and engineering skills necessary to design and construct the structure.
- b.* The overall scope of the business and the contractual obligations of the person designing and building the structure.
- c.* The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
- d.* The size and weight of the structure.
- e.* The permanency or degree of annexation of the structure to other real property which would affect its mobility.
- f.* The cost of building, moving or dismantling the structure.

219.12(2) Example. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7,000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment.

This rule is intended to implement Iowa Code section 423.3(37).

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 423.2 is a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. Rule 701—219.21(423) provides an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair and new construction, reconstruction, alteration, expansion, and remodeling activities can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project are factors which determine whether certain enumerated services are exempt. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof.

219.13(1) Repair. Since retailers, as defined in Iowa Code section 423.1(47), may purchase building materials, supplies, and equipment for resale, persons making taxable repairs are not considered to be owners, contractors, subcontractors, or builders and are not subject to the provisions of Iowa Code section 423.2(1)“b.” Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors, or builders who may make repairs are subject to Iowa Code section 423.2(1)“b” and must pay tax at the time building materials, supplies, and equipment are purchased from vendors even though the contractors, subcontractors, or builders hold a valid sales tax permit. In determining who is a contractor and who is a retailer of repair services, the department looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges; if the labor and materials charges are billed as one lump sum, the entire amount is subject to sales tax. A contractor’s markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. Rule 701—225.3(423) provides an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

- a. Repair of broken or defective glass.
- b. Replacement of broken, defective, or rotten windows.
- c. Replacing individual or damaged roof shingles.
- d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.
- e. Repair or replacement of broken or damaged garage doors or garage door openers.
- f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.
- g. Replacing or repairing a broken water heater, furnace, or central air conditioning compressor.
- h. Restoration of original wiring in a house or building.

219.13(2) New construction, reconstruction, alteration, expansion, and remodeling. The following are examples of new construction, reconstruction, alteration, expansion, and remodeling activities:

- a. The building of a garage or adding a garage to an existing building is considered new construction.
- b. Adding a wooden redwood deck to an existing structure is considered new construction.
- c. Replacing the entire roof on an existing structure is considered reconstruction.
- d. Adding a new room to an existing building is considered new construction.
- e. Adding a new room by building interior walls is considered alteration.
- f. Replacing kitchen cabinets with some structural modification to the kitchen layout is considered remodeling.
- g. Laying a new floor over an existing floor is considered remodeling.
- h. Building a new wing to an existing building is considered an expansion.
- i. Rearranging the interior physical structure of a building is considered remodeling or alteration.
- j. Installing manufactured housing or a modular or mobile home on a foundation is considered new construction.

However, rule 701—282.8(423) provides a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

k. Replacing an entire water heater, water softener, furnace, or central air conditioning unit.

In all instances of new construction, reconstruction, alteration, expansion, or remodeling, the contractor is the final consumer of the materials, supplies, or equipment used in completing the job and is therefore responsible for paying sales tax to its supplier on the full sales price of the materials, supplies, or equipment used in the project. However, the contractor is not to charge the owner sales tax on any labor charges associated with completing the job.

219.13(3) *“On or connected with.”* The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

219.13(4) *Time and physical relationship.*

a. *Time.* The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

b. *Physical.* A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

c. *Incidental relationship.* On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a contractor to add a new room to an existing home. The existing home is in need of a number of the repairs described in subrule 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

d. *Determination of taxability.* Facts and motives are important in the determination of the taxability of services relating to construction activities. It should also be noted that taxes on enumerated services are applicable to repair or installation work that is not on or connected with new construction, reconstruction, alteration, expansion, or remodeling.

219.13(5) *Various nontaxable services.* Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

219.13(6) *Taxable construction-related services.*

a. *Carpentry repair or installation.* Persons engaged in the business of carpentry, as the trade is known in the usual course of business, are selling a service subject to sales tax, regardless of whether they perform repair or installation. The carpentry services can be conducted on or within real or personal property.

b. *Roof, shingle, and glass repair.* Persons engaged in the business of repairing, restoring, or renovating roofs or shingles or restoring or replacing glass, whether the glass is personal property or affixed to real property, are selling a service subject to sales tax.

c. Electrical and electronic repair and installation.

(1) In general. Persons engaged in the business of repairing or installing electrical wiring, fixtures, or switches in or on real property, or repairing or installing any article of tangible personal property powered by electric current, are selling a service subject to sales tax. This includes installation of semiconductors, such as vacuum tubes, transistors, or integrated circuits, or installation or repair of machinery or equipment that functions mainly through the use of semiconductors.

(2) New machinery or equipment. The sales price of the electrical or electronic installation is exempt from tax if the sales price is charged for the installation of new machinery or equipment.

(3) Definition. For purposes of this subrule:

“*Installation*” includes affixing electrical wiring, fixtures or switches to real property; affixing any article of personal property powered by electric current to any other article of personal property; or making any article of personal property powered by electric current operative with respect to its intended function or purpose.

d. Excavating and grading.

(1) In general. Persons engaged in the business of excavating and grading are selling services subject to sales tax.

(2) Definitions. For purposes of this subrule:

“*Excavation*” means the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. “*Excavation*” ordinarily includes not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface.

“*Grading*” means a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level. “*Grading*” includes the reducing of the surface of the earth to a given line fixed as the grade, involving excavating, filling, or both.

e. Painting, papering and interior decorating.

(1) In general. Persons engaged in the business of painting, papering, and interior decorating are selling a service subject to sales tax.

(2) Definitions. For purposes of this subrule:

“*Interior decoration*” means the designing or decoration of the interior of houses or buildings, counseling with respect to such design or decoration, or the procurement of furniture fixtures or home or building decorations.

“*Painting*” means the covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on the surface in thin coats for decoration, protection, or preservation purposes. This includes all necessary preparations, including surface preparation. “*Painting*” does not include automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metal such as but not limited to chromium, bronze, tin, galvanized metal, or platinum.

“*Papering*” means the application of wallpaper or wall fabric to the interior of a house or building and any necessary preparations, including surface preparation.

(3) Incidental service. When a person provides interior decorating services without charge, incidental to the sale of real or tangible personal property, no sales tax shall be charged in addition to the tax paid on the sales price or any part thereof of the real or tangible personal property.

f. Pipe fitting and plumbing.

(1) In general. Persons engaged in the business of pipe fitting and plumbing are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

“*Pipe fitting and plumbing*” means the trade of fitting, threading, installing, and repairing pipes, fixtures, or apparatus used for heating, refrigeration, or air conditioning, or concerned with the introduction, distribution, and disposal of a natural or artificial substance.

g. Wood preparation.

(1) In general. Persons engaged in the business of wood preparation or treatment for others are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

“*Wood preparation*” includes all processes whereby wood is sawed from logs in measured dimensions, planed, sanded, oiled, or treated in any manner before being used to repair an existing structure or create or become a part of a new structure. If such preparation is engaged solely for the purpose of processing lumber or wood products for ultimate sale at retail, such preparation may not be deemed as selling a service subject to sales tax.

h. Well drilling. Persons engaged in the business of well drilling are selling a service subject to sales tax.

i. Landscaping. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of a building or structure are not subject to sales tax. Rule 701—211.24(423) provides more information about landscaping services.

j. House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, for any reason, are selling a service subject to sales tax. The sales price from this service is not considered a transportation charge.

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

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. More information can be found in rule 701—204.8(423).

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.15(423) Liability of subcontractors. A subcontractor providing materials and labor on the actual construction of a structure has the same status and tax responsibilities as a contractor under Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a contractor or a subcontractor, the individual or firm is considered a materials supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by materials suppliers to contractors shall be sold for resale, and the contractor must provide the materials supplier with a valid resale certificate.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.16(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies, and equipment by a contractor or subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Likewise, a contractor cannot be held responsible for the tax liability incurred on building materials, supplies, and equipment by a subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

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

701—219.17(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.
2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.
3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

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

701—219.18(423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier, it should be purchased for resale. Rule 701—219.9(423) provides more information on this topic. Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract or a contract

for reconstruction, alteration, expansion, or remodeling. Rule 701—219.4(423) and subrule 219.13(1) provide more information.

This rule is intended to implement Iowa Code section 423.45.

701—219.19(423) Reporting for use tax. An Iowa contractor can report use tax as consumed goods on a sales and use tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a sales and use tax return, which is available directly from the department of revenue, unless the contractor is registered with the department.

This rule is intended to implement Iowa Code section 423.31.

701—219.20(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.20(1) Exempt lease or rental of machinery and equipment. The sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of structures and all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder.

219.20(2) Exempt sales, including lease or rental of equipment. The sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax.

This rule is intended to implement Iowa Code sections 423.3(37) and 423.3(85).

701—219.21(423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract provides for the sale and delivery of materials and also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and is liable for sales tax. Tax applies on the sales price of the material.

This rule is intended to implement Iowa Code section 423.3(31).

701—219.22(423) Construction contracts with designated exempt entities. This rule applies to exempt sales of building materials, supplies, equipment, or services to certain persons performing construction contracts for sponsors that are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

219.22(1) Definitions.

“Construction contract” means the same as defined in rule 701—219.8(423).

“Designated exempt entity” means the same as defined in Iowa Code section 423.3(80).

“GovConnectIowa” means the e-services portal of the department.

219.22(2) Registration with the department. A designated exempt entity seeking to issue exemption certificates to contractors, subcontractors, builders, or manufacturers performing construction contracts shall register with the department through GovConnectIowa. The designated exempt entity shall provide the following information:

- a. The name and address of the designated exempt entity.
- b. The federal identification number of the designated exempt entity.
- c. The name of the construction project or the project number for which exemption is requested.
- d. A general description of the construction project.
- e. The name and address of all contractors, subcontractors, builders, or manufacturers to which the designated exempt entity shall provide exemption certificates.

f. Additional information as requested by the department if the status of the entity seeking registration as a designated exempt entity is unclear.

219.22(3) Exemption certificates. Once a designated exempt entity's registration is completed and approved, the designated exempt entity can obtain exemption certificates to provide to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers may then provide these exemption certificates to retailers when purchasing building materials, supplies, equipment, or services to be used in completion of the construction contract with the designated exempt entity in order to make those purchases exempt from sales tax.

219.22(4) Exempt purchases, withdrawals from inventory, and manufacturers' fabrication costs.

a. A contractor, subcontractor, or builder who purchases building materials, supplies, equipment, or services intending to use such property or services in the performance of a construction contract with a designated exempt entity shall purchase the property or services from a retailer exempt from tax if the property or services are subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the designated exempt entity.

c. The fabricated cost, as defined in rule 701—219.6(423), of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if an exemption certificate is received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer's consumption of building materials, supplies, equipment, or services used in the performance of a construction contract for purposes other than incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for the exemption described by this rule.

219.22(5) Refunds. A designated exempt entity that does not complete the registration process in order to provide exemption certificates to contractors, subcontractors, builders, or manufacturers in advance of its construction project may request a refund of sales tax the designated exempt entity paid to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers should provide the designated exempt entity with completed Iowa Contractor's Statement forms. The designated exempt entity shall then submit a Construction Contract Claim for Refund form and all accompanying Iowa Contractor's Statement forms to the department.

219.22(6) Other sales. 701—Chapter 212 provides more information regarding the taxability of other types of sales to entities that qualify as designated exempt entities.

This rule is intended to implement Iowa Code sections 423.3(80) and 423.4(1).