

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 221
“Miscellaneous Nontaxable Transactions”

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 423.1, 423.3, 423.5, and 455C

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 adopt a new Chapter 221. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also moved rules from other chapters that fit with the topic of this chapter. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the exemption of miscellaneous nontaxable transactions that do not fit under any other chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification on what is taxable and what is exempt.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact of the proposed rules.
 - Qualitative description of impact:
The rules reduce uncertainty about what is taxable and what is exempt. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about when exemptions apply.

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

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

6. Alternative methods considered by the agency:

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

The Department did not seriously consider any alternative methods.

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

Proceeding without these rules would lead to confusion about when exemptions apply.

Small Business Impact

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

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

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

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

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 221 and adopt the following **new** chapter in lieu thereof:

CHAPTER 221

MISCELLANEOUS NONTAXABLE TRANSACTIONS

701—221.1(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of \$200. Customer A purchases a sweater for \$50 from ABC Clothing Company. ABC Clothing Company will debit A's card \$52.50 ($\50×1.05) for the state tax rate of 5 percent or \$53 ($\50×1.06) if one local option tax rate of 1 percent is applicable.

Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—221.2(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date which are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

701—221.3(423) Beverage container deposits. Tax does not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—221.4(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

221.4(1) In general. A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons, or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property.

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as “agency”) shall act as follows:

- a. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.
- b. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.
- c. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency’s services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

221.4(2) Scope. The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

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

701—221.5(422,423) Films and other media, exempt rental and sale.

221.5(1) Exempt rental. The sales price from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard or read shall not be taxable if the lessee either:

- a. Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or
- b. Broadcasts the contents of the media for public viewing or listening.

The sales price from lessees who are film exhibitors or who rent video tapes and discs would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of criteria “a” or “b” above will occur. The rental of films, video tapes and video discs for home viewing is not exempt from tax.

221.5(2) Exempt sale. Sales price from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media which can be seen, heard, or read are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(41).