

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 212, 284, and 285
“Exempt and Taxable Sales; Sales Involving Government Entities and Nonprofits; and Types of Sales Based on the Type and Method of Transaction”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1, 423.2, 423.3, 423.14, and 413.14A

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:

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Purpose and Summary

The purpose of the proposed rulemaking is to readopt Chapters 212 and 285 and rescind Chapter 284. Revenue proposes revisions to Chapters 212 and 285 to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. These chapters describe the Department’s interpretation of Iowa Code chapter 423 as it applies to certain types of exempt and taxable sales. Chapter 212 provides guidance on sales involving government entities and nonprofits. Chapter 285 provides guidance on certain types of sales based on the type and method of transaction. Some rules from rescinded Chapter 284 have been moved to Chapters 210, 212, and 219. Chapters 210 and 219 are not included in this Regulatory Analysis but are covered in separate analyses published herein (11/1/23 IAB).

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 create costs for any classes of persons. Any cost is associated with the underlying statute imposing the tax.

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

The public, including retailers and purchasers, will benefit from guidance on taxable and exempt sales.

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

- Quantitative description of impact:

There is no economic impact associated with the rules beyond what is contained in statute.

- Qualitative description of impact:

These rules reduce uncertainty about what sales are taxable and exempt. Failing to have these rules would lead to confusion, additional questions to the Department, and potential errors in calculating sales tax.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

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

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, these chapters provide guidance on sales that are considered taxable and exempt, making it more likely that the correct amount of tax will be remitted.

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 chapters to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about when a taxable sale occurs.

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 Department considered the option of not having rules explaining how the method of transaction affects taxation or rules related to government entities and nonprofits but determined that the rules provide useful guidance to the public and to government entities and nonprofits.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing the rules in these chapters but determined that it provides useful guidance to the public beyond what is provided by the statutes.

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

The absence of these rules would lead to confusion about whether certain sales are taxable or exempt.

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?

These chapters do not have a substantial impact on small business. They do not make any special distinctions for small businesses. These rules do not impose any requirements on businesses other than the taxes imposed by the underlying statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 212 and adopt the following **new** chapter in lieu thereof:

CHAPTER 212
GOVERNMENTS AND NONPROFITS

701—212.1(423) Taxability of profits used by or donated to an educational, charitable, or religious entity. For purposes of the exemption provided in Iowa Code section 423.3(78), the following definitions apply:

212.1(1) Educational. An activity has an “educational purpose” if the activity has as its primary objective to give instruction. The term “educational purpose” includes recreational or cultural activities. Activities which are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of this exemption. Municipal or public or nonprofit science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: A local nonprofit preschool that is exempt from federal tax under Internal Revenue Code (IRC) Section 501(c)(3) has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. Rule 701—212.5(423) contains additional information regarding the sale of tangible personal property and performance of services to certain nonprofit corporations.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The sales from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

212.1(2) Religious. “Religious purpose” includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for “on-premises consumption” (rule 701—220.5(423) contains more information on the sale of prepared food), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. Iowa Code section 423.3(2) contains the exemption for the sales price of sales for resale.

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used.

212.1(3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fundraiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the sales price would be exempt from sales tax.

a. Profits. The sales price from sales at issue in this exemption is exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. For purposes of this rule, “profits” means proceeds remaining after direct expenses have been deducted from the sales price derived from the activity or event. The expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity.

Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 423.3(78), it can still be held responsible for sales tax on gross receipts sales price if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the sales price in the tax period in which that portion was expended.

EXAMPLE 1: The cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense.

EXAMPLE 2: An educational institution hosts an art show. It invests profits from the art show into income-producing property and uses the remainder of the profits to purchase books for the library.

EXAMPLE 3: A nonprofit organization hosts a concert to raise money for neighborhood improvements. The cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, is a direct expense of the concert.

Unless a specific exemption applies to the entity, purchases by qualifying organizations which are not for resale cannot be purchased free of sales tax.

b. General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records which meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code which requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.

(5) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(6) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts sales price from the car show are subject to tax.

(7) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events which are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 423.3.

(8) An organization whose function is to promote by advertising the use of a particular product which can be purchased at retail does not qualify for the exemption provided by Iowa Code section 423.3(78), even though promotion by advertising may educate the public.

(9) Sales of tangible personal property or specified digital products by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(10) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. When organizations operate such games, they are required to have a sales tax permit and a gambling license.

This rule is intended to implement Iowa Code section 423.3(78).

701—212.2(423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or specified digital products or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

This rule is intended to implement Iowa Code section 423.3(107).

701—212.3(423) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property or services are exempt as described in Iowa Code section 423.3(43), sales tax does not apply.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. Company A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to Company B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

212.3(1) Proof of transportation. The most acceptable proof of transportation outside the state is:

- a. A waybill or bill of lading made out to the retailer's order calling for transport; or
 - b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts;
- or
- c. A trip sheet signed by the retailer's transport agency which shows the signature and address of the person outside the state who received the transported goods.

212.3(2) Certificate of out-of-state delivery. Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

212.3(3) Exemption not applicable. Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 423.3(43).

701—212.4(423) Educational institution. Tangible personal property, specified digital products, or enumerated services purchased by any private nonprofit educational institution, as defined in Iowa Code section 423.3(17), in the state and used for educational purposes is exempt from sales tax. When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

212.4(1) Taxable sales. Examples of taxable sales include:

- a. Sales of prepared food or other taxable food (rules 701—220.3(423) to 701—220.6(423) contain more information), whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.
- b. Sales from vending machines.
- c. Special event billings to colleges for meals for guests not connected with the college or at events not connected with the college.
- d. Sales to fraternities or sororities for events not billed to the college.
- e. Special event meals by commercial or social clubs, such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, whether or not billed through the college.

212.4(2) Exempt sales. Examples of exempt sales include:

- a. The sales of yearbooks to schools which have executed contracts with yearbook companies to purchase yearbooks. These are considered sales for resale and are exempt from tax.
- b. The sales of yearbooks from the school to the students and others. These are considered an educational activity and are exempt to the extent the profits therefrom are expended for educational purposes.
- c. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.
- d. Students and faculty casual board when billed to the college.
- e. Events, when given by faculty for students and billed to the college.
- f. Events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.
- g. Meals for students on education field trips and billed to the college.

EXAMPLE 1: A child care center (ABC) is a private nonprofit organization that provides the service of caring for children newborn to six years of age. In addition, ABC teaches children basic learning skills such as shapes, numbers, colors,

and the alphabet. ABC's primary purpose is to provide child care. The education of the children is a secondary activity. Consequently, ABC is not a private educational institution and would not qualify for exemption from sales tax under Iowa Code section 423.3(17).

EXAMPLE 2: A Preschool (XYZ) is a nonprofit private organization that teaches children from the ages of three to six years old. XYZ Preschool teaches the children basic learning skills such as shapes, numbers, colors and the alphabet by using certified faculty and accredited curriculum. XYZ Preschool is a private nonprofit educational institution and is eligible to claim the exemption to the extent purchases otherwise meet the requirements of Iowa Code section 423.3(17).

This rule is intended to implement Iowa Code section 423.3(17).

701—212.5(423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

212.5(1) Unless a specific exemption applies, the sales price of tangible personal property, taxable services, and specified digital products sold to nonprofit corporations is subject to tax. Sales price from the sale or rental of tangible personal property, specified digital products, or from services performed, rendered or furnished to certain nonprofit corporations are exempt from tax. Such organizations can be found in Iowa Code section 423.3(18).

212.5(2) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in this rule.

This rule is intended to implement Iowa Code section 423.3(18).

701—212.6(423) Nonprofit private museums. Iowa Code section 423.3(21) provides a sales tax exemption for certain purchases by nonprofit private museums.

212.6(1) Definitions and examples. A "museum" is all of the following:

- a. An institution organized for educational, scientific, historical preservation, or aesthetic purposes.
- b. Predominantly devoted to the care and exhibition of a collection of objects in a room, building, or locale.
- c. The collection must be open to the public periodically or at fixed intervals.
- d. Have staff available to answer questions regarding the collection.

212.6(2) Exclusions from definition of "museum."

- a. An institution is not a "museum" unless it can be included in the ordinary and usual public concept of a museum.
- b. Examples of institutions that are not designated as "museums" include aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos.

701—212.7(423) State fair and fair societies. The sales price from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

This rule is intended to implement Iowa Code sections 423.3(23) and 423.3(35).

701—212.8(423) Sales to hospices. Iowa Code section 423.3(28) provides an exemption for freestanding nonprofit hospice facilities. "Hospice" and "hospice care" are defined in 42 CFR 418.3. A "freestanding hospice facility" is any hospice program housed in a building which is dedicated only to the hospice program and which is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 423.3(28).

701—212.9(423) Art centers.

212.9(1) Iowa Code section 423.3(22) provides an exemption from tax for certain purchases made by private nonprofit art centers.

212.9(2) To qualify for the exemption, the organization will be all of the following:

- a. An art center, which is defined as a structure that displays aesthetic objects which are the product of the conscious use of skill and creative imagination.
- b. Housed in a structure open to the public periodically or at fixed intervals with regular hours and with staff available to answer visitors' questions.

c. Located in Iowa.

This rule is intended to implement Iowa Code section 423.3(22).

701—212.10(423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the federal governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 423.5(1) “c” shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code section 423.3.

701—212.11(423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the sales price from taxable retail sales of tangible personal property, specified digital products, and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by Iowa Code section 423.3(32).

This rule is intended to implement Iowa Code chapter 423.

701—212.12(423) Sales to federal, state, municipal, and tribal governments and instrumentalities.

212.12(1) Exempt sales. Sales are exempt from tax under Iowa Code section 423.3(31) if the tangible personal property, taxable services, and specified digital products are:

a. Sold directly to an exempt government entity described in Iowa Code section 423.3(31);

b. Used for a public purpose; and

c. Not one of the types of the products listed in Iowa Code section 423.3(31) “a”(1) through 423.3(31) “a”(3) that remain taxable even when sold to certain government entities.

212.12(2) Direct, legal incidence of the tax.

a. *Sale to exempt government entities.* A sale to an exempt government entity occurs only if the government entity, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. Rule 701—219.23(423) contains additional information on construction contracts with designated exempt entities.

b. *Government contractors.* Iowa Code section 423.3(31) does not apply to independent contractors who contract with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services which a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

c. *Examples.*

EXAMPLE 1: Patient A purchases a hospital bed. A percentage of patient A’s bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale. Patient A is the direct purchaser of the bed. The exemption in Iowa Code section 423.3(31) does not apply.

EXAMPLE 2: A is a federal government employee. A travels in Iowa while on government business and purchases prepared meals from restaurants in Iowa. A pays for the meals. The federal government later reimburses A the entire cost of the meals, including the sales tax A paid on the prepared meals. A has purchased meals, and Iowa sales tax should be charged accordingly. The federal government is not the direct purchaser of the prepared meals so the exemption under Iowa Code section 423.3(31) does not apply and neither A nor the federal government qualify for a tax refund.

212.12(3) Government instrumentalities.

a. *Express statute.* An entity can be an instrumentality of government under Iowa Code section 423.3(31) if a state or federal statute expressly designates the entity as a government instrumentality that is exempt from paying sales tax on its direct purchases.

EXAMPLE 1: Iowa Code section 231.32(5) provides that after the commission on aging designates an area agency on aging, the area agency “shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state.” Thus, a designated area agency on aging is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

EXAMPLE 2: Iowa Code section 12E.3(1) provides the tobacco settlement authority is “a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential government functions.” Thus, the tobacco settlement authority is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

b. Lack of express statute defining an entity as a government instrumentality. If there is no statute that expressly defines an entity as a government instrumentality exempt from tax, the entity may qualify as a government instrumentality if it satisfies all of the following requirements:

- (1) Government controls the detailed physical performance of the entity;
- (2) The entity’s day-to-day operations are supervised by government; and
- (3) The entity is created for the purpose of, and is primarily engaged in, the performance of essential government functions.

212.12(4) *Certain corporations organized under federal statutes.* The sale of tangible personal property, specified digital products, or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

- a.* Federal savings and loan associations.
- b.* Federal savings and trust companies.
- c.* National banks.
- d.* Other organizations of like character.

701—212.13(423) Fees paid to cities and counties for the privilege of participating in any athletic sport. A “sport” is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An “athletic” sport is any sport which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

212.13(1) The following is a list of various fees which would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

a. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

b. Fees paid to enter any tournament or league which involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

212.13(2) Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

a. Fees paid for lesson or instruction in how to play or to improve one’s ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

b. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

c. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport which can be played within the facility.

d. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

e. Fees paid for the use of a campground or hiking trail are not subject to tax. This rule is intended to implement Iowa Code section 423.3(32).

701—212.14(423) Property used by a lending organization. The sales price from the sale of tangible personal property or specified digital products to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services or specified digital products. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 423.3(19).

701—212.15(423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

ITEM 2. Rescind and reserve **701—Chapter 284.**

ITEM 3. Rescind 701—Chapter 285 and adopt the following **new** chapter in lieu thereof:

CHAPTER 285
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE

701—285.1(423) Auctioneers as agents.

285.1(1) An auctioneer in making a sale, whether of tangible personal property, specified digital products, or realty, is by virtue of this employment making the sale as the agent of the principal.

285.1(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 423.3(39), the sales price from the sale is exempt from sales tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3(39).

701—285.2(423) Florists.

285.2(1) Florists are engaged in the business of selling tangible personal property and specified digital products at retail. The sales price from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property and specified digital products are subject to sales tax.

285.2(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, based on sales price from the total amount collected from the customer, except the cost of a telegram if separately stated on a bill or invoice.

b. In cases where an Iowa florist receives an order pursuant to which the Iowa florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, Iowa sales tax is not due.

c. In cases where Iowa florists receive telephonic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for Iowa sales tax with respect to the transaction.

This rule is intended to implement Iowa Code section 423.2.

701—285.3(422,423) Student fraternities and sororities.

285.3(1) Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—220.5(423).

285.3(2) Student fraternities or sororities engaged in the business of selling meals or other tangible personal property to persons other than members for which separate charges are made are making taxable sales.

285.3(3) Sales by other food preparers. When student fraternities or sororities do not provide their own meals but meals instead are provided to members by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of sales tax on the sales price from meals furnished.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—285.4(423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling tangible personal property, specified digital products, and funeral services. Examples of the tangible personal property sold by a funeral director include but are not limited to caskets, other burial containers, flowers, and burial clothing. “Funeral services” includes but is not limited to cremation, transportation by hearse and embalming. Tax is due only on the sales price from the sale of tangible personal property, specified digital products, and taxable services, and not on the sales price from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, specified digital products, taxable services and nontaxable services, tax is due only upon the sales price from the sales of tangible personal property and taxable services.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, burial clothing, and other items sold to customers for resale, and may purchase these items from suppliers without payment of sales tax.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code section 423.2.

701—285.5(423) Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians are not liable for sales tax on services rendered, including but not limited to examinations, consultations, diagnosis, and surgery.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual’s own use. For example, the purchase of prescription drugs would not be subject to sales tax if purchased for use in the practice of the physician, dentist, surgeon, ophthalmologist, optometrist, or optician. Sales of tangible personal property and specified digital products to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from sales tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property and specified digital products to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property and specified digital products to ophthalmologists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of equipment that is utilized directly in the care of an illness, injury or disease, which would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—285.6(423) Warranties and maintenance contracts.

285.6(1) Mandatory warranties. A warranty is a mandatory warranty when the buyer, as a condition of the sale, is required to purchase the warranty from the seller. When the sale of tangible personal property, specified digital products, or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for

resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

285.6(2) Optional warranties. A warranty is an optional warranty when the buyer is not required to purchase the warranty from the seller.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 423.2 is considered a sale of tangible personal property the sales price of which is subject to tax at the time of sale except as described below.

b. The sale of a residential service contract regulated under Iowa Code chapter 523C is not the sale of tangible personal property, and the sales price from the sales of these service contracts is not subject to tax, and the sales price from taxable services performed for the providers of residential service contracts are now subject to tax. "Residential service contract" is defined in Iowa Code section 523C.1(8).

c. If an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only, then no tax is imposed on the furnishing of those services. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then sales tax shall be imposed on the sales price from the sale of the contract.

285.6(3) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code section 423.2.

701—285.7(423) Casual sales.

285.7(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.*

a. Exemptions. Casual sales are exempt from Iowa sales and use taxes except for the casual sale of vehicles subject to registration, aircraft, and other vehicles listed in Iowa Code section 423.3(39) "b." In order for a casual sale to qualify for exemption under this subrule, two conditions must be present:

(1) The sale of tangible personal property, specified digital products, or taxable services must be of a nonrecurring nature, and

(2) The seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale must be outside the regular course of the seller's business.

b. Nonrecurring events. Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year.

c. Sales of capital assets. Sales of capital assets such as equipment, machinery, and furnishings which are not sold as inventory shall be deemed outside the regular course of business (including sales of capital assets during a retailer's liquidation) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible personal property, specified digital products, or services for a profit, since the sales are recurring, there is no casual sale.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 701—285.1(423).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at the sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation.

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 285.7(2) *infra*, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporation) which will continue to engage in a similar trade or business.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(2) *Special rules for casual sales involving the liquidation of a trade or business.* When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 285.7(1), and the resale exemption is always potentially applicable to sales of inventory. The examples below contain further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 285.7(1) for criteria which determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 285.7(2) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations which were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 285.7(1) for the criteria of a casual sale exemption which could apply.

The above examples are not the only ones pertaining to the question of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(3) *Casual sales of services.* The “casual sale” of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale was outside the regular course of the seller's business; or

b. The sales of all, or substantially all of the services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit, if the retailer sells or otherwise transfers the trade or business to another person who engages in a similar trade or business.

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning which are taxable services. Once, as a favor to customer W, V cut customer W's lawn and otherwise performed the taxable service of “lawn care” for customer W. Since this performance of lawn care was not “within V's regular course of business” and was not “recurring,” the sales price from the lawn care is not subject to tax.

EXAMPLE: Corporation X rents a piece of equipment from Y. Y does not otherwise rent equipment and does not engage in the business for profit of selling tangible personal property, specified digital products, or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code section 423.3(39).

701—285.8(423) Taxation of Native Americans.

285.8(1) *Definitions.*

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

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

285.8(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement to Native Americans who are members of the tribe located on that settlement, where delivery occurs on the settlement, are exempt from tax. Retail sales of tangible personal property made on a recognized settlement to Native Americans where delivery occurs off the settlement are subject to tax. Retail sales of tangible personal property made to non-Native Americans on a recognized settlement are subject to tax regardless of where the delivery occurs. Sales made to non-Native Americans are taxable even though the seller may be a member of a recognized settlement.

285.8(3) *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans who are members of the tribe

located on the recognized settlement where delivery of the service occurs are exempt from tax. Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans where delivery of the services occurs off a recognized settlement are subject to tax.

285.8(4) Off-settlement purchases. Purchases made by Native Americans off a recognized settlement are subject to tax if delivery occurs off the settlement. Purchases made by Native Americans off a recognized settlement are not subject to tax if delivery is made on the settlement to Native Americans who are members of the tribe located on that settlement.

This rule is intended to implement Iowa Code section 423.3.

701—285.9(423) Computer software.

285.9(1) In general.

a. Applicability of tax. For the purposes of this rule, the sales price of the tangible personal property, specified digital products, and services found within Iowa Code section 423.2 is subject to tax.

b. Definitions.

“Program” is interchangeable with the term “software” for purposes of this rule.

“Rental or lease” means the same as defined in Iowa Code section 423.1(24).

285.9(2) Taxable sales, rentals or leases, and services.

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract for the use of equipment, the rental or lease payments are subject to tax.

c. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

d. Services a part of the sale or lease of equipment. Where services, such as programming, or training are provided to those who purchase or lease software on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

e. Mailing services. Addressing (including labels) for mailing. Where a service provider addresses, through the use of its software or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for addressing. Similarly, where the service provider prepares, through the use of its software or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service provider itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service provider. Mailing lists which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

This rule is intended to implement Iowa Code section 423.3.

701—285.10(423) Envelopes for advertising. Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt.

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item which is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

This rule is intended to implement Iowa Code section 423.3(42).

701—285.11(423) Newspapers, free newspapers and shoppers’ guides.

285.11(1) *Sales price of newspapers.* The sales price from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable.

285.11(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material.

285.11(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

285.11(4) *Characteristics which distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 423.3(55).

701—285.12(423) Maintenance or repair of fabric or clothing.

285.12(1) Sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See rule 701—200.1(423) for definitions of the terms "chemical," "solvent," "sorbent" or "reagent." This subrule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances which do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethylene "perch" or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

285.12(2) The sale of property which is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article which protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of "shirt boards" and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article's sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, "bundle bags" and "Meese carts," used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

Concerning labels, the sale of which would be exempt from tax, these labels must be affixed to the dry-cleaned or laundered clothing and transferred to the customer of the dry-cleaning or laundering establishment. By way of nonexclusive example, the sale to dry cleaners, of "special attention," "invoice" and "sorry" tags would be exempt from tax.

The sale of safety pins and other types of clips used to hang skirts and other garments from hangers would not be exempt from tax. These items do not sufficiently resemble containers or labels to the extent that their sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.3(45) and 423.3(51).

701—285.13(423) Drop shipment sales. A “drop shipment” generally involves two transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. A drop shipment sale occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer’s order is placed. The retailer then purchases the property from the supplier. The supplier ships the property directly to the consumer in Iowa. The supplier in a drop shipment sale is not required to collect sales or use tax from the consumer, even if the requisite nexus to require collection exists.

If delivery of goods under a contract for sale occurs outside of Iowa, sale of the goods occurs outside of Iowa. If delivery of the goods under the contract for sale occurs within Iowa, the sale occurs in Iowa. If the sale occurs in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa sales tax, the retailer is obligated to collect Iowa sales tax upon the sales price from its sale of the goods to the consumer. If the sale occurs in Iowa but the retailer does not have nexus sufficient to require it to collect Iowa sales or use tax, or if the retailer fails to collect sales tax, the consumer is obligated to pay use tax directly to the department.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa use tax. The supplier is not obligated to collect or pay any Iowa tax.

This rule is intended to implement Iowa Code sections 423.1, 423.14, and 413.14A.