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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

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CHAPTER 81  
RENEWABLE CHEMICAL PRODUCTION TAX CREDIT PROGRAM

**261—81.1(15) Purpose.** The purpose of this chapter is to encourage development of the renewable chemicals industry and stimulate job growth using the renewable chemical production tax credit program to incentivize new and existing businesses to produce high-value renewable chemicals in Iowa from biomass feedstock.

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

**261—81.2(15) Definitions.** As used in this chapter, the following definitions shall apply:

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Authority’s website*” means the information and related content found at [www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com) and may include integrated content at affiliate sites.

“*Biobased content percentage*” means, with respect to any renewable chemical, the amount, expressed as a percentage, of renewable organic material present as determined by testing representative samples using the American Society for Testing and Materials standard D6866.

“*Biomass feedstock*” means sugar, polysaccharide, crude glycerin, lignin, fat, grease, or oil derived from a plant or animal, or a protein capable of being converted to a building block chemical by means of a biological or chemical conversion process.

“*Board*” means the members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Building block chemical*” means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. “Building block chemical” includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, nonfuel butanol, nonfuel ethanol, benzene, toluene, xylene, ethylbenzene, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

“*Crude glycerin*” means glycerin with a purity level below 95 percent.

“*Director*” means the director of the economic development authority or the director’s designee.

“*Eligible business*” means a business meeting the requirements of rule 261—81.3(15).

“*Food additive*” means a building block chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, or nutritional content of food. The authority, in its discretion, shall determine whether or not a building block chemical is primarily consumed as food.

“*High-purity glycerol*” means glycerol with a purity level of 95 percent or higher.

“*Pre-eligibility production threshold*” means, with respect to each eligible business, the number of pounds of renewable chemicals produced, if any, by an eligible business during the calendar year prior to the calendar year in which the business first qualified as an eligible business pursuant to rule 261—81.3(15).

“*Production year*” means any calendar year after the year in which the eligible business’s pre-eligibility production threshold was established and in which the eligible business produces renewable chemicals.

“*Program*” means the renewable chemical production tax credit program administered pursuant to this chapter.

“*Renewable chemical*” means a building block chemical with a biobased content percentage of at least 50 percent. “Renewable chemical” does not include a chemical sold or used for the production of food, feed, or fuel. “Renewable chemical” includes cellulosic ethanol, starch ethanol, or other ethanol derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that such

molecules are produced and sold for uses other than food, feed, or fuel. “Renewable chemical” also includes a building block chemical that can be a food additive as long as the building block chemical is not primarily consumed as food and is also sold for uses other than food. “Renewable chemical” also includes supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that such molecules do not provide caloric value so as to be considered sustenance as food or feed.

“*Sugar*” means the organic compound glucose, fructose, xylose, arabinose, lactose, sucrose, starch, cellulose, or hemicellulose.

[ARC 3004C, IAB 3/29/17, effective 5/3/17; ARC 4307C, IAB 2/13/19, effective 3/20/19]

**261—81.3(15) Eligibility requirements.** To be eligible to receive the renewable chemical production tax credit pursuant to the program, a business shall meet all of the following requirements:

**81.3(1) Physical location.** The business must have a facility that produces renewable chemicals and is physically located in the state of Iowa. If a business has facilities located in more than one state, only those renewable chemicals produced at facilities physically located in the state of Iowa may be counted for the purpose of calculating the tax credit under subrule 81.6(1).

**81.3(2) Operated for profit and under single management.** The business must be operated for profit and under single management. For purposes of this rule, “single management” means that if the same eligible business has an ownership or equity interest in multiple facilities at which renewable chemicals are produced, the facilities under common ownership will be considered a single eligible business for purposes of calculating the maximum tax credit amount under rule 261—81.6(15). In calculating the maximum tax credit amount under rule 261—81.6(15), only the pro rata share of each eligible business’s ownership in a facility will be attributed to that eligible business.

**81.3(3) Type of business.** The business may not be an entity providing professional services, health care services, or medical treatments or an entity engaged primarily in retail operations.

**81.3(4) Organization.** The business must have organized, expanded, or located in the state on or after April 6, 2016.

**81.3(5) Not reducing operations.** The business shall not be relocating or reducing operations as described in Iowa Code section 15.329(1) “b” and as determined under the discretion of the authority.

**81.3(6) Compliance.** The business must be in compliance with all agreements entered into under this program or other programs administered by the authority.

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

**261—81.4(15) Application process and review.**

**81.4(1)** An eligible business that produces a renewable chemical in this state from biomass feedstock during a calendar year may apply to the authority for the renewable chemical production tax credit.

**81.4(2)** The application shall be made to the authority in the manner prescribed by the authority. Information about the program and a link to the online application and instructions may be obtained by contacting the authority or by visiting the authority’s website:

Iowa Economic Development Authority  
Business Development Division  
200 East Grand Avenue  
Des Moines, Iowa 50309  
(515)725-3000  
[www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com)

**81.4(3)** The application shall be made to the authority during the calendar year following the calendar year in which the renewable chemicals were produced. For example, an eligible business may submit an application in calendar year 2018 to receive a tax credit based on renewable chemicals produced in calendar year 2017.

**81.4(4)** The application may be submitted to the authority electronically during the annual filing window. This filing window shall be from February 15 to March 15 of each calendar year. The authority may adjust the annual filing window dates under extenuating circumstances and will notify affected parties of such circumstances.

**81.4(5)** The application shall include all of the following information:

- a. The name of the qualifying building block chemical produced by the eligible business for which the business is claiming a tax credit.
- b. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year, measured in pounds.
- c. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year prior to the year in which the business first qualified as an eligible business under the program.
- d. The city or county where the plant producing renewable chemicals is located.
- e. The type of feedstock used to produce the renewable chemicals.
- f. The date on which the eligible business organized, expanded or located in the state.
- g. Any other information reasonably required by the authority in order to establish and verify eligibility under the program.

**81.4(6)** Applications will be reviewed by the authority on a first-come, first-served basis as described in subrule 81.6(5). Applications shall be date- and time-stamped by the authority in the order in which such applications are received. If the authority deems that additional information is needed before a determination of eligibility can be made, and the authority makes a written request for additional information from the applicant, the applicant must provide the requested information within 30 days of the date that the written request from the authority was made. If an applicant does not provide the requested information within 30 days, the applicant will be placed at the end of the queue of applications received. The authority shall review the queue of applications for eligibility and maintain a list of successful applicants as required by subrule 81.6(5).

**81.4(7)** The authority shall notify an applicant when the applicant has been placed on the list of successful applicants.

a. For applicants on the list for whom there are sufficient tax credits available in the aggregate cap for the fiscal year, the applicant must sign the agreement within 60 days of being notified of eligibility for the tax credit. Upon request by the applicant, the authority may extend the time period for signing the agreement by an additional 30 days.

b. For applicants on the wait list established in subrule 81.6(5), the authority shall notify the applicant of the applicant's status and position on the wait list.

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

## **261—81.5(15) Agreement.**

**81.5(1) Agreement.** Before being issued a tax credit pursuant to this chapter, an eligible business shall enter into an agreement with the authority for the successful completion of all requirements of the program. As part of the agreement, and as a condition of receiving the tax credit, the eligible business shall agree to collect and provide any information reasonably required by the authority in order to allow the board to fulfill the board's reporting obligation under Iowa Code section 15.320.

**81.5(2) Fees.** The compliance cost fees authorized in rule 261—187.6(15) shall apply to all agreements entered into under this program and shall be collected by the authority in the same manner and to the same extent as described in that rule.

**81.5(3) Requirements.** An eligible business shall fulfill all the requirements of the program and the agreement before receiving a tax credit or entering into a subsequent agreement under this rule. The authority may decline to enter into a subsequent agreement under this rule or to issue a tax credit if an agreement is not successfully fulfilled.

**81.5(4) Issuance of credit.** Upon establishing that all requirements of the program and the agreement have been fulfilled, the authority shall issue a tax credit and related tax credit certificate to the eligible business stating the amount of renewable chemical production tax credit the eligible business may claim. The amount of the tax credit shall not exceed the amount allowable under rule 261—81.6(15).

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

## **261—81.6(15) Renewable chemical production tax credit.**

**81.6(1) Calculation of tax credit amount.** An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) may be issued a tax credit in an amount equal to the product of five

cents multiplied by the number of pounds of renewable chemicals produced in this state from biomass feedstock by the eligible business during a given production year.

*a.* The maximum amount of tax credit that may be issued under the program to an eligible business for the production of renewable chemicals in a calendar year shall not exceed the following:

(1) In the case of an eligible business that has been in operation in the state for five years or less at the time of application, \$1 million.

(2) In the case of an eligible business that has been in operation in the state for more than five years at the time of application, \$500,000.

*b.* For purposes of this subrule, “operation” begins on the date the eligible business first began commercial production.

*c.* If an eligible business has been in operation in the state for five years or less at the time of application but is more than fifty percent owned by an eligible business that has been in operation in the state for more than five years, then that eligible business will be considered in operation in the state for more than five years pursuant to subparagraph 81.6(1) “a”(2).

**81.6(2) *Eligible business only.*** An eligible business shall not receive a tax credit for renewable chemicals produced before the date the business first qualified as an eligible business pursuant to rule 261—81.3(15).

**81.6(3) *Production above pre-eligibility production threshold.*** An eligible business shall only receive a tax credit for renewable chemicals produced in a calendar year to the extent such production exceeds the eligible business’s pre-eligibility production threshold as defined in rule 261—81.2(15). For example, if an eligible business produces 3 million pounds of renewable chemicals during calendar year 2016 and first becomes an eligible business under this chapter in calendar year 2017, the pre-eligibility production threshold for the business is 3 million pounds. If the same eligible business produces 10 million pounds of renewable chemicals during calendar year 2017, the eligible business may only receive a tax credit for the amount produced over the pre-eligibility production threshold, which in this example equals 7 million pounds.

**81.6(4) *Maximum number of credits.*** An eligible business shall not receive more than five tax credits under the program. Each tax credit must be applied for separately, and each application will be reviewed independently of past tax credits. Receipt of a tax credit in one year does not guarantee receipt of a tax credit in a subsequent year.

**81.6(5) *Tax credit wait list.***

*a.* The authority shall issue tax credits under the program on a first-come, first-served basis until the maximum amount of tax credits allocated pursuant to Iowa Code section 15.119(2) “h” is reached for any given fiscal year. The authority shall maintain a list of successful applicants under the program, so that if the maximum aggregate amount of tax credits is reached in a given fiscal year, eligible businesses that successfully applied but for which tax credits were not issued shall be placed on a wait list in the order the eligible businesses applied and shall be given priority for receiving tax credits in succeeding fiscal years.

*b.* Placement on a wait list pursuant to this subrule shall not constitute a promise binding the state. The availability of a tax credit and issuance of a tax credit certificate pursuant to this rule in a future fiscal year is contingent upon the availability of tax credits in that particular fiscal year.

**81.6(6) *Termination and repayment.*** The failure by an eligible business in fulfilling any requirement of the program or any of the terms and obligations of an agreement entered into pursuant to this chapter may result in the reduction, termination, or rescission of the tax credits under Iowa Code section 15.319 and may subject the eligible business to the repayment or recapture of tax credits claimed. The repayment or recapture of tax credits pursuant to Iowa Code section 15.319(4) shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

**81.6(7) *Issuance of credit.*** The authority shall not issue a tax credit certificate prior to July 1, 2018. [ARC 3004C, IAB 3/29/17, effective 5/3/17]

**261—81.7(15) Claiming the tax credit.**

**81.7(1) *Maximum tax credit claimed.*** An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) may claim a tax credit in an amount equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in this state from biomass feedstock by the eligible business during a given production year within the limits set forth in rule 261—81.6(15). An eligible business may claim a tax credit for the production of more than one qualifying renewable chemical under this chapter, provided that the total tax credit claimed by the eligible business does not exceed the limits set forth in subrule 81.6(1). However, an eligible business shall not receive a tax credit for the production of a secondarily derived building block chemical if that chemical is also the subject of a credit at the time of production as a first product. The renewable chemical production tax credit shall not be available for any renewable chemical produced before the 2017 calendar year or after the 2026 calendar year.

**81.7(2) *Who may claim the credit.*** The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II or III. The tax credit shall be claimed for the tax year during which the eligible business was issued the tax credit. An individual may claim a tax credit under this chapter of a partnership, limited liability company, S corporation, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, cooperative, estate, or trust.

*a.* To claim a tax credit under this rule, a taxpayer shall include one or more tax credit certificates with the taxpayer's tax return.

*b.* The tax credit certificate shall contain the taxpayer's name, address, and tax identification number, the amount of the credit, the name of the eligible business, and any other information required by the department of revenue.

*c.* The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II and III, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of the program.

**81.7(3) *Refundability.*** Any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

**81.7(4) *Transferability.*** Tax credit certificates issued pursuant to this chapter shall not be transferred to any other person.

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

## **261—81.8(15) Process to add building block chemicals.**

**81.8(1) *General process.*** The authority may add additional molecules to the definition of "building block chemical" in rule 261—81.2(15) pursuant to Iowa Code section 15.316. The authority may initiate the administrative rule-making process for the addition of such molecules to this chapter.

**81.8(2) *Request to include additional molecules.*** Any individual or business may request that an additional molecule be added to the definition of "building block chemical" by submitting a written request to the authority. Such requests shall be made in the form prescribed by the authority and shall be submitted to the authority during the filing windows prescribed by the authority. At a minimum, the authority shall accept requests between April 1 and May 1 of each calendar year and October 1 and November 1 of each calendar year. The authority may adjust these dates under extenuating circumstances and will notify affected parties of such circumstances.

**81.8(3) *Consultation with experts.*** Prior to initiating a rule making to add molecules to the definition of "building block chemical" in rule 261—81.2(15), the authority shall consult with appropriate experts from Iowa state university, including but not limited to the Iowa state university center for biorenewable chemicals. The authority shall conduct an initial staff review of any requests received by the authority pursuant to subrule 81.8(2). Following the initial staff review, the authority shall consult with the experts at Iowa state university regarding the molecules that the authority believes are

consistent with the definitions under this chapter. The experts at Iowa state university shall provide a written recommendation to the authority indicating which chemicals, in the experts' opinion, meet the definition of "building block chemical" consistent with this chapter.

**81.8(4) *Initiation of rule-making proceedings.*** Following the consultation and review process set forth in subrule 81.8(3), the authority may initiate the administrative rule-making process to amend the definition of "building block chemical" to add molecules which the authority, in the authority's sole discretion, finds to be consistent with the definitions in this chapter.

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

**261—81.9(15) Additional information—confidentiality—annual report.**

**81.9(1) *Additional information.*** The authority may at any time request additional information and documentation from an eligible business regarding the operations, job creation, and economic impact of the eligible business, and the authority may use the information in preparing and publishing any reports to be provided to the governor and the general assembly.

**81.9(2) *Confidential information.*** Except as provided in subrule 81.9(3), any information or record in the possession of the authority with respect to the program shall be presumed by the authority to be a trade secret protected under Iowa Code chapter 550 or common law and shall be kept confidential by the authority unless otherwise ordered by a court.

**81.9(3) *Public information.*** The identity of a tax credit recipient and the amount of the tax credit shall be considered public information under Iowa Code chapter 22.

[ARC 3004C, IAB 3/29/17, effective 5/3/17]

These rules are intended to implement Iowa Code sections 15.315 to 15.322.

[Filed ARC 3004C (Notice ARC 2867C, IAB 12/21/16), IAB 3/29/17, effective 5/3/17]

[Filed ARC 4307C (Notice ARC 4043C, IAB 10/10/18), IAB 2/13/19, effective 3/20/19]

**EDUCATION DEPARTMENT[281]**

Created by 1986 Iowa Acts, chapter 1245, section 1401.  
 Prior to 9/7/88, see Public Instruction Department[670]  
 (Replacement pages for 9/7/88 published in 9/21/88 IAC)

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CHAPTER 14  
SCHOOL HEALTH SERVICES

**281—14.1(256) Medication administration.** Each school district, area education agency, and school shall establish medication administration policy and procedures, which include the following:

**14.1(1)** A statement on administration of prescription and nonprescription medication.

**14.1(2)** A statement on an individual health plan pursuant to rule 281—14.2(256) when administration requires ongoing professional health judgment.

**14.1(3)** A statement that persons administering medication shall include authorized practitioners, such as licensed registered nurses and physicians, and persons to whom authorized practitioners have delegated the administration of prescription and nonprescription drugs (who shall have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals shall self-administer asthma or other airway constricting disease medication or possess and have use of an epinephrine auto-injector with parent and physician consent on file, without the necessity of demonstrating competency to self-administer these medications.

**14.1(4)** A provision for a medication administration course provided by the department that is completed every five years with an annual medication administration procedural skills check completed with a registered nurse or pharmacist. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

**14.1(5)** A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

**14.1(6)** A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

**14.1(7)** A requirement that a written medication administration record shall be on file at the school and shall include:

- a. Date.
- b. Individual's name.
- c. Prescriber or person authorizing administration.
- d. Medication.
- e. Medication dosage.
- f. Administration time.
- g. Administration method.
- h. Signature and title of the person administering medication.
- i. Any unusual circumstances, actions or omissions.

**14.1(8)** A statement that medication shall be stored in a secured area unless an alternate provision is documented.

**14.1(9)** A requirement for a written statement by the individual's parent or guardian requesting the individual's co-administration of medication, when competency is demonstrated.

**14.1(10)** A requirement for emergency protocols for medication-related reactions.

**14.1(11)** A statement regarding confidentiality of information.

[ARC 3387C, IAB 10/11/17, effective 11/15/17]

**281—14.2(256) Special health services.** Some individuals need special health services to participate in an educational program. These individuals shall receive special health services along with their educational program.

**14.2(1) Definitions.** The following definitions shall be used in this rule, unless the context otherwise requires:

*“Assignment and delegation”* occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed

health personnel. Each designation considers the individual's special health service. The rationale for the designation is documented.

*"Co-administration"* is the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

*"Educational program"* includes all school curricular programs and activities both on and off school grounds.

*"Education team"* may include the individual, the individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program. The education team may be the team required by the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973 if the child is eligible under either of those statutes.

*"Health assessment"* is health data collection, observation, analysis, and interpretation relating to the individual's educational program.

*"Health instruction"* is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates shall be on file at school.

*"Individual health plan"* is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, nursing diagnosis, outcomes, planning, interventions, evaluation, student goals, if applicable, and a plan for emergencies to provide direction in managing an individual's health needs. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with collaboration from the parent or guardian, individual's health care provider or education team.

*"Licensed health personnel"* means a licensed registered nurse, licensed physician, or other licensed health personnel legally authorized to provide special health services and medications.

*"Prescriber"* means licensed health personnel legally authorized to prescribe special health services and medications.

*"Qualified designated personnel"* means a person instructed, supervised, and competent in implementing the eligible individual's health plan.

*"Special health services"* includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

*"Supervision"* is the assessment, delegation, monitoring, and frequency of evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

**14.2(2) *Special health services policy.*** Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines shall address the following:

- a. Licensed health personnel shall provide special health services under the auspices of the school.

Duties of the licensed health personnel include:

- (1) Participating as a member of the education team.
- (2) Providing the health assessment.
- (3) Planning, implementing and evaluating the written individual health plan.
- (4) Planning, implementing and evaluating special emergency health services.
- (5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.

(6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.

(7) Maintaining a record of special health services. The documentation shall include the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Reporting unusual circumstances to the parent, school administration, and prescriber.

(9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.

(10) Updating knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services, the following shall be on file:

(1) A written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) A written statement by the individual's parent requesting the provision of the special health service.

(3) A written report of the preplanning staffing or meeting of the education team.

(4) A written individual health plan available in the health record and integrated into the IEP or 504 plan, if applicable.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of the individuals performing the special health services. The documented rationale shall include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person's job description.

(3) Determination of the assignment and delegation based on the individual's needs and qualifications of school personnel performing health services.

(4) Review of the designated person's competency.

(5) Determination of initial and ongoing level of supervision, monitoring and evaluation required for safe, quality services.

d. Licensed health personnel shall supervise the special health services, define the level of frequency of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the individual health plan. Documentation of instruction, written consent of personnel as required in Iowa Code section 280.23 and periodic updates shall be on file at the school.

f. Parents shall provide the usual equipment, supplies, and necessary maintenance of the equipment, unless the school is required to provide the equipment, supplies, and maintenance under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

**14.2(3) Relationship between this rule and other laws and rules.** In complying with this rule, for children who are eligible under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973, the school health services must comply with any additional or differing requirements imposed by those laws based on a specific child's needs.

[ARC 3387C, IAB 10/11/17, effective 11/15/17]

**281—14.3(256) School district and accredited nonpublic school stock epinephrine auto-injector voluntary supply.**

**14.3(1) Definitions.** For the purpose of this rule, the following definitions apply:

“*Act*” means 2015 Iowa Acts, Senate File 462, which amends Iowa Code section 280.16 and creates Iowa Code section 280.16A.

“*Department*” means the department of education.

“*Epinephrine auto-injector*” means a disposable drug delivery device that has a spring-activated concealed needle and is designed for immediate self-administration or administration by another trained individual of a measured dose of epinephrine to a student or individual at risk of anaphylaxis.

“*Licensed health care professional*” means a person who has prescriptive authority and is licensed under Iowa Code chapter 148 to practice medicine and surgery, an advanced nurse practitioner licensed pursuant to Iowa Code chapter 152, or a physician assistant licensed to practice under the supervision of a physician as authorized in Iowa Code chapters 147 and 148C.

“*Medication administration course*” means a course approved or provided by the department that includes safe storage of medication, handling of medication, general principles, procedural aspects, skills demonstration and documentation requirements of safe medication administration in schools.

“*Medication error*” means the failure to administer an epinephrine auto-injector to a student or individual by proper route, failure to administer the correct dosage, or failure to administer an epinephrine auto-injector according to generally accepted standards of practice.

“*Medication incident*” means accidental injection of an epinephrine auto-injector into a digit of the authorized personnel administering the medication.

“*Personnel authorized to administer epinephrine*” means a school employee who has successfully completed the medication administration course requirements and who completes an annual anaphylaxis training program approved by the department and conducted by the school nurse, including a return-skills demonstration on the use of an epinephrine auto-injector.

“*School building*” means each attendance center within a school district or accredited nonpublic school where students or other individuals are present.

“*School nurse*” means a registered nurse holding current licensure recognized by the Iowa board of nursing who practices in the school setting to promote and protect the health of the school population by using knowledge from the nursing, social, and public health sciences.

**14.3(2) *Applicability.*** This rule applies to and permits:

- a. A licensed health care professional to prescribe a stock epinephrine auto-injector in the name of a school district or accredited nonpublic school for use in accordance with the Act and this rule,
- b. A pharmacist to dispense epinephrine auto-injectors pursuant to a prescription issued in the name of a school district or accredited nonpublic school, and
- c. A school district or accredited nonpublic school to acquire and maintain a stock supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with the Act.

**14.3(3) *Prescription for stock epinephrine auto-injector.*** A school district or accredited nonpublic school may obtain a prescription for epinephrine auto-injectors from a licensed health care professional annually in the name of the school district or accredited nonpublic school for administration to a student or individual who may be experiencing an anaphylactic reaction. The school district or accredited nonpublic school shall maintain the supply of such auto-injectors in a secure, dark, temperature-controlled location in each school building. If a school district or accredited nonpublic school obtains a prescription pursuant to the Act and these rules, the school district or accredited nonpublic school shall stock a minimum of one pediatric dose and one adult dose epinephrine auto-injector for each school building. A school district or accredited nonpublic school may obtain a prescription for more than the minimum and may maintain a supply in other buildings.

**14.3(4) *Authorized personnel and stock epinephrine auto-injector administration.*** A school nurse or personnel trained and authorized may provide or administer an epinephrine auto-injector from a school supply to a student or individual if the authorized personnel or school nurse reasonably and in good faith believes the student or individual is having an anaphylactic reaction.

a. The following persons, provided they have acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, failure to administer, or assistance in the administration of an epinephrine auto-injector:

- (1) Authorized personnel and the school nurse,

(2) The school district or accredited nonpublic school employing the personnel or school nurse,  
(3) The board of directors in charge of the school district or authorities in charge of the accredited nonpublic school, and

(4) The prescriber of the epinephrine auto-injector.

*b.* Pursuant to Iowa Code section 280.23, authorized personnel will submit a signed statement to the school nurse stating that the authorized personnel agree to perform the service of administering a stock epinephrine auto-injector to a student or individual who may be experiencing an anaphylactic reaction.

*c.* Emergency medical services (911) will be contacted immediately after a stock epinephrine auto-injector is administered to a student or individual, and the school nurse or authorized personnel will remain with the student or individual until emergency medical services arrive.

*d.* The administration of an epinephrine auto-injector in accordance with this chapter is not the practice of medicine.

**14.3(5)** *Stock epinephrine auto-injector training.* School employees may obtain a signed certificate to become authorized personnel.

*a.* Training to obtain a signed certificate may be accomplished by:

(1) Successfully completing, every five years, the medication administration course provided by the department;

(2) Annually demonstrating to the school nurse a procedural return-skills check on medication administration;

(3) Annually completing an anaphylaxis training program approved by the department;

(4) Demonstrating to the school nurse a procedural return-skills check on the use of an epinephrine auto-injector using information from the training, authorized prescriber instructions regarding the administration of the stock epinephrine auto-injector, and as directed by the prescription epinephrine auto-injector's manufacturing label; and

(5) Providing to the school nurse a signed statement, pursuant to Iowa Code section 280.23, that the person agrees to perform the service of administering a stock epinephrine auto-injector to a student or individual who may be experiencing an anaphylactic reaction.

*b.* Training required after a medication error or medication incident. Authorized personnel or the school nurse directly involved with a medication error or medication incident with the administration of stock epinephrine auto-injectors shall be required to follow the medication error or medication incident protocol adopted by the board of directors of the school district or authorities in charge of the school district or accredited nonpublic school. To retain authorization to administer stock epinephrine auto-injectors in the school setting, authorized personnel directly involved with a medication error or medication incident will be required to provide a procedural skills demonstration to the school nurse demonstrating competency in the administration of stock epinephrine auto-injectors.

**14.3(6)** *Procurement and maintenance of stock epinephrine auto-injector supply.* A school district or accredited nonpublic school may obtain a prescription to stock, possess, and maintain epinephrine auto-injectors.

*a.* Stock epinephrine auto-injectors shall be stored in a secure, easily accessible area for an emergency within the school building, or in addition to other locations as determined by the school district or accredited nonpublic school, that is dark and maintained at room temperature (between 59 to 86 degrees) or in accordance with the manufacturing label of the stock epinephrine auto-injector.

*b.* A school district or school will designate an employee to routinely check stock epinephrine auto-injectors and document in a log monthly throughout the calendar year for:

(1) The expiration date;

(2) Any visualized particles; or

(3) Color change.

*c.* The school district or school shall develop a protocol to replace as soon as reasonably possible any logged epinephrine auto-injector that is used, close to expiration, or discolored or has particles visible in the liquid.

**14.3(7) Disposal of used stock epinephrine auto-injectors.** The school district or school that administers epinephrine auto-injectors shall dispose of used cartridge injectors as infectious waste pursuant to the department's medication waste guidance.

**14.3(8) Reporting.** A school district or school that obtains a prescription for stock epinephrine auto-injectors shall report each medication incident with the administration of stock epinephrine, medication error with the administration of stock epinephrine, or the administration of a stock epinephrine auto-injector to the department within 48 hours, using the reporting format approved by the department.

**14.3(9) School district or accredited nonpublic school policy.** A school district or school may stock epinephrine auto-injectors. The board of directors in charge of the school district or authorities in charge of the accredited nonpublic school that stocks epinephrine auto-injectors shall establish a policy and procedure for the administration of a stock epinephrine auto-injector, which shall comply with the minimum requirements of this rule.

**14.3(10) Rule of construction.** This rule shall not be construed to require school districts or accredited nonpublic schools to maintain a stock of epinephrine auto-injectors. An election not to maintain such a stock shall not be considered to be negligence.

[ARC 2311C, IAB 12/9/15, effective 1/13/16]

**281—14.4(279) Suicide prevention, identification of adverse childhood experiences, and strategies to mitigate toxic stress response.**

**14.4(1) Definitions.**

*“Adverse childhood experience”* means a potentially traumatic event occurring in childhood that can have negative, lasting effects on an individual's health and well-being.

*“Postvention”* means the provision of crisis intervention, support, and assistance for those affected by a suicide or suicide attempt to prevent further risk of suicide.

**14.4(2) Required protocols.** School districts shall adopt protocols for suicide prevention and postvention and the identification of adverse childhood experiences and strategies to mitigate toxic stress response. The protocols shall be based on nationally recognized best practices.

**14.4(3) Required training.**

*a.* By July 1, 2019, the board of directors of a school district shall require annual, evidence-based training at least one hour in length on suicide prevention and postvention for all school personnel who hold a license, certificate, authorization, or statement of recognition issued by the board of educational examiners and who have regular contact with students in kindergarten through grade 12. The content of the training shall be based on nationally recognized best practices.

*b.* By July 1, 2019, the board of directors of a school district shall require annual, evidence-based, evidence-supported training on the identification of adverse childhood experiences and strategies to mitigate toxic stress response for all school personnel who hold a license, certificate, authorization, or statement of recognition issued by the board of educational examiners and who have regular contact with students in kindergarten through grade 12. The content of the training shall be based on nationally recognized best practices.

**14.4(4) Resources for implementation.** The Iowa department of education will publicly provide resources and technical assistance to assist districts in compliance with this rule.

[ARC 4294C, IAB 2/13/19, effective 3/20/19]

**281—14.5(256,280) Severability.** If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these rules which can be given effect, and to this end the provisions of these rules are declared to be severable.

[ARC 2311C, IAB 12/9/15, effective 1/13/16; ARC 4294C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16.

[Filed ARC 2311C (Notice ARC 2183C, IAB 10/14/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 3387C (Notice ARC 3088C, IAB 6/7/17), IAB 10/11/17, effective 11/15/17]

[Filed ARC 4294C (Notice ARC 4157C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

CHAPTER 15  
USE OF ONLINE LEARNING AND TELECOMMUNICATIONS  
FOR INSTRUCTION BY SCHOOLS

**281—15.1(256) Purpose.** It is the purpose of this chapter to give guidance and direction for the use of online learning or the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade 12. It is a further purpose of this chapter to provide guidance for students and school districts regarding enrollment of students in one or more courses offered by Iowa Learning Online.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

**281—15.2(256) Definitions.**

*“Appropriately licensed and endorsed”* means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

*“Class size”* refers to the total group taught during a time period by a teacher or teaching team with students at one or more sites.

*“Delivered primarily over the Internet”* means more than 50 percent of the course content or instruction or both is delivered using the global computer network of the World Wide Web or Internet.

*“Department”* means the department of education.

*“Exclusive instruction”* means without the use of any other form of instructional delivery.

*“Iowa Learning Online”* or *“ILO”* means the department’s digital learning initiative to provide online courses to students enrolled or dually enrolled in participating school districts and accredited nonpublic schools. ILO is more specifically explained in Division III herein.

*“Online learning”* or *“online coursework”* means educational instruction and content delivered primarily over the Internet. “Online learning” or “online coursework” does not include print-based correspondence curricula, broadcast television or radio, videocassettes, or stand-alone educational software programs that lack a significant Internet-based instructional component.

*“Participating school district or accredited nonpublic school”* means a school district or accredited nonpublic school that has registered a student in an ILO course and has agreed to provide the student with access, during the school day, to a computer that has Internet connectivity through a direct connection as well as access to a telephone or an ICN classroom and transportation to periodic laboratory components, if needed or required. The district has also agreed to provide a staff member to serve as a site coordinator and contact for the ILO teacher, to monitor progress, and to serve as the student’s advocate by providing academic coaching and technical support. Further, the district has agreed to award a grade and credit on the student’s district-level transcript, based on the end-of-course evaluation by the ILO teacher.

*“Telecommunications”* means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. “Telecommunications” does not include online learning.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

DIVISION I  
USE OF TELECOMMUNICATIONS FOR INSTRUCTION BY SCHOOLS

**281—15.3(256) Interactivity.** Courses delivered primarily via telecommunications shall employ live interactive systems which allow, at a minimum, one-way video and two-way audio communication. An annual waiver may be granted by the department for a telecommunications system that does not include audio but has alternative contemporaneous, interactive communication ability and is consistent with sound instructional practice.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

**281—15.4(256) Course eligibility.** Telecommunications may be employed as a means to deliver any course, including a course required for accreditation by the department, provided it is not the exclusive means of instructional delivery.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

**281—15.5(256) Teacher preparation and accessibility.** A teacher appropriately licensed and endorsed for the educational level and content area being taught shall be present and responsible for the instructional program at the receiving site if a presenter of material transmitted via telecommunications is not an appropriately licensed and endorsed teacher for the educational level and content area. If a presenter of material transmitted via telecommunications is an appropriately licensed and endorsed teacher for the educational level and content area, a supervising teacher, or aide to whom a supervising teacher is readily available for consultation, shall supervise and monitor the curriculum and students and be readily accessible to the students. Prior to being assigned initially to deliver instruction via telecommunications, a teacher shall receive training regarding effective practices which enhance learning by telecommunications.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

**281—15.6(256) School responsibilities.** Each board of a school district or an accredited nonpublic school employing telecommunications for instruction shall develop policies relative to the use of telecommunications in the delivery of the educational program that are consistent with effective clinical practice. The school district or accredited nonpublic school shall report its use of telecommunications for instruction annually to the department on forms provided by the department. This report shall include:

1. To whom the instruction was delivered including class size, type of class (such as seminar or lecture), and grade level;
2. The course description and schedule of instruction;
3. The number, assignment, licensure including the licensing folder number, and the training received regarding effective practices which enhance learning by telecommunications of all staff involved in the teaching/learning process at both the origination and the receiving sites; and
4. The type of telecommunications used for course delivery, e.g., Internet, ICN, Polycom, etc.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

DIVISION II  
ONLINE LEARNING OFFERED BY A SCHOOL DISTRICT

**281—15.7(256) School district responsibilities.**

**15.7(1) General.** Any online coursework offered by a school district shall be offered to resident students of the school district, students attending the school district through a sharing agreement with another school district, or students attending the school district pursuant to Iowa Code section 282.18. Online coursework shall be aligned with the Iowa core standards as applicable and shall be taught by a teacher appropriately licensed and endorsed for the educational level and content area being taught. The teacher may be employed directly by the school district or by a third-party provider of the online curricula used by the school district. Teachers employed by the school district shall be subject to the provisions of Iowa Code chapters 272, 279, and 284. Teachers employed by a third-party provider shall be subject to the provisions of Iowa Code chapter 272; these teachers must be given access to appropriate professional development by the school district, but otherwise are not subject to the provisions of Iowa Code chapters 279 and 284.

**15.7(2) Monitoring and supervision.** A school district providing educational instruction and course content delivered primarily over the Internet shall do all of the following with regard to such instruction and content:

- a. Monitor and verify full-time student enrollment, timely completion of graduation requirements, course credit accrual, and course completion.
- b. Monitor and verify student progress and performance in each course through a school-based assessment plan that includes submission of coursework and security and validity of testing components.
- c. Conduct parent-teacher conferences.
- d. Administer assessments required by the state to all students in a proctored setting and pursuant to state law.

[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 4295C, IAB 2/13/19, effective 3/20/19]

**281—15.8(256) Data reporting.**

**15.8(1) District responsibilities.** A school district providing educational instruction and course content that are delivered primarily over the Internet pursuant to this division shall annually submit to the department, in the manner prescribed by the department, data that includes but is not limited to the following:

- a. Student achievement and demographic characteristics.
- b. Retention rates.
- c. The percentage of enrolled students' active participation in extracurricular activities.
- d. Academic proficiency levels, consistent with requirements applicable to all school districts and accredited nonpublic schools in this state.
- e. Academic growth measures, which shall include either of the following:
  - (1) Entry and exit assessments in, at a minimum, math and English for elementary and middle school students, and additional subjects, including science, for high school students.
  - (2) State-required assessments that track year-over-year improvements in academic proficiency.
- f. Academic mobility. To facilitate the tracking of academic mobility, school districts shall request the following information from the parent or guardian of a student enrolled in educational instruction and course content that are delivered primarily over the Internet pursuant to this division:
  - (1) For a student newly enrolling, the reasons for choosing such enrollment.
  - (2) For a student terminating enrollment, the reasons for terminating such enrollment.
- g. Student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the Internet pursuant to this division, and shall be consistent with evidence-based best practices.

**15.8(2) Department responsibilities.** The department shall compile and review the data collected pursuant to this division and shall submit its findings and recommendations for the continued delivery of educational instruction and course content by school districts delivered primarily over the Internet, in a report to the general assembly by January 15 annually.

[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 2313C, IAB 12/9/15, effective 1/13/16; ARC 4295C, IAB 2/13/19, effective 3/20/19]

**281—15.9(256) Special education services.** Children with disabilities may not be categorically excluded from admission to online learning programs or from enrollment in online coursework.

**15.9(1)** Whether an online course or online learning is appropriate to a child with a disability must be determined by the child's needs, not by the child's weightedness. If a child's individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

**15.9(2)** If a child's IEP team determines that online learning is inappropriate to the child, the child's parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

**15.9(3)** When a child with an IEP seeks enrollment into an online learning program by means of open enrollment, the child's IEP team shall determine that the child meets the open enrollment requirements under 281—Chapter 17. In addition, the child's IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, shall determine whether the receiving district is able to provide an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district's program is appropriate shall be resolved by the director of special education of the area education agency in which the receiving district is located. The child shall remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

[ARC 0522C, IAB 12/12/12, effective 1/16/13]

DIVISION III  
IOWA LEARNING ONLINE (ILO)

**281—15.10(256) Appropriate applications of ILO coursework.** ILO courses are intended to help Iowa school districts expand learning opportunities by providing opportunities for individual students to take one or more courses offered “at a distance” using technologies such as the Internet and interactive videoconferencing. Participating school districts and accredited nonpublic schools may also enroll students in ILO courses if online learning is more suited to a specific student’s circumstances. ILO may also provide distance education to a student receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,” competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3.  
[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 3981C, IAB 8/29/18, effective 10/3/18]

**281—15.11(256) Conditions under which ILO coursework may be used to satisfy general accreditation requirements.**

**15.11(1) General.** Subject to the exceptions contained in subrules 15.11(2) and 15.11(3), ILO coursework may not be used to meet the requirements of Iowa Code section 256.11(5), which require that specified subjects be offered and taught by a school district or accredited nonpublic school.

**15.11(2) Use of ILO for up to two specified subjects.** The requirements of subrule 15.11(1) shall not apply if a school district or school demonstrates either of the following conditions:

- a. The school district or school makes every reasonable and good faith effort to employ a teacher licensed under Iowa Code chapter 272 for the specified subject and is unable to employ such a teacher.
- b. Fewer than ten students typically register for instruction in the specified subject at the school district or school.

**15.11(3) Waiver for additional specified subjects.** The department may waive for one school year the applicability of Iowa Code section 256.11(5), at its discretion, to additional specified subjects for a school district or accredited nonpublic school that proves to the satisfaction of the department that the school district or school has made every reasonable effort but is unable to meet the requirements of Iowa Code section 256.11(5). A school district or accredited nonpublic school may apply for an annual waiver each year.

**15.11(4) Use of private providers.** Any specified subject course to which Iowa Code section 256.11(5) does not apply under either subrule 15.11(2) or 15.11(3) shall be provided by ILO if ILO offers the course, unless the course offered by ILO lacks the capacity to accommodate additional students. In that case, the specified subject course may instead be provided by the school district or accredited nonpublic school:

- a. Through an online learning platform if the course is developed by the school district or accredited nonpublic school itself, provided the course is taught by an Iowa licensed teacher with online learning experience and the course content is aligned with the Iowa content standards and satisfies the requirements of subrule 15.13(1).
- b. Through a private provider utilized to provide the course that meets the standards of subrule 15.13(1) and is approved in accordance with rule 281—15.16(256).

**15.11(5) Definition.** For purposes of this rule, “good faith effort” means the same as defined in Iowa Code section 279.19A(9).  
[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 2861C, IAB 12/7/16, effective 1/11/17; ARC 4295C, IAB 2/13/19, effective 3/20/19]

**281—15.12(256) School and school district responsibilities.** Each participating school district and accredited nonpublic school shall submit its online curricula, excluding coursework provided by ILO, to the department for review. Each participating school district and accredited nonpublic school shall include in its comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7(21) a list and description of the online coursework offered by the school or school district, excluding coursework provided by ILO. Each participating school district and accredited nonpublic school is responsible for recording grades received for ILO coursework in a student’s permanent

record and for awarding graduation credit for ILO coursework. Each participating school district and accredited nonpublic school shall identify a site coordinator to serve as a student advocate and as a liaison between the initiative staff and teachers and the school district or accredited nonpublic school. Each participating school district and school shall pay the fees prescribed by subrule 15.13(2). A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18. However, if a student's participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district shall, within 30 days of the termination, notify the district of residence of the termination and the date of the termination. A rebate for tuition or fees paid or any other dividend or bonus moneys for enrollment of a child shall not be offered or provided directly or indirectly by a school district, school, or private provider to the parent or guardian of a pupil who enrolls in a school district or school to receive educational instruction and course content delivered primarily over the Internet.

[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 3981C, IAB 8/29/18, effective 10/3/18; ARC 4295C, IAB 2/13/19, effective 3/20/19]

#### **281—15.13(256) Department responsibilities.**

**15.13(1) *Course quality.*** The department shall annually evaluate the quality of courses offered under ILO to ensure that coursework is rigorous and of high quality and is aligned with Iowa's core curriculum and core content requirements and standards as well as with national standards of quality for online courses issued by an internationally recognized association for elementary and secondary online learning. The department shall ensure that all ILO coursework is taught by a teacher who is appropriately licensed and endorsed for the educational level and content area being taught and who has completed an online-learning-for-Iowa-educators professional development course offered by an area education agency, a teacher preservice program, or comparable coursework. The director of the department shall maintain a list of approved online providers that meet the standards of this subrule and provide course content through an online learning platform taught by a teacher licensed under Iowa Code chapter 272 who has specialized training or experience in online learning. This list shall be maintained pursuant to subrule 15.16(2). Providers shall apply for approval annually or as determined by the department.

**15.13(2) *Fiscal matters.*** The department shall establish fees payable by school districts, accredited nonpublic schools, and individuals providing instruction to students under Iowa Code chapter 299A as described in rule 281—15.10(256), for ILO coursework. Fees collected pursuant to this subrule are appropriated to the department to be used only for the purpose of administering ILO and shall be established so as not to exceed the cost of administering ILO. Providing professional development necessary to prepare teachers to participate in the initiative shall be considered a cost of ILO administration. Notwithstanding Iowa Code section 8.33, fees collected by the department that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purpose of expanding ILO coursework offered in subsequent fiscal years.

[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 3981C, IAB 8/29/18, effective 10/3/18; ARC 4295C, IAB 2/13/19, effective 3/20/19]

**281—15.14(256) Responsibilities of individuals providing private instruction under Iowa Code chapter 299A.** The individual providing instruction to a student under rule 281—15.10(256) shall pay the fees prescribed by subrule 15.13(2). The individual providing instruction to a student under rule 281—15.10(256) shall receive the student's score for completed ILO coursework.

[ARC 0522C, IAB 12/12/12, effective 1/16/13; ARC 3981C, IAB 8/29/18, effective 10/3/18]

**281—15.15(256) Enrollment in an ILO course.** Under ILO, a student must be enrolled in a participating school district or accredited nonpublic school or be receiving private instruction under Iowa Code chapter 299A as described in rule 281—15.10(256).

[ARC 3981C, IAB 8/29/18, effective 10/3/18]

**281—15.16(256) Private providers of online coursework.**

**15.16(1) *School district discretion.*** At the discretion of a school board or authorities in charge of an accredited nonpublic school, after consideration of circumstances created by necessity, convenience, and cost-effectiveness, courses developed by private providers may be utilized by a school district or school in implementing a high-quality online learning program. Courses obtained from private providers shall be taught by teachers licensed under Iowa Code chapter 272.

**15.16(2) *Department approval of private providers.*** Private providers utilized to provide courses by a school district or accredited nonpublic school in accordance with this chapter shall meet the standards of subrule 15.13(1) and be approved in accordance with this subrule. The department shall establish an application process and review process for courses developed by private providers, including establishing a schedule of opportunities for new course approval applications, which shall be available at least annually, and a review cycle of courses previously approved.

[ARC 4295C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code sections 256.2, 256.7, 256.9, and 256.41 to 256.43.

[Filed 4/13/90, Notice 1/10/90—published 5/2/90, effective 6/6/90]

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[Filed ARC 2861C (Notice ARC 2760C, IAB 10/12/16), IAB 12/7/16, effective 1/11/17]

[Filed ARC 3981C (Notice ARC 3823C, IAB 6/6/18), IAB 8/29/18, effective 10/3/18]

[Filed ARC 4295C (Notice ARC 4158C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

CHAPTER 17  
OPEN ENROLLMENT

**281—17.1(282) Intent and purpose.** It is the intent of Iowa Code section 282.18 to maximize parental choice in providing a wide range of educational opportunities which are not available for pupils because of where they live. It is the purpose of this chapter to give guidance and direction to parents/guardians, public school district administrators and boards in making quality decisions regarding school district choice for the education of pupils.

**281—17.2(282) Definitions.** For the purpose of this chapter the indicated terms are defined as follows:

*“Alternative receiving district”* means a district to which a parent/guardian petitions for the open enrollment of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

*“Attendance center”* means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

*“Court-ordered desegregation plan”* means a plan that is under direct court order to avoid racial isolation in the district.

*“Department”* means the department of education.

*“Director”* means the director of the department of education or the director’s designee.

*“Diversity plan”* or *“voluntary diversity plan”* means a plan that is voluntarily adopted by a local school board to promote diversity and to avoid minority student isolation in the district.

*“Eligible district”* means a school district whose board had adopted a voluntary desegregation plan under this chapter prior to June 28, 2007.

*“Minority student”* shall be defined by a local school board in its diversity plan, and may include consideration of any one characteristic or a combination of any of the following characteristics except that race may not be either the sole or the determinative characteristic: socioeconomic status, ethnicity/national origin, English language learner status, or race.

*“Open enrollment”* is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost.

*“Receiving district”* is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

*“Resident district”* is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil shall be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

*“Sending district”* is synonymous with the term resident district.

*“Sibling”* means a child residing primarily in the same household as the child for whom an open enrollment request is filed and who is related by adoption, blood or marriage to the child for whom an open enrollment request is filed. “Sibling” also includes a foster child who is placed in the same household as the child for whom an open enrollment request is filed.

*“Socioeconomic status”* means the income level of a student or the student’s family, and shall be measured by whether a student or the student’s family meets the financial eligibility criteria for free meals or reduced price meals offered under the Child Nutrition Program.

**281—17.3(282) Application process.** The following procedure shall be used by parents/guardians and school districts in processing open enrollment applications.

**17.3(1) Parent/guardian responsibilities.** On or before March 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify both the district of residence and the receiving district of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. Failure by the parent to send the form to the resident district and receiving district by the deadline may cause the application to be considered untimely. The parent/guardian is required to indicate on the form if the request is for a pupil

requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district and area education agency and from the state department of education.

**17.3(2) School district responsibilities.**

*a.* The board of the resident district shall take no action on an open enrollment request except for a request made under rule 281—17.5(282) or 281—17.14(282).

*b.* The board of the receiving district shall act on an open enrollment request no later than June 1 of the school year preceding the school year for which the request is made.

(1) The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

(2) As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before March 1. The board of directors of a receiving school district may adopt a policy granting the superintendent of the school district authority to approve open enrollment applications submitted after the March 1 deadline, but the board of the receiving district shall take action to approve the request if good cause exists. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before March 1, good cause applications, and kindergarten applications filed on or before September 1, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

*c.* The parent/guardian may withdraw an open enrollment request anytime prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(4), 17.8(5), 17.8(6), and 17.8(7).

*d.* The board of the receiving district shall comply with the provisions of rule 281—17.11(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

*e.* Notification to parents.

(1) By September 30 of each school year, all districts shall notify parents of the following:

1. Open enrollment deadlines;

2. Transportation assistance;

3. That within 30 days of a denial of an open enrollment request by a district board of education, the parent/guardian may file an appeal with the state board of education only if the open enrollment request was based on repeated acts of harassment or a serious health condition of the pupil that the district cannot adequately address; and that all other denials must be appealed to the district court in the county in which the primary business office of the district is located; and

4. Possible loss of athletic eligibility for open enrollment pupils.

(2) This notification may be published in a school newsletter, a newspaper of general circulation, a website, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

**17.3(3) Exception to process when resident district is under voluntary or court-ordered desegregation.** If the resident district has a voluntary or court-ordered desegregation plan requiring the district to maintain minority and nonminority student ratios, the request for open enrollment shall be filed solely with the district of residence on or before March 1 of the school year preceding the school year for which open enrollment is requested. The superintendent of the resident district may deny a request under this subrule unless the request is made on behalf of a student whose sibling already actively participates in open enrollment to the same receiving district to which open enrollment is sought for this student. A denial by the superintendent may be appealed to the board of the district in which the request was denied. A decision of the local board to uphold the denial may only be appealed to the district court in the county in which is located the primary business office of the district that upheld the denial of the open enrollment request.

[ARC 2746C, IAB 10/12/16, effective 11/16/16]

**281—17.4(282) Filing after the March 1 deadline—good cause.** A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested and before the date specified in Iowa Code section 257.6, subsection 1, of that calendar year if good cause exists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place after March 1, or the closing or loss of accreditation of a nonpublic school of attendance after March 1 resulting in the desire of the parent/guardian to obtain open enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met pursuant to rule 17.3(282).

Consideration of an open enrollment request filed under the provision of good cause does not preclude the authority, as appropriate, for the resident or receiving district to administer board policy related to insufficient classroom space or the requirements of a desegregation plan or order in acting to approve or deny the request. (See subrules 17.6(2) and 17.6(3).)

**17.4(1)** Good cause related to change in the pupil's residence shall include:

*a.* A change in the family residence due to the family's moving from the district of residence anytime after March 1 of the school year preceding the school year for which open enrollment is requested.

*b.* A change in the state of residence allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence.

*c.* A change in the marital status of the pupil's parents.

*d.* A guardianship or custody proceeding.

*e.* Placement of the child in foster care.

*f.* Adoption.

*g.* Participation in a foreign exchange program.

*h.* Participation in a substance abuse or mental health treatment program.

**17.4(2)** Good cause related to change in status of the pupil's resident district or nonpublic school of attendance shall include:

*a.* Reorganization action.

(1) Failure of the area education board to vote in favor of a reorganization proposal,

(2) Failure of the area education board to act on objections to exclude territory from a reorganization proposal,

(3) Failure of a reorganization election,

(4) Rescinded IAB 3/8/00, effective 4/12/00.

*b.* Dissolution action.

(1) Failure of a dissolution commission to make a recommendation to the board of directors,

(2) Failure of the board to take positive action on objections filed by residents of the district to a dissolution proposal,

(3) Failure of contiguous districts to accept a dissolution proposal,

(4) Failure of an election on a dissolution proposal.

*c.* Whole grade sharing action.

(1) Failure of the board to pursue negotiations for a whole grade sharing proposal for which it has given public notice by board action of its intent to pursue,

(2) Failure of the board to approve a request by a parent/guardian to send an affected pupil to a contiguous district rather than to the district party to the agreement,

(3) Failure of the board to extend or renew a whole grade sharing agreement,

(4) Unilateral rejection by one board of a whole grade sharing agreement prior to expiration of the term of the agreement.

*d.* Loss of accreditation.

(1) Removal of accreditation by the state board after March 1.

(2) Surrender of accreditation after March 1.

(3) Permanent closure of a nonpublic school after March 1.

*e.* Rescinded IAB 8/21/02, effective 9/25/02.

On open enrollment requests for good cause related to a change in status of the pupil's school district of residence, action by a parent/guardian must be taken to file notification within 45 days of the last board action or within 30 days of the certification of an election, whichever circumstance is applicable.

**17.4(3)** Good cause shall not include:

*a.* Actions of a board of education in the designation of attendance centers within a school corporation and in the assignment of pupils to such centers as provided by Iowa Code section 279.11.

*b.* Actions of a board of education in making its own rules of government for the internal organization and operation of the school corporation as provided by Iowa Code section 279.8.

**17.4(4)** Rescinded IAB 8/21/02, effective 9/25/02.

**17.4(5)** Timelines for board action on applications filed after March 1 for good cause. The board of the receiving district shall act on the request within 30 days of its receipt. The same timelines for approval, forwarding, and notification shall apply.

The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

**17.4(6)** If the resident district believes that the board of the receiving district approved a late-filed open enrollment request that does not meet the definition of "good cause" under Iowa Code section 282.18(4) "b," the resident district may appeal to the director.

*a.* Upon affirmative vote of a majority of its board to do so, the resident district shall file a written appeal to the director within 30 days of receipt by the resident district of notification by the board of the receiving district of the approval by the receiving district of a late-filed open enrollment request. The written appeal shall state the name and grade level of the affected student, the name of the receiving district, the date of approval by the board of the receiving district, the date the resident district was notified of the approval, and a brief statement explaining why the resident district board believes there is no good cause for the request to have been filed and approved after March 1. The appeal shall be signed by the president of the board of the resident district and shall have attached to it a copy of the disputed open enrollment request and the minutes of the board meeting at which the resident district board voted to appeal. An appeal is timely filed if it is postmarked or delivered personally or via facsimile transmission to the director within the 30-day time period.

*b.* The director shall, upon receipt of an appeal, first attempt to mediate the dispute. If mediation is unsuccessful, the director shall schedule a telephonic hearing for the purpose of hearing testimony from both boards.

*c.* If a hearing is necessary, the boards may stipulate to any or all facts to be considered by the director. At the sole discretion of the director, an in-person hearing may be scheduled. The director shall issue a written decision within ten days of the hearing, upholding or reversing the decision of the board of the receiving district.

*d.* Within five days of the issuance of the decision of the director, the aggrieved board may appeal the decision to the state board of education under the procedures in Iowa Code chapter 290.

**281—17.5(282) Filing after the March 1 deadline—harassment or serious health condition.** A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested if the parent's/guardian's child is the victim of repeated acts of harassment or if the child has a serious health condition that the resident district cannot adequately address. If either of these conditions exists, the parent/guardian shall be permitted to apply for open enrollment by sending notification to both the resident and receiving districts.

**17.5(1)** The board of the resident district shall act on the request within 30 days of its receipt. If the request is denied, the parent/guardian shall be notified by the district superintendent within 3 days following board action. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within 5 days following board action and shall notify the parent/guardian within 3 days of this action. The board of the receiving district shall act to approve or deny an open enrollment request within 30 days following receipt of the notice of approval from the

resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action.

**17.5(2)** A denial by either board of a request made under this rule involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address may be appealed by a parent/guardian to the state board of education pursuant to Iowa Code section 290.1. The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

**281—17.6(282) Restrictions to open enrollment requests.** A district board may exercise the following restrictions related to open enrollment requests.

**17.6(1)** *Enrollment loss caps.* Rescinded IAB 12/8/93, effective 1/12/94.

**17.6(2)** *Voluntary diversity plans or court-ordered desegregation plans.* In districts with court-ordered desegregation or voluntary diversity plans where there is a requirement to maintain minority and nonminority student ratios according to the plan, the superintendent of the district may deny a request for open enrollment if it is found that the enrollment or release of a pupil will adversely affect the district's court-ordered desegregation plan or voluntary diversity plan. Open enrollment requests that would facilitate the court-ordered desegregation plan or voluntary diversity plan shall be given priority over other open enrollment requests received by the district. A parent/guardian whose request for open enrollment is denied by the superintendent of the district on the basis of its adverse effect on the district's court-ordered desegregation plan or voluntary diversity plan may appeal that decision to the district board.

**17.6(3)** *Policy on insufficient classroom space.* No receiving district shall be required to accept an open enrollment request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

**17.6(4)** *Designation of attendance center.* The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code section 279.11, to "determine the particular school which each child shall attend." In the application process, however, the parent or guardian may request an attendance center of preference.

**281—17.7(282) Open enrollment for kindergarten.** While the regular time frame in requesting open enrollment is that an application should be made no later than March 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application on or before September 1 of that school year. In considering an application for a kindergarten pupil, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space or the requirements of a desegregation plan or order.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before September 1 under this rule. The timelines established in rule 17.4(282) shall apply to applications for a kindergarten pupil.

**281—17.8(282) Requirements applicable to parents/guardians and students.**

**17.8(1) *Expelled or suspended students.*** A pupil who has been suspended or expelled by action of the administration or board of the resident district shall not be permitted to enroll if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for open enrollment shall be considered in the same manner as any other open enrollment request. If a pupil for whom an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied enrollment by the receiving district board until the pupil is reinstated for school attendance by the resident district. The provisions of this subrule shall also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.8(4).

**17.8(2) *Restrictions on participation in interscholastic athletic contests and competitions.*** Subject to rule 281—17.15(282), a pupil who changes school districts under open enrollment in any of the grades 9 through 12 shall not be eligible to participate in varsity interscholastic athletic contests and competitions during the first 90 school days of enrollment. This restriction also shall apply to enrollments resulting from an approved petition filed by a parent/guardian to open enroll to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. This 90-school-day restriction is not applicable to a pupil who:

*a.* Participates in an athletic activity in the receiving district that is not available in the district of residence.

*b.* Participates in an athletic activity for which the resident district and the receiving district have a “cooperative student participation agreement” in place as provided by rule 281—36.20(280).

*c.* Has paid tuition for one or more years to the receiving school district prior to making application and being approved for open enrollment.

*d.* Has attended the receiving district for one or more years, prior to making application and being approved for open enrollment, under a sharing or mutual agreement between the resident district and the receiving district.

*e.* Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise the option of maintaining the open enrollment agreement as provided in subrule 17.8(6) except that the period of 90 school days of ineligibility shall apply to a pupil who open enrolls to another school district. If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent’s or guardian’s change in residence.

*f.* Obtains open enrollment as provided in subrule 17.8(7) except that the period of 90 school days of ineligibility shall apply to a pupil who open enrolls to another school district.

*g.* Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12).

*h.* Obtains open enrollment due to the pupil’s district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement.

*i.* Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

*j.* Open enrolls from a district of residence that has determined that the pupil was previously subject to a founded incident of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence.

**17.8(3) *Term of enrollment.*** Rescinded IAB 10/9/96, effective 11/13/96.

**17.8(4) *Petition for attendance in an alternative receiving district.*** Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The petition shall be filed by the parent/guardian with the receiving district on or before March 1 of the year preceding the school year for which the change is requested. The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the original

receiving district, and to the resident district of the pupil. Petitions for change shall be effectuated at the start of the next school year.

As an alternative procedure, the receiving and alternative receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a written request for such change which is approved by the two boards. The parent/guardian and the resident district board shall be notified of the approval and the date for change in open enrollment within 15 days of the mutual agreement action of the receiving and alternative receiving boards.

A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

**17.8(5) *Renewal of an open enrollment agreement.*** An open enrollment agreement shall remain in place unless canceled by the parent/guardian or terminated as outlined in the provisions of subrule 17.8(10).

**17.8(6) *Change in residence when participating in open enrollment.*** If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, to open enroll to another school district, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the original district of residence shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place on or after the date specified in Iowa Code section 257.6, subsection 1. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the move takes place between the end of one school year and the date specified in Iowa Code section 257.6, subsection 1, of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand on or before the date specified in Iowa Code section 257.6, subsection 1, to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

**17.8(7) *Change in residence when not participating in open enrollment.*** If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the date specified in Iowa Code section 257.6, subsection 1. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the date specified in Iowa Code section 257.6, subsection 1, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

**17.8(8) *Pupil governance.*** An open enrollment pupil, and where applicable the pupil's parent/guardian, shall be governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent/guardian concerning the educational system, its process, or administration in the receiving district shall be initially directed to the board of directors of that district in compliance with the policy of that district.

**17.8(9) *Appeal procedure.*** A parent/guardian may appeal the decision of the board of directors of a school district (resident or receiving) only on an application for open enrollment under Iowa Code section 282.18(5) as amended by 2002 Iowa Acts, House File 2515. This appeal is to the state board of

education and shall comply with the provisions of Iowa Code section 290.1. The appeal shall be filed within 30 days of the decision of the district board and shall be in the form of an affidavit signed by the parent/guardian. It shall state in a plain and concise manner what the parent/guardian feels to be the basis for appeal.

**17.8(10) *Open enrollment termination.*** Open enrollment ends when:

*a.* The pupil graduates, moves into the receiving district, moves into a third district and does not elect to continue attending in the receiving district, moves out of state, elects to attend a nonpublic school instead of the receiving district, or any other circumstance not excepted below that results in the pupil no longer attending the receiving district.

EXCEPTIONS: This rule shall not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status will automatically be reinstated when the pupil returns.

*b.* The pupil drops out of school. In this instance, if the pupil desires to return to the resident district during the term of the original open enrollment, notice must be given as outlined in the provisions of subrule 17.8(4).

[ARC 2746C, IAB 10/12/16, effective 11/16/16; ARC 4296C, IAB 2/13/19, effective 3/20/19]

### **281—17.9(282) Transportation.**

**17.9(1) *Parent responsibilities.*** The parent/guardian of a pupil who has been accepted for open enrollment shall be responsible to transport the pupil without reimbursement, except as provided in subrule 17.9(2), to and from a point on a regular school bus route of the receiving district. This point shall be a designated stop on the bus route of the receiving district. If this point—designated stop—is within the distances established by Iowa Code section 285.1 from the school designated for attendance by the receiving district, that district may, but is not required to, provide transportation for an open enrollment pupil. A receiving district may send buses into a resident district solely for the purpose of transporting an open enrollment pupil if the boards of both the sending and receiving districts agree to this arrangement. Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code subsection 285.9(3), may be used to transport open enrollment pupils if boards of directors of the resident and receiving districts have both taken action to approve such an arrangement. Bus routes that have been established by the receiving district for the purpose of transporting nonpublic school or special education pupils that operate in the resident district of an open enrollment pupil shall not be utilized for the transportation of such pupil for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both taken action to approve such an arrangement. Bus routes transporting pupils for the purpose of whole-grade sharing shall not be used to transport open enrollment pupils for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both taken action to approve such an arrangement.

**17.9(2) *Qualifications and provisions for transportation assistance.*** Open enrollment pupils that meet the economic eligibility requirements established by the department of education shall receive transportation assistance from their resident district under the following conditions. The resident district is not required to provide any transportation assistance for a pupil involved in open enrollment with a district that is not contiguous with the pupil's resident district. The resident district shall provide transportation for the pupil to a point that is a designated stop on a regular bus route of a contiguous receiving district, or as an alternative, the resident district shall pay the parent/guardian for providing this transportation. In either situation the resident district is not obligated to expend more than the average cost per pupil transported amount established for that district for the previous school year. If the resident district provides the transportation, it shall determine that it is able to perform this function at a cost not in excess of the average cost per pupil transported for the resident district as established the previous year. It shall not assess any additional cost to the parent/guardian for providing transportation. If the district chooses to reimburse the parent/guardian for providing transportation, to determine the amount to be reimbursed, the district shall use the provisions of Iowa Code subsection 285.1(3). This reimbursement

shall not exceed the average cost per pupil transported for the resident district as established the previous year. The resident district may withhold from the amount it is required to pay to a receiving district for an open enrollment pupil the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount.

**17.9(3) *Economic eligibility requirements for transportation.*** A parent/guardian shall be eligible for transportation assistance from the resident district if the household income of the parent/guardian is at or below 160 percent of the federal income poverty guidelines as stated by household size. Since the federal income poverty guidelines are adjusted each year, the department of education shall provide revised eligibility guidelines to school districts each year.

**281—17.10(282) Method of finance.** Open enrollment options shall be made available for pupils at no instructional cost to their parents/guardians. Open enrollment pupils shall be considered enrolled resident pupils in the resident district and shall be included in the certified enrollment count of that district for the purposes of generating school foundation aid.

**17.10(1) *Full-time pupils.*** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4; plus either the teacher leadership supplement state cost per pupil for the previous year as provided in Iowa Code section 257.9(11) or the teacher leadership supplement foundation aid allocation for fiscal year 2017 as provided in Iowa Code section 284.13(1) “e,” whichever the district received, if both the district of residence and the receiving district received either of the supplements. If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

**17.10(2) *Dual enrolled pupils.*** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for pupils who receive competent private instruction and are dual enrolled, the resident district shall pay each year to the receiving district an amount equal to .1 times the state cost per pupil for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4. However, a pupil dual enrolled in grades nine through twelve shall be counted by the receiving district in the same manner as a shared-time pupil under Iowa Code section 257.6(1) “c.”

**17.10(3) *Home school assistance program pupils.*** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for pupils who receive competent private instruction and are registered for a home school assistance program, the resident district shall pay each year to the receiving district an amount equal to .3 times the state cost per pupil under Iowa Code chapter 257 for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4.

**17.10(4) *Transportation assistance.*** The resident district may deduct any transportation assistance funds for which the pupil is eligible as provided by subrule 17.9(2).

**17.10(5) *Method of payment.*** These moneys shall be paid to the receiving district by the first resident district according to the timeline in Iowa Code section 282.20(3) (on or before February 15 and July 15 of each year). Payments shall be made to the receiving district in a timely manner. The district cost per pupil for nonspecial education students shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students shall be as outlined in rule 281—17.11(282).

**17.10(6) *Partial-year situations.*** In the event that the pupil who is under open enrollment withdraws from school, moves into the district of attendance, moves out of state, moves to another district in the state of Iowa and elects to attend that district, graduates at midyear, is allowed to return to the district of residence during the school year, or other similar set of circumstances that result in the pupil no longer attending in the receiving district, payment of cost per pupil will be prorated.

**17.10(7) *Late changes of open enrollment.*** The resident district and the receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a petition for such change which is approved by the two boards. A change due to good cause is a late change in enrollment. If any change in enrollment is made on or after the date specified in Iowa Code section 257.6, subsection 1, the resident district is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

**17.10(8) *Supplemental weighting.*** A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—subrule 97.2(5) for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the ICN, or supplementary weighting for project lead the way (PLTW) enrollment through sharing with a community college pursuant to 281—subrule 97.2(6). An open enrolled student who is under competent private instruction (CPI) shall be weighted in the student's receiving district, and no tuition shall be billed to the resident district. An open enrolled student who is not under CPI shall be weighted in the resident district, and the funding shall be sent to the receiving district in addition to open enrollment tuition.

*a.* If the open enrolled student is present in the resident district on October 1 of the school year, the resident district shall count the student, excluding a student under CPI, for supplementary weighting.

*b.* The concurrent enrollment course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(5), and the PLTW course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(6).

*c.* The resident district shall forward the weighting generated for the concurrent or PLTW enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent or PLTW enrollment course multiplied by the current school year's district cost per pupil in the resident district.

*d.* The receiving district shall pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

*e.* If the student was not present in the resident district on October 1 of the school year and is a late transfer, the receiving district bears all the tuition cost and shall not bill the resident district in the first year pursuant to subrule 17.10(7).

**17.10(9) *Open enrollment pursuant to rule 281—17.15(282).*** If a pupil participates in cocurricular or extracurricular activities in accordance with subrule 17.15(2), the district of residence may deduct up to \$200 per activity, for up to two activities, from the amount calculated in this rule. For a cocurricular activity, one semester shall equal one activity. Extracurricular activities for which such a resident district may charge up to \$200 per activity for up to two activities under this subrule include interscholastic athletics, music, drama, and any other activity with a general fund expenditure exceeding \$5,000 annually. A pupil may participate in additional extracurricular activities at the discretion of the resident district. The school district of residence may charge the pupil a fee for participation in such cocurricular or extracurricular activities equivalent to the fee charged to and paid in the same manner by other resident pupils.

[ARC 9261B, IAB 12/15/10, effective 1/19/11; ARC 0521C, IAB 12/12/12, effective 1/16/13; ARC 2746C, IAB 10/12/16, effective 11/16/16; ARC 3181C, IAB 7/5/17, effective 8/9/17; ARC 4296C, IAB 2/13/19, effective 3/20/19]

**281—17.11(282) *Special education students.*** If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, 281—Chapter 41. This determination shall be made by the receiving district in consultation with the resident district and the appropriate area

education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent may request a due process hearing as provided by 281—41.507(256B,34CFR300) or a mediation conference as provided by 281—41.506(256B,34CFR300). If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of the child's individualized education program team, which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 281—17.9(282).

The district of residence shall pay to the receiving district on the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

[ARC 3181C, IAB 7/5/17, effective 8/9/17]

**281—17.12(282) Laboratory school provisions.** Rescinded ARC 2746C, IAB 10/12/16, effective 11/16/16.

**281—17.13(282) Applicability.** For implementing the open enrollment provisions of Iowa Code section 282.18, the provisions of this chapter shall be retroactively applicable to June 5, 1989.

**281—17.14(282) Voluntary diversity plans or court-ordered desegregation plans.**

**17.14(1) Applicability.** These rules govern only the components of a voluntary diversity plan or court-ordered desegregation plan as the plan affects open enrollments. Nothing herein shall prohibit a district from implementing a lawful voluntary diversity plan or court-ordered desegregation plan or components thereof for transfers other than open enrollment.

**17.14(2) Eligibility to adopt and implement a plan applicable to open enrollments.**

*a. Adoption.* The board of an eligible school district may adopt a voluntary diversity plan with a component that applies to open enrollments if either of the following conditions exists: (1) The percentage of minority students in the district exceeds the percentage of minority students in the state by at least 20 percentage points; or (2) the percentage of minority students in one or more attendance centers in the district exceeds the percentage of minority students in the district as a whole by at least 20 percentage points.

*b. Implementation.* The open enrollment component of the plan adopted by the district board shall only be implemented by the district if other components of the diversity plan describe the steps the district is taking internally to avoid or reduce minority student isolation, and the district demonstrates the extent to which it has implemented those steps. For districts with multiple attendance centers at the

same grade level, such steps may include intradistrict student transfer policies, pairing of attendance centers, revision of boundaries of attendance centers, selecting school sites, realignment of feeder systems, magnet schools, and the placement of specialized programs and services. In a district without multiple attendance centers at the same grade level, such steps may include pupil assignments to classrooms, classroom pairing, community and family outreach programs, student-to-student mentoring or grouping designed to promote understanding and acceptance of and positive interactions with all groups of minority students, and professional development activities designed to promote understanding and acceptance of and positive interactions with all groups of minority students. The open enrollment component of the plan adopted by the district board may remain in effect for so long as the district's total minority student population exceeds 15 percent, and shall remain in effect for so long as the district demonstrates it is necessary to avoid minority student isolation in the district.

**17.14(3)** *Open enrollment elements of a diversity plan.*

*a.* All applicable deadlines for the filing and determination of open enrollment requests, including the exceptions for good cause under rule 17.4(282), apply to open enrollment requests filed in a district that has adopted an open enrollment component in its voluntary diversity plan.

*b.* The plan shall establish a districtwide ratio of minority-to-nonminority students to be maintained, consistent with subrule 17.14(2). All open enrollment requests, both those into and out of the district, shall be acted on according to whether the request will adversely affect or will positively affect the implementation of the plan. Under Iowa Code section 282.18, if an open enrollment request would positively affect the plan, the district shall give priority to granting the request over other requests.

*c.* A district with multiple attendance centers at the same grade level shall specify in the open enrollment component of its diversity plan which attendance centers are affected by the open enrollment component. For each of those attendance centers, the district shall establish and specify the individual attendance center ratios of minority-to-nonminority students, consistent with subrule 17.14(2). The plan may provide for an initial determination of whether a requested open enrollment will negatively affect the specific attendance center ratio. With respect to a request to open enroll out of the district, if such enrollment will negatively affect the ratio established for the student's current attendance center, the request may be denied by the district with no further determination of the impact of the request on the districtwide ratio. For a request to open enroll either into or out of the district, if the open enrollment will not negatively affect the attendance center ratio, the request shall be denied only if there would be a negative impact on the districtwide ratio. As of July 1, 2003, if a district's plan sets a threshold lower than allowed in paragraph 17.14(2) "a" and that plan has not been disapproved by a court of competent jurisdiction, the district may implement its individual attendance center ratios in addition to its districtwide ratio.

*d.* The plan shall include provision for the formation and operation of a waiting list for those requests that could not be granted immediately. A parent/guardian of a child on the waiting list must be informed by the district of the details of the operation of the list and whether the parent/guardian must refile a timely request for open enrollment in order to remain on the waiting list.

*e.* The plan shall specify a district contact person to whom questions may be directed from parents/guardians.

*f.* The plan shall include a provision whereby a parent/guardian has a means to request that the district determine whether a hardship exists for granting a request that may not otherwise be granted under the plan.

**17.14(4)** *Exceptions.* The following exceptions shall apply:

*a.* If an open enrollment request is filed on behalf of a student whose sibling is already participating in open enrollment to the same district to which the student desires open enrollment, the request shall be granted.

*b.* If an open enrollment request is filed on behalf of a student whose parent/guardian moves out of the school district of residence and who wishes to remain in the district of residence as an open enrolled student without interruption in the student's educational program under subrule 17.8(7), the request shall be granted. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time.

c. A request for open enrollment based on repeated acts of harassment of the student shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

d. A request for open enrollment based on a serious health condition of the student that the district cannot adequately address shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

**17.14(5) Review by department.** All voluntary desegregation plans adopted under this rule prior to June 28, 2007, are no longer valid. An eligible district whose board desires to adopt a voluntary diversity plan for open enrollment must do so by March 1, 2008. The district shall submit a copy of its plan to the department for review within 10 days of the adoption of the plan. Open enrollment requests received prior to March 1, 2008, by a district that has a voluntary diversity plan may be held by the district for action pursuant to the district's new voluntary diversity plan.

The department shall inform the district within 10 days of receipt of the district's voluntary diversity plan whether the plan complies with this rule. All changes to voluntary diversity plans for open enrollment shall be submitted to the department within 60 days of local board action.

### **281—17.15(282) Open enrollment and online coursework.**

**17.15(1) General.** A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18. However, if a student's participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district shall, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

**17.15(2) Participation in activities in resident district.** A pupil participating in open enrollment for purposes of receiving educational instruction and course content primarily over the Internet in accordance with Iowa Code section 256.7(32) may participate in any cocurricular or extracurricular activities offered to children in the pupil's grade or group and sponsored by the district of residence under the same conditions and requirements as the pupils enrolled in the district of residence. The pupil may participate in not more than two cocurricular or extracurricular activities during a school year unless the resident district approves the student's participation in additional activities. The student shall comply with the eligibility, conduct, and other requirements relating to the activity that are established by the district of residence for any student who applies to participate or who is participating in the activity.

[ARC 4296C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code section 282.18.

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CHAPTER 22  
SENIOR YEAR PLUS PROGRAM

DIVISION I  
GENERAL PROVISIONS

**281—22.1(261E) Scope.** The senior year plus program provides Iowa high school students access to advanced placement courses and a variety of means by which to concurrently access secondary and postsecondary credit.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.2(261E) Student eligibility.** A student shall meet all of the following criteria as a condition of participation in the programs described in Divisions IV and V of this chapter, except that a student enrolled in a career and technical course under Division IV does not have to meet the proficiency requirements set forth in paragraph 22.2(2) “b.” To the extent that postsecondary credit is available to a student under the programs described in Divisions III and VI, the student shall meet all of the following criteria. A student who desires to participate in the postsecondary enrollment options program under Division V of these rules also shall meet the eligibility requirements set forth in rule 281—22.16(261E).

**22.2(1) Requirements established by postsecondary institution.**

a. The student shall meet the enrollment requirements established by the eligible postsecondary institution providing the course credit.

b. The student shall meet or exceed the minimum performance measures on any academic assessments that may be required by the eligible postsecondary institution.

c. The student shall have taken the appropriate course prerequisites, if any, prior to enrollment in the eligible postsecondary course, as determined by the eligible postsecondary institution delivering the course.

**22.2(2) Requirements established by school district.**

a. The student shall have attained the approval of the school board or its designee and the eligible postsecondary institution to register for the postsecondary course.

b. The student shall have demonstrated proficiency in all of the content areas of reading, mathematics, and science as evidenced by achievement scores on the most recent administration of the Iowa assessments for which scores are available for the student. If the student was absent for the most recent administration of the Iowa assessments, and such absence was not excused by the student’s school of enrollment, the student is deemed not to be proficient in any of the content areas. The school district may determine whether such student is eligible for qualification under an equivalent qualifying performance measure.

(1) If a student is not proficient in one or more of the content areas of reading, mathematics, and science, the school board may establish alternative but equivalent qualifying performance measures. The school board is not required to establish equivalent performance measures, but if it does so, such measures may include but are not limited to additional administrations of the state assessment, portfolios of student work, student performance rubric, or end-of-course assessments. A school board that establishes equivalent performance measures shall also establish criteria by which its district personnel shall determine comparable student proficiency.

(2) A student who attends an accredited nonpublic school and desires to access postsecondary enrollment options shall meet the same eligibility criteria as students in the school district in which the accredited nonpublic school is located.

(3) A student under competent private instruction shall meet the same proficiency standard as students in the school district in which the student is dually enrolled and shall have the approval of the school board in that school district to register for the postsecondary course. In lieu of Iowa assessments scores as the state assessment, a school district shall allow a student under competent private instruction to demonstrate proficiency in reading, mathematics, and science by any one of the following means:

1. By meeting the same alternative but equivalent qualifying performance measures established by the local school board for all students in the school district in which the student is dually enrolled;

2. By submitting the written recommendation of the licensed practitioner providing supervision to the student in accordance with Iowa Code section 299A.2;
3. As evidenced by achievement scores on the annual achievement evaluation required under Iowa Code section 299A.4;
4. As evidenced by a composite score of at least 21 on the college readiness assessment administered by ACT, Inc.;
5. As evidenced by a sum of at least 141 in critical reading, mathematics, and writing skills on the preliminary scholastic aptitude test (PSAT) administered by the College Board; or
6. As evidenced by a sum of at least 990 in critical reading and mathematics on the college readiness assessment (SAT) administered by the College Board.

[ARC 8187B, IAB 10/7/09, effective 11/11/09; ARC 9902B, IAB 12/14/11, effective 1/18/12; ARC 0526C, IAB 12/12/12, effective 1/16/13]

**281—22.3(261E) Teacher eligibility, responsibilities.** A teacher employed to provide instruction under this chapter shall meet the following criteria:

**22.3(1) Eligibility.** The teacher shall meet the standards and requirements set forth which other full-time instructors teaching within the academic department are required to meet and which are approved by the appropriate postsecondary administration. An individual under suspension or revocation of an educational license or statement of professional recognition issued by the board of educational examiners shall not be allowed to provide instruction for any program authorized by this chapter. If the instruction for any program authorized by this chapter is provided at a school district facility or a neutral site, the teacher or instructor shall have successfully passed a background investigation conducted in accordance with Iowa Code section 272.2(17) prior to providing such instruction. The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility or a neutral site. For purposes of this rule, “neutral site” means a facility that is not owned or operated by an institution.

**22.3(2) Responsibilities.** A teacher employed to provide instruction under this chapter shall do all of the following:

- a. Collaborate, as appropriate, with other secondary or postsecondary faculty of the institution that employs the teacher regarding the subject area;
- b. As assisted by the school district, provide ongoing communication about course expectations, teaching strategies, performance measures, resource materials used in the course, and academic progress to the student and, in the case of students of minor age, to the parent or guardian of the student;
- c. Provide curriculum and instruction that are accepted as college-level work as determined by the institution;
- d. Use valid and reliable student assessment measures, to the extent available.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.4(261E) Institutional eligibility, responsibilities.**

**22.4(1) Requirements of both school district and eligible postsecondary institution.**

a. The institutions shall ensure that students, or in the case of minor students, parents or guardians, receive appropriate course orientation and information, including but not limited to a summary of applicable policies and procedures, the establishment of a permanent transcript, policies on dropping courses, a student handbook, information describing student responsibilities, and institutional procedures for academic credit transfer.

b. The institutions shall ensure that students have access to student support services, including but not limited to tutoring, counseling, advising, library, writing and math labs, and computer labs, and student activities, excluding postsecondary intercollegiate athletics. If a fee is charged to other students of the eligible postsecondary institution for any of the above services, that fee may also be charged to participating secondary students on the same basis as it is charged to postsecondary students.

c. The institutions shall ensure that students are properly enrolled in courses that will carry college credit.

d. The institutions shall ensure that teachers and students receive appropriate orientation and information about the institution's expectations.

e. The institutions shall ensure that the courses provided achieve the same learning outcomes as similar courses offered in the subject area and are accepted as college-level work.

f. The institutions shall review the course on a regular basis for continuous improvement, shall follow up with students in order to use information gained from the students to improve course delivery and content, and shall share data on course progress and outcomes with the collaborative partners involved with the delivery of the programming and with the department, as needed.

g. The institutions shall not require a minimum or a maximum number of postsecondary credits to be earned by a high school student under this chapter. However, no student shall be enrolled as a full-time student in any one postsecondary institution.

h. The institutions shall not place restrictions on participation in senior year plus programming beyond that which is specified in statute or administrative rule.

i. The institutions shall provide the teacher or instructor appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

j. The institutions shall provide the teacher or instructor adequate notification of an assignment to teach a course under this chapter, as well as adequate preparation time to ensure that the course is taught at the college level. The specifics of this paragraph shall be locally determined.

**22.4(2) Requirements of school district only.**

a. The school district shall certify annually to the department, as an assurance in the district's basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter supplements, and does not supplant, a course provided by the school district in which the student is enrolled. For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

b. The school district shall ensure that the background investigation requirement of subrule 22.3(1) is satisfied. The school district shall pay for the background investigation but may charge the teacher or instructor a fee not to exceed the actual cost charged the school district for the background investigation conducted. If the teacher or instructor is employed by an eligible postsecondary institution, the school district shall pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

**22.4(3) Requirements of eligible postsecondary institution only.**

a. All eligible postsecondary institutions providing programming under this chapter shall include the unique student identifier assigned to students while in the kindergarten through grade 12 system as a part of the institution's student data management system.

(1) Eligible postsecondary institutions providing programming under this chapter shall cooperate with the department on data requests related to the programming.

(2) All eligible postsecondary institutions providing programming under this chapter shall collect data and report to the department on the proportion of females and minorities enrolled in science-, technology-, engineering-, and mathematics-oriented educational opportunities provided in accordance with this chapter.

b. The eligible postsecondary institution shall provide the teacher or instructor with ongoing communication and access to instructional resources and support, and shall encourage the teacher or instructor to participate in the postsecondary institution's academic departmental activities.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.5(261E) Reserved.**

DIVISION II  
DEFINITIONS

**281—22.6(261E) Definitions.** For the purposes of this chapter, the indicated terms are defined as follows:

*“Concurrent enrollment”* means any course offered to students in grades 9 through 12 during the regular school year approved by the board of directors of a school district through a contractual agreement between a community college and the school district that meets the provisions of Iowa Code section 257.11(3).

*“Department”* means the department of education.

*“Director”* means the director of the department of education.

*“Dually enrolled”* means the status of a student who receives competent private instruction under Iowa Code chapter 299A and whose parent, guardian, or legal custodian has registered the student pursuant to Iowa Code section 299A.8 in a school district for any of the purposes listed therein, including, for purposes of these rules, participation in any part of the senior year plus program on the same basis as public school students.

*“Eligible postsecondary institution”* means an institution of higher learning under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9.

*“Full time”* means enrollment in any one academic year, exclusive of any summer term, of 24 or more postsecondary credit hours.

*“ICN”* means Iowa communications network, the statewide system of educational telecommunications including narrowcast and broadcast systems under the public broadcasting division of the department of education and live interactive systems which allow, at a minimum, one-way video and two-way audio communication.

*“Institution”* means a school district or eligible postsecondary institution delivering the instruction in a given program as authorized by this chapter.

*“School board”* means the board of directors of a school district or a collaboration of boards of directors of school districts.

*“State board”* means the state board of education.

*“Student”* means any individual in grades 9 through 12 enrolled or dually enrolled in a school district who meets the criteria in rule 281—22.2(261E). For purposes of Division III (Advanced Placement Program) and Division V (Postsecondary Enrollment Options Program) only, “student” also includes a student enrolled in an accredited nonpublic school or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

DIVISION III  
ADVANCED PLACEMENT PROGRAM

**281—22.7(261E) School district obligations.** All school districts shall comply with the following obligations but may do so through direct instruction, collaboration with another school district, or use of the Iowa online advanced placement academy. An international baccalaureate program is not an advanced placement program.

**22.7(1)** A school district shall provide descriptions of the advanced placement courses available to students using a course registration handbook.

**22.7(2)** A school district shall ensure that advanced placement course teachers are appropriately licensed by the board of educational examiners in accordance with Iowa Code chapter 272 and meet the minimum certification requirements of the national organization that administers the advanced placement program.

**22.7(3)** A school district shall establish prerequisite coursework for each advanced placement course offered and shall describe the prerequisites in the course registration handbook, which shall be provided

to every junior high school or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

**22.7(4)** A school district shall make advanced placement coursework available to a dually enrolled student under competent private instruction if the student meets the same criteria as a regularly enrolled student of the district.

**22.7(5)** A school district shall make advanced placement coursework available to a student enrolled in an accredited nonpublic school located in the district if the student meets the criteria in subparagraph 22.2(2) “b”(3).

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.8(261E) Obligations regarding registration for advanced placement examinations.** The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall ensure that any student enrolled who is interested in taking an advanced placement examination is properly registered for the examination. An accredited nonpublic school shall provide a list of students registered for advanced placement examinations to the school district in which the accredited nonpublic school is located. The school district and the accredited nonpublic school shall ensure that any student enrolled in the school district or school, as applicable, who is interested in taking an advanced placement examination and qualifies for a reduced fee for the examination is properly registered for the fee reduction.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.9(261E) and 22.10(261E)** Reserved.

DIVISION IV  
CONCURRENT ENROLLMENT PROGRAM

**281—22.11(261E) Applicability.** The concurrent enrollment program, also known as district-to-community college sharing, promotes rigorous academic or career and technical pursuits by providing opportunities to high school students to enroll part-time in eligible nonsectarian courses at or through community colleges established under Iowa Code chapter 260C.

**22.11(1)** The program shall be made available to all eligible resident students in grades 9 through 12.

*a.* Notice of the availability of the program shall be included in a school district’s student registration handbook, and the handbook shall identify which courses, if successfully completed, generate college credit under the program.

*b.* A student and the student’s parent or guardian shall also be made aware of this program as a part of the development of the student’s core curriculum plan in accordance with Iowa Code section 279.61.

**22.11(2)** A student enrolled in an accredited nonpublic school may access the program through the school district in which the accredited nonpublic school is located. A student receiving competent private instruction may access the program through the school district in which the student is dually enrolled and may enroll in the same number of concurrent enrollment courses as a regularly enrolled student of the district.

**22.11(3)** A student may make application to a community college and the school district to allow the student to enroll for college credit in a nonsectarian course offered by the community college. A comparable course, as defined in rules adopted by the board of directors of the school district, must not be offered by the school district or accredited nonpublic school which the student attends. The school board shall annually approve courses to be made available for high school credit using locally developed criteria that establish which courses will provide the student with academic rigor and will prepare the student adequately for transition to a postsecondary institution. A school district may not use concurrent enrollment courses to meet the accreditation requirements in Division V of 281—Chapter 12 other than for career-technical courses.

**22.11(4)** If an eligible postsecondary institution accepts a student for enrollment under this division, the school district, in collaboration with the community college, shall send written notice to the student,

the student's parent or guardian in the case of a minor child, and the student's school district. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the student will receive from the community college upon successful completion of the course.

**22.11(5)** A school district shall grant high school credit to a student enrolled in a course under this division if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to 22.11(3). The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a course. Students shall not "audit" a concurrent enrollment course; the student must take the course for credit.

**22.11(6)** School districts that participate in district-to-community college sharing agreements or concurrent enrollment programs that meet the requirements of Iowa Code section 257.11(3) are eligible to receive supplementary weighted funding under that provision. Regardless of whether a district receives supplementary weighted funding, the district shall not charge tuition of any of its students who participate in a concurrent enrollment course.

**22.11(7)** Community colleges shall comply with the data collection requirements of Iowa Code section 260C.14(22). The data elements shall include but not be limited to the following:

- a. An unduplicated enrollment count of eligible students participating in the program.
- b. The actual costs and revenues generated for concurrent enrollment. An aligned unique student identifier system shall be established by the department for students in kindergarten through grade 12 and community college.
- c. Degree, certifications, and other qualifications to meet the minimum hiring standards.
- d. Salary information including regular contracted salary and total salary.
- e. Credit hours and laboratory contact hours and other data on instructional time.
- f. Other information comparable to the data regarding teachers collected in the basic education data survey.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.12(261E) Transportation.** Reserved.

**281—22.13(261E)** Reserved.

DIVISION V  
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

**281—22.14(261E) Availability.** The senior year plus programming provided by a school district pursuant to this division may be but is not required to be available to students on a year-round basis.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.15(261E) Notification.** The availability and requirements of this program shall be included in each school district's student registration handbook. Information about the program shall be provided to the student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61. The school district shall establish a process by which students may indicate interest in and apply for enrollment in the program.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.16(261E) Student eligibility.** Persons who have graduated from high school are not eligible for this program. Eligible students shall be residents of Iowa. "Eligible student" includes a student classified by the board of directors of a school district, by the state board of regents for students of the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade student who is identified according to the school district's gifted and talented criteria and procedures, pursuant to Iowa Code section 257.43, as a gifted and talented child, or an eleventh or twelfth grade student, during the period the student is participating

in the postsecondary enrollment options program. To be eligible to participate in a program under this division, a student must meet all criteria in rule 281—22.2(261E).

**22.16(1)** A student enrolled in an accredited nonpublic school who meets all eligibility requirements may apply to take courses under this division in the school district where the accredited nonpublic school is located, provided that neither the accredited nonpublic school nor the school district offers a comparable course.

**22.16(2)** A student under competent private instruction who meets the eligibility requirements in this rule and those in subparagraph 22.2(2) “b”(3) may apply to take courses under this division through the public school district in which the student is dually enrolled, provided that the resident school district does not offer a comparable course, and shall be allowed to take such courses on the same basis as a regularly enrolled student of the district.

**22.16(3)** Postsecondary institutions may require students to meet appropriate standards or requirements for entrance into a course. Such requirements may include prerequisite courses, scores on national academic aptitude and achievement tests, or other evaluation procedures to determine competency. Acceptance of a student into a course by a postsecondary institution is not a guarantee that a student will be enrolled in all requested courses. Priority may be given to postsecondary students before eligible secondary students are enrolled in courses. However, once an eligible secondary student has enrolled in a postsecondary course, the student cannot be displaced by another student for the duration of the course. Students shall not “audit” postsecondary courses. The student must take the course for credit and must meet all of the requirements of the course which are required of postsecondary students.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.17(261E) Eligible postsecondary courses.** These rules are intended to implement the policy of the state to promote rigorous academic pursuits. Therefore, postsecondary courses eligible for students to enroll in under this division shall be limited to: nonsectarian courses; courses that are not comparable to courses offered by the school district where the student attends which are defined in rules adopted by the board of directors of the public school district; credit-bearing courses that lead to an educational degree; courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C. A school district or accredited nonpublic school district shall grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.18(261E) Application process.** To participate in this program, an eligible student shall make application to an eligible postsecondary institution to allow the eligible student to enroll for college credit in a nonsectarian course offered at the institution. A comparable course must not be offered by the school district or accredited nonpublic school the student attends. For purposes of these rules, “comparable” is not synonymous with identical, but means that the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school. If the postsecondary institution accepts an eligible student for enrollment under this division, the institution shall send written notice to the student, the student’s parent or guardian in the case of a minor child, and the student’s school district or accredited nonpublic school and the school district in the case of a nonpublic school student or student under competent private instruction, or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the eligible student will receive from the eligible postsecondary institution upon successful completion of the course.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.19(261E) Credits.** A school district, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or an accredited nonpublic school shall grant high school credit to an eligible student

enrolled in a course under this division if the eligible student successfully completes the course as determined by the eligible postsecondary institution.

**22.19(1)** The board of directors of the school district, the board of regents for the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or authorities in charge of an accredited nonpublic school shall determine the number of high school credits that shall be granted to an eligible student who successfully completes a course.

**22.19(2)** Eligible students may take up to seven semester hours of credit during the summer months when school is not in session and receive credit for that attendance, if the student pays the cost of attendance for those summer credit hours.

**22.19(3)** The high school credits granted to an eligible student under this division shall count toward the graduation requirements and subject area requirements of the school district of residence, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or the accredited nonpublic school of the eligible student. Evidence of successful completion of each course and high school credits and college credits received shall be included in the student's high school transcript.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.20(261E) Transportation.** The parent or guardian of an eligible student who has enrolled in and is attending an eligible postsecondary institution under this division shall furnish transportation to and from the postsecondary institution for the student.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.21(261E) Tuition payments.**

**22.21(1)** Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to a postsecondary institution that has enrolled its resident eligible students under this division, unless the eligible student is participating in open enrollment under Iowa Code section 282.18, in which case, the tuition reimbursement amount shall be paid by the receiving district. However, if a child's residency changes during a school year, the tuition shall be paid by the district in which the child was enrolled as of the date specified in Iowa Code section 257.6(1) or the district in which the child was counted under Iowa Code section 257.6(1) "a"(6). For students enrolled at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

*a.* The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.

*b.* Two hundred fifty dollars.

**22.21(2)** A secondary student is not eligible to enroll on a full-time basis in an eligible postsecondary institution under this program.

**22.21(3)** An eligible postsecondary institution that enrolls an eligible student under this division shall not charge the student for tuition, textbooks, materials, or fees directly related to the course in which the student is enrolled except that the student may be required to purchase equipment that becomes the property of the student. For the purposes of this subrule, equipment shall not include textbooks.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.22(261E) Tuition reimbursements and adjustments.** The failure of a student to complete or otherwise to receive credit for an enrolled course requires the student, if 18 years of age or older, to reimburse the school district for the cost of the enrolled course. If the student is under 18 years of age, the student's parent or guardian shall sign the student registration form indicating that the parent or guardian assumes all responsibility for the costs directly related to the incomplete or failed coursework. If documentation is submitted to the school district that verifies the student was unable to complete the course for reasons including but not limited to the student's physical incapacity, a death in the student's immediate family, or the student's move to another school district, that verification shall constitute a waiver of the requirement that the student or parent or guardian pay the costs of the course to the school

district. An eligible postsecondary institution shall make pro rata adjustments to tuition reimbursement amounts based upon federal guidelines established pursuant to 20 U.S.C. §1091b.  
[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.23(261E)** Reserved.

DIVISION VI  
CAREER ACADEMIES

**281—22.24(261E) Career academies.** A career academy is a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course.

**22.24(1)** A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

**22.24(2)** The school district providing secondary education under this division shall be eligible for supplementary weighting under Iowa Code section 257.11(2), and the community college shall be eligible for funds allocated pursuant to Iowa Code section 260C.18A.

**22.24(3)** Information regarding career academies shall be provided by the school district to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.25(261E)** Reserved.

DIVISION VII  
REGIONAL ACADEMIES

**281—22.26(261E) Regional academies.** A regional academy is a program established by a school district to which multiple school districts send students in grades 7 through 12. In addition to partnering with other school districts, the school district establishing a regional academy may enter into a contract or a chapter 28E agreement with one or more accredited nonpublic schools, area education agencies, community colleges, accredited public or nonpublic postsecondary institutions, businesses, and private agencies located within or outside of Iowa.

**22.26(1) Purpose.** A regional academy shall be established to build a culture of innovation for students and community; to diversify educational and economic opportunities by engaging in learning experiences that involve students in complex, real-world projects; and to develop regional or global innovation networks.

**22.26(2) Curriculum.** A regional academy shall include in its curriculum advanced-level courses. A regional academy may include in its curriculum career and technical courses and core curriculum coursework. The coursework may be delivered virtually, or via the ICN, asynchronous learning networks, or Internet-based delivery systems.

**22.26(3) Supplementary weighting.** School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11(2). The school districts participating in the regional academy shall enter into an agreement on how the funding generated by the supplementary weighting received shall be used and shall submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

**22.26(4) Student plan.** Information regarding regional academies shall be provided to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.

[ARC 8187B, IAB 10/7/09, effective 11/11/09; ARC 9902B, IAB 12/14/11, effective 1/18/12]

**281—22.27(261E) Waivers for certain regional academies.** A school district that establishes a regional academy may, but is not required to, submit to the department a request for waiver from any

statutory or regulatory provision identified by the school district as a barrier to the school district's goal of increasing student achievement or increasing competency-based learning opportunities for students. The school district shall submit a plan to the department demonstrating how the regional academy will increase student achievement or increase competency-based learning opportunities for students, how the regional academy will assess either the increase in student achievement or the increase in competency-based learning opportunities for students, and why the requested waiver or waivers are necessary. The waiver request and plan shall be submitted to the department for approval by January 1 of the school year immediately preceding the school year for which waiver is sought. The department may not waive or modify any statutory or regulatory provision relating to requirements applicable to school districts that pertain to audit requirements, investment of public funds, collective bargaining, open meetings, public records, civil rights, human rights, special education, contracts with and discharge of teachers and administrators, powers and duties of school boards, teacher quality, and school transportation.

[ARC 9902B, IAB 12/14/11, effective 1/18/12]

DIVISION VIII  
INTERNET-BASED AND ICN COURSEWORK

**281—22.28(261E) Internet-based coursework.** The programming in this chapter may be delivered via Internet-based technologies including but not limited to the Iowa learning online program. An Internet-based course may qualify for additional supplemental weighting if it meets the requirements of Division IV or Division VI of this chapter. To qualify as a senior year plus course, an Internet-based course must comply with the appropriate provisions of this chapter.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.29(261E) ICN-based coursework.** The ICN may be used to deliver coursework for the programming provided under this chapter subject to an appropriation by the general assembly for that purpose. A school district that provides courses delivered via the ICN shall receive supplemental funding as provided in Iowa Code section 257.11(7). To qualify as a senior year plus course, a course offered through the ICN must comply with the appropriate provisions of this chapter.

[ARC 8187B, IAB 10/7/09, effective 11/11/09]

**281—22.30 and 22.31** Reserved.

DIVISION IX  
PROJECT LEAD THE WAY

**281—22.32(261E) Project lead the way.**

**22.32(1) Program established.** A project lead the way program is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits.

**22.32(2) Notification.** A school district shall provide descriptions of the project lead the way courses available to students using a course registration handbook. The handbook shall identify which courses, if successfully completed, generate college credit under the program. Information about available project lead the way courses shall be provided to every junior high school student or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

**22.32(3) Access.** Students from accredited nonpublic schools and students receiving competent private instruction under Iowa Code chapter 299A may access the program through the school district in which the accredited nonpublic school or private institution is located.

**22.32(4) Curriculum.** A school district offering a project lead the way program must offer the curriculum developed by the national organization that administers the project lead the way program.

**22.32(5) Instructor.** A school district shall ensure that a teacher or instructor employed to provide instruction under this rule meets the following additional criteria:

*a.* The teacher shall have successfully completed the training required by the national organization that administers the project lead the way program.

b. The teacher shall meet the minimum requirements of the national organization that administers the project lead the way program.

**22.32(6) Accreditation standards.** A project lead the way course may apply toward high school program accreditation standards pursuant to 281—subrule 12.5(5). To meet the requirement, the instructor must be appropriately licensed and endorsed by the board of educational examiners to teach the subject area of the accreditation standard.

**22.32(7) Shared district-to-community college courses.**

a. A district-to-community college sharing program for project lead the way courses is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits at or through community colleges established under Iowa Code chapter 260C. The program shall be made available to all resident students in grades 9 through 12.

b. A comparable course, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, must not be offered by the school district or accredited nonpublic school the student attends.

c. A school district shall be certified by the national organization that administers the project lead the way program and have a signed agreement with that organization.

d. To be eligible, institutions, instructors, and students shall meet the requirements of Iowa Code section 261E.3.

e. A school district may set additional eligibility requirements to ensure student readiness to achieve success. All students in the shared course shall meet the expectations of the national organization that administers the project lead the way program and shall be registered for college credit.

f. A student may make application to a community college and the school district to allow the student to enroll for college credit in a project lead the way course offered by the community college.

g. A district-to-community college sharing program for project lead the way courses that meets the requirements of 281—subrule 97.2(6) is eligible for funding under that provision for shared college credit career and technical education courses.

**22.32(8) Credit.**

a. The school district shall grant high school credit to a student enrolled in a project lead the way course not offered by a community college. At a school district's discretion, a project lead the way course may count toward a school district's graduation requirements provided that the teacher is licensed by the board of educational examiners and endorsed within the subject area of the graduation requirement.

b. The school district shall grant high school credit to a student enrolled in a project lead the way course for college credit under this chapter if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to Iowa Code subsection 261E.8(3) and paragraph 22.2(2)“a.” If a student is not successful in completing a project lead the way course as determined by the community college, the student's high school transcript shall reflect the failing grade. The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a project lead the way course.

c. The school district may offer a project lead the way course as an articulated course. Articulated courses shall be offered through an agreement between the district and postsecondary institution which allows students to receive college credit at the postsecondary institution upon matriculation based on the demonstrated mastery of concepts in the high school course. An articulated course shall not be delivered by a postsecondary institution or through a sharing agreement with a community college and shall not generate supplementary weighting.

[ARC 0519C, IAB 12/12/12, effective 1/16/13]

### **281—22.33(261E) Summer college credit program.**

**22.33(1) Program established.** A summer college credit program is established to expand access for high school students to high-quality career and technical education experiences aligned with career pathways leading to postsecondary credentials and high-demand jobs. Programs approved under subrule 22.33(3) shall be offered during the summer term of an eligible postsecondary institution.

**22.33(2) *Type of coursework offered.*** The following provisions apply to coursework delivered through an approved program under this rule.

*a.* Coursework eligible to be offered through an approved program under this rule shall be technical core coursework within and prerequisite coursework for a career and technical education program approved under 281—subrule 21.4(3).

*b.* The career and technical education program shall be aligned to in-demand occupations identified by the state workforce development board and community colleges pursuant to Iowa Code section 84A.1B(13A) as enacted by 2018 Iowa Acts, House File 2458.

*c.* Coursework delivered under this rule shall comply with the course requirements established under Iowa Code section 257.11(3). The course shall be ineligible for supplementary weighting under that section.

*d.* The credit earned by a student who successfully completes a course under this rule shall not apply toward full-time enrollment defined under rule 281—22.6(261E).

**22.33(3) *Program proposals.*** The department shall establish an annual process for the submission and review of proposals for summer college credit programs. A postsecondary institution eligible to offer programming under Division IV of this chapter may submit program proposals to the department.

*a. Minimum components.* The proposal shall detail the following components.

(1) A program description, including the course or courses to be made available through the program; total number of credit hours; additional cocurricular experiences and activities including project-, problem-, and work-based learning opportunities; additional support services to be made available through the program; and any other pertinent program information.

(2) All minimum and required costs associated with offering the program, including, but not limited to, instructor salary, materials and supplies, and overhead costs.

(3) The total number of students that the program is capable of serving.

(4) Any additional components and expenses built into the program, including but not limited to student transportation, academic supports, and extracurricular experiences.

(5) The start date and duration of the program. Programs approved under this rule shall have a start date no later than the second Friday in June of each year.

*b. Enrollment threshold.* The postsecondary institution will propose, and the department will approve, a minimum program enrollment threshold. Programs that surpass the minimum enrollment threshold shall be eligible for funding under paragraph 22.33(4)“*b.*”

*c. Review of proposals.* The department shall establish a review process to evaluate all program proposals. In reviewing proposals, the department shall give priority consideration to program proposals that will ensure equitable geographic disbursement of approved programs. The department shall also give consideration to additional criteria including number of students served; cost per credit hour offered; alignment to in-demand occupations; the inclusion of extracurricular experiences with an emphasis on project-, problem-, and work-based learning opportunities; and the inclusion of provisions that address and remove barriers to participation for nontraditional students, underrepresented minority students, and low-income students.

*d. Funding of proposals.* A program proposal approved under this rule shall be funded under paragraph 22.33(4)“*a*” for the amount described under paragraph 22.33(3)“*a.*”

**22.33(4) *Disbursement of funds.*** Subject to the appropriation of funds, the department shall disburse funds to a postsecondary institution offering an approved program in the following manner. All funds received under this rule shall be used to support and sustain the approved program.

*a. Base funding.* Not more than one-half of the total allocation shall be made available to fund proposals approved under subrule 22.33(3).

*b. Enrollment.* Any funds not distributed under paragraph 22.33(4)“*a*” shall be distributed to postsecondary institutions offering an approved program with student enrollment greater than the minimum enrollment threshold.

(1) An approved program shall gather a count of students enrolled in the program on the third day following the start date of the program. The count of students enrolled in the program shall be submitted to the department in a manner prescribed by the department.

(2) Enrollment funding shall be calculated by the department for each program with enrollment greater than the minimum enrollment threshold. For purposes of this rule, the portion of enrollment funding to be received by a postsecondary institution offering an approved program shall be equal to the total number of credits for all student enrollment in the approved program divided by the total number of credits for all student enrollments statewide.

*c. Subsequent years.* In each of the subsequent three years following the implementation year, the portion of the allocation distributed based on enrollment shall increase by 10 percent each year until the minimum amount awarded based on enrollment is equal to 80 percent of the total allocation.

**22.33(5) Availability.** A postsecondary institution offering an approved program shall enter into a contract with a school district interested in making the program available to eligible students of the school district. The program shall be made available to any eligible student from a participating school district. An institution offering programming to a student under this rule shall comply with the requirements of Division IV of this chapter.

*a. Student eligibility.* To participate in an approved program, a student shall comply with the criteria established under rule 281—22.2(261E).

*b. Teacher eligibility.* A teacher assigned to provide instruction under this rule shall comply with the criteria established under rule 281—22.3(261E) and be a community college-employed instructor.

*c. Institutional eligibility.* Institutions offering an approved program under this rule shall comply with the criteria established under rule 281—22.4(261E).

[ARC 4293C, IAB 2/13/19, effective 1/17/19]

These rules are intended to implement Iowa Code chapter 261E.

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CHAPTER 97  
SUPPLEMENTARY WEIGHTING

**281—97.1(257) Definitions.** For the purpose of this chapter, the following definitions apply.

*“Actual enrollment”* shall mean the enrollment determined annually on October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, pursuant to Iowa Code section 257.6.

*“Career academy”* shall mean a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course. A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

*“Class”* shall mean a course for academic credit which applies toward a high school or community college diploma.

*“Enrolled”* shall mean that a student has registered with the school district and is taking part in the educational program.

*“Fraction of a school year”* shall mean the product of the minutes per day of class multiplied by the number of days per year the class meets divided by the product of the total number of minutes in a school day multiplied by the total number of days in a school year. All minutes available in a normal day shall be used in the calculation.

*“ICN”* shall mean the Iowa Communications Network.

*“Political subdivision”* shall mean a political subdivision in the state of Iowa and shall include a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (Iowa School for the Deaf, Iowa State University, University of Iowa, and University of Northern Iowa).

*“Project lead the way”* means the nonprofit organization with 501(c)(3) tax-exempt status that provides rigorous and innovative science, technology, engineering, and mathematics education curriculum founded in fundamental problem-solving and critical-thinking skills while integrating national academic and technical learning standards.

*“Regional academy”* shall mean an educational program established by a school district to which multiple school districts send students in grades 7 through 12. The curriculum shall include advanced-level courses and, in addition, may include career-technical courses, Internet-based courses, and coursework delivered via the ICN. Regional academy courses shall not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11, subsection 2.

*“Superintendent”* shall be defined pursuant to Iowa Code section 272.1.

*“Supplant”* shall mean the community college’s offering a course that consists of substantially the same concepts and skills as the content of a course provided by the school district or the community college’s offering a course that is required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11. If a student is unable to earn credit in both courses, then the two courses would be deemed similar enough in content and skills to be defined as supplanting.

*“Supplementary weighting plan”* shall mean a plan as defined in this chapter to add a weighting for each resident student eligible who is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents by the number of eligible resident students enrolled in that class and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

*“Supplementary weighting plan for at-risk students”* shall mean a plan as defined in this chapter to add a weighting for each resident student enrolled in the district and a weighting for the percentage of pupils enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who are eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1769j, multiplied by the budget enrollment in the school district to generate funding to be used to develop or

maintain at-risk programs, alternative programs and alternative school programs, and returning dropout and dropout prevention programs approved pursuant to Iowa Code section 257.40.

“Teacher” shall be defined pursuant to Iowa Code section 272.1.

[ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 0014C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 0520C, IAB 12/12/12, effective 1/16/13; ARC 1486C, IAB 6/11/14, effective 5/15/14; ARC 1596C, IAB 9/3/14, effective 10/8/14; ARC 4297C, IAB 2/13/19, effective 3/20/19]

### **281—97.2(257) Supplementary weighting plan.**

**97.2(1) Eligibility.** Except if listed under subrule 97.2(7), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

- a. Resident student attends class in another school district pursuant to subrule 97.2(2), or
- b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or
- c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or
- d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5), or
- e. Resident student attends class in a community college for college credit pursuant to subrule 97.2(6).

Other than as listed in paragraphs 97.2(1)“a” to “e” above and in rules 281—97.3(257), 281—97.4(257), and 281—97.7(257), no other sharing arrangement shall be eligible for supplementary weighting.

**97.2(2) Attend class in another school district.** Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1)“a” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

**97.2(3) Attend class taught by a teacher employed by another school district.** Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1)“b” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

**97.2(4) Attend class taught by a teacher jointly employed with another school district.** All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)“c.” The school districts jointly employing the teacher must have:

- a. A joint teacher evaluation process and instruments.
- b. A joint teacher professional development plan.
- c. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs “a” to “c” above, no two or more school districts shall list each other for the same classes and grade levels.

**97.2(5) Attend class in a community college.** All of the following conditions must be met for any student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)“d.”

- a. The course must supplement, not supplant, high school courses.

(1) For purposes of these rules, to comply with the “supplement, not supplant” requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

(2) The course must not be used by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11(5)“a” to “j,” with an exception to the career and technical limitation applicable to Iowa Code section 256.11(5)“h.”

(3) A school district with total basic educational data survey enrollment of not more than 600 that contracts with a community college to provide any of the three required sequential units in any of the four career and technical education service areas identified as the district’s career and technical program

required in Iowa Code section 256.11(5) “h” may request supplementary weighting for any community college course within one of the four service areas if the district’s course enrollment exceeds five.

b. The course must be included in the community college catalog or an amendment or addendum to the catalog.

c. The course must be open to all registered community college students not just high school students.

d. The course must be for college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

e. The course must be taught by an instructor employed by or under contract with the community college who meets the requirements of Iowa Code section 261E.3.

f. The course must be taught utilizing the community college course syllabus.

g. The course must be taught in such a manner as to result in student work and student assessment which meet college-level expectations.

h. The course must not have been determined as failing to meet the standards established by the postsecondary course audit committee.

**97.2(6)** *Attend a project lead the way class in a community college.* Students attending a science, technology, engineering, or mathematics class that uses an activities-based, project-based, and problem-based learning approach and that is offered collaboratively by the students’ school district and a community college in partnership with a nationally recognized provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are eligible for supplementary weighting under paragraph 97.2(1) “e” if the curriculum provider is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

**97.2(7)** *Ineligibility.* The following students are ineligible for supplementary weighting:

a. Nonresident students attending the school district under any arrangement except open enrolled in students, nonpublic shared-time students, or dual enrolled competent private instruction students in grades 9 through 12.

b. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9 when being served by special education programs or services that carry additional weighting.

c. Students in whole-grade sharing arrangements except under sharing pursuant to subrule 97.2(5) or subrule 97.2(7).

d. Students open enrolled out except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph “c.”

e. Students open enrolled in, except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph “c,” when the students are under competent private instruction and are dual enrolled in grades 9 through 12.

f. Students participating in shared services rather than shared classes except under sharing pursuant to rule 281—97.7(257).

g. Students taking postsecondary enrollment options (PSEO) courses.

h. Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

i. Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

*j.* Students enrolled in an at-risk program or alternative school program when being served by such program.

*k.* Students enrolled in summer school courses.

**97.2(8) Whole-grade sharing.** If all or a substantial portion of the students in any grade are shared with another one or more school districts for all or a substantial portion of a school day, then no students in that grade level are eligible for supplementary weighting except as authorized by rule 281—97.5(257). No students in the grade levels who meet the criterion in this subrule are eligible for supplementary weighting even in the absence of an agreement executed pursuant to Iowa Code sections 282.10 through 282.12. A district that discontinues grades pursuant to Iowa Code section 282.7 is deemed to be whole-grade sharing the resident students in those discontinued grades for purposes of these rules.

*a.* In a one-way whole-grade sharing arrangement, the receiving district may count its resident students in the grade levels that are whole-grade shared if the resident students are shared pursuant to subrule 97.2(2), 97.2(3), or 97.2(5).

*b.* In a one-way whole-grade sharing arrangement, the receiving district may not count its resident students in the grade levels that are whole-grade shared pursuant to subrule 97.2(3) if the teacher is employed by the same district that is sending students under the whole-grade sharing arrangement.

**97.2(9) Due date.** Supplementary weighting shall be included with the certified enrollment which is due October 15 following the October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, on which the enrollment was taken.

[ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 9266B, IAB 12/15/10, effective 1/19/11; ARC 0520C, IAB 12/12/12, effective 1/16/13; ARC 4297C, IAB 2/13/19, effective 3/20/19]

#### **281—97.3(257) Supplementary weighting plan for at-risk students.**

**97.3(1) Uses of funds.** Funding generated by the supplementary weighting plan for at-risk students shall be used to develop or maintain at-risk programs, which may include alternative school programs.

**97.3(2) Calculation of funding.** Funding for the supplementary weighting plan for at-risk students is calculated as follows:

*a.* Adding a weighting for each resident student of one hundred fifty-six one-hundred-thousandths, and

*b.* Adding a weighting of forty-eight ten-thousandths multiplied by the percentage of pupils in the district enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who are eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1769j, multiplied by the district's budget enrollment.

**97.3(3) Guarantee.** Rescinded IAB 8/21/02, effective 9/25/02.

**97.3(4) Recalculation of funding.** Rescinded IAB 8/21/02, effective 9/25/02.

**97.3(5) School-based youth services.** Rescinded IAB 8/21/02, effective 9/25/02.

[ARC 4297C, IAB 2/13/19, effective 3/20/19]

#### **281—97.4(257) Supplementary weighting plan for a regional academy.**

**97.4(1) Eligibility.** Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

*a.* Two or more Iowa school districts, other than a whole-grade sharing partner district, send students to advanced-level courses that are included in the curriculum of the regional academy, and these students are eligible for supplementary weighting under subrule 97.2(1), paragraph "a" or "c." In addition, for the host district to qualify for the minimum weighting pursuant to subrule 97.4(4), one or more Iowa school districts, other than a whole-grade sharing partner district, must send students to career-technical classes that are included in the curriculum of the regional academy.

*b.* The regional academy is located in the district.

*c.* The grade levels include one or more grades seven through twelve.

*d.* The curriculum is an organized course of study, adopted by the board, that includes a minimum of two advanced-level courses that are not part of a career-technical program. An advanced-level course is a course that is above the level of the course units required as minimum curriculum in 281—Chapter 12 in the host district.

*e.* The resident students are not eligible for supplementary weighting under another supplementary weighting plan.

*f.* No resident or nonresident students are attending the regional academy under a whole-grade sharing arrangement as defined in subrule 97.2(7).

*g.* Two or more sending districts that are whole-grade sharing partner districts shall be treated as one sending district for purposes of subrule 97.4(1), paragraph “a.”

*h.* The school districts participating in a regional academy shall enter into an agreement on how the funding generated by the supplementary weighting received shall be used and shall submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

**97.4(2) *Weighting.*** Resident students eligible for supplementary weighting pursuant to subrule 97.4(1) shall be eligible for a weighting of one-tenth of the fraction of a school year during which the pupil attends courses at the regional academy in which nonresident students are enrolled pursuant to subrule 97.4(1), paragraph “a.”

**97.4(3) *Maximum weighting.*** The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to 30 full-time-equivalent pupils.

**97.4(4) *Minimum weighting.*** The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to 15 full-time-equivalent pupils if the academy provides both advanced-level courses and career-technical courses.

**97.4(5) *Additional programs.*** If all of the criteria in subrule 97.4(1) are met, the regional academy may also include in its curriculum career-technical courses, Internet-based courses and ICN courses.

**97.4(6) *Career academy.*** A career academy is not a regional academy for purposes of these rules. [ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 0014C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

### **281—97.5(257) Supplementary weighting plan for whole-grade sharing.**

**97.5(1) *Whole-grade sharing.*** A school district which participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and which has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, 2019, is eligible to assign a weighting of one-tenth of the fraction of the school year during which resident pupils attend classes pursuant to subrule 97.2(1), paragraph “a,” “b,” or “c.” A school district participating in a whole-grade sharing arrangement shall be eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of supplementary weighting for the second year and for the third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, 2019.

**97.5(2) *Contiguous districts.*** School districts that adopt a board resolution jointly with all other affected boards to study reorganization must be contiguous school districts. If two or more of the affected districts are not contiguous to each other, all districts separating those districts must be a party to the whole-grade sharing arrangement and the board resolution adopted jointly to study reorganization.

**97.5(3) *Consecutive years.*** A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, 2018.

**97.5(4) *Change in sharing districts.*** A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) may enter into a whole-grade sharing arrangement with one or more different districts for its second or third year of eligible weighting by adopting and filing a new joint board resolution pursuant to this subrule. Establishing a new whole-grade sharing arrangement does not extend the maximum number of years for which a school district is eligible.

**97.5(5) *Filing board resolutions.*** Each school district that adopts a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization shall file a copy of the board resolution with the department of education not later than October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

**97.5(6) *Filing progress reports.*** Each school district that assigned a supplementary weighting to resident students attending class in a whole-grade sharing arrangement and that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in the following year shall file a report of progress toward reorganization with the school budget review committee, on forms developed by the department of education, no later than August 1 preceding October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

*a.* The progress report shall include, but not be limited to, the following information:

- (1) Names of districts with which the district is studying reorganization.
- (2) Descriptive information on the whole-grade sharing arrangement.
- (3) If the district is studying dissolution, information on whether public hearings have been held, a proposal has been adopted, and an election date has been set.
- (4) If the district is studying reorganization, information on whether public hearings have been held, a plan has been approved by the AEA, and an election date has been set.
- (5) Description of joint activities of the boards such as planning retreats and community meetings.
- (6) Information showing an increase in sharing activities with the whole-grade sharing partners such as curriculum offerings, program administration, personnel, and facilities.

*b.* The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2019. Indicators of progress may include, but are not limited to:

- (1) Establishing substantially similar salary schedules or a plan by which the sharing districts will be able to develop a single salary schedule upon reorganization.
- (2) Establishing a joint teacher evaluation process and instruments.
- (3) Developing a substantially similar continuous school improvement plan (CSIP) with aligned goals including a district professional development plan.
- (4) Increasing the number of grades involved in the whole-grade sharing arrangement.
- (5) Increasing the number of shared teaching or educator positions.
- (6) Increasing the number or extent of operational sharing arrangements.
- (7) Increasing the number of shared programs such as career, at risk, gifted and talented, curricular, or cocurricular.
- (8) Increasing the number of joint board meetings or planning retreats.
- (9) Holding regular or frequent public meetings to inform the public of progress toward reorganization and to receive comments from the public regarding the proposed reorganization.
- (10) Adopting a reorganization or dissolution proposal.
- (11) Setting proposed boundaries.
- (12) Setting a date for an election on the reorganization or dissolution proposal.

*c.* The school budget review committee shall consider each progress report at its first regular meeting of the fiscal year and shall accept the progress report or shall reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

*d.* A school district whose progress report is not accepted shall be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee shall accept or reject the revised progress report.

*e.* If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district shall not be eligible for supplementary weighting for whole-grade sharing.

[ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 1486C, IAB 6/11/14, effective 5/15/14; ARC 1596C, IAB 9/3/14, effective 10/8/14]

### **281—97.6(257) Supplementary weighting plan for ICN video services.**

**97.6(1) Eligibility.** Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment, is not eligible for supplementary weighting for the same course under another supplementary weighting plan, and meets any of the criteria in “a,” “b,” or “c” below. For purposes of this subrule, the portion of a course offered via ICN video services shall be considered separately from the portion of the course not offered via ICN video services. Eligible students include:

*a.* Resident students who receive a virtual class provided by another school district via ICN video services.

*b.* Resident students who attend a virtual class that the resident district is providing to students in one or more other school districts via ICN video services.

*c.* Resident students who receive a virtual community college class via ICN video services. The community college class must be a course eligible for supplementary weighting under the criteria listed in subrule 97.2(5).

**97.6(2) Weighting.** Resident students eligible for supplementary weighting pursuant to subrule 97.6(1) shall be eligible for a weighting of one-twentieth of the fraction of the school year during which the pupil attends the virtual class.

**97.6(3) Payment to teachers.** A school district that includes students in a virtual class for supplementary weighting shall reserve 50 percent of the supplementary weighting funding the district will receive as a result of including the resident students in the virtual class for supplementary weighting as additional pay for the virtual class teacher.

*a.* The employer of the virtual class teacher will make the payment.

*b.* The additional pay includes salary and the employer’s share of FICA and IPERS.

*c.* The employer shall pay the virtual class teacher during the same school year in which the virtual class is provided.

*d.* The employer may pay the virtual class teacher at the conclusion of the virtual class or may pay the teacher periodic payments that represent the portion of the virtual class that has been provided. The employer may not pay the teacher prior to services being rendered.

*e.* The additional pay shall be calculated as 0.5 multiplied by the supplementary weighting for the virtual class multiplied by the district cost per pupil in the subsequent budget year.

*f.* If the teacher’s contract includes additional pay for teaching the virtual class, the teacher shall receive the higher amount of the additional pay in the contract or the amount of the additional pay calculated pursuant to paragraphs “b” and “e” above. For purposes of this comparison, the employer shall compare the salary portions only.

*g.* The contract between the agencies shall provide for the additional pay for the teacher of the virtual class. That 50 percent of the supplementary weighting funding would be paid in addition to the tuition sent to the providing district or community college to be paid as additional pay to its teacher employee.

### **281—97.7(257) Supplementary weighting plan for operational services.**

**97.7(1) Eligibility.** Supplementary weighting is available if all of the following criteria are met:

*a.* The district shares a discrete operational function with one or more other political subdivisions pursuant to a written contract.

*b.* The district shares an operational function for at least 20 percent of the contract time period during the fiscal year that is customary for a full-time employee in the operational function for at least 20 percent of the contract time period during the fiscal year. The 20 percent is measured each fiscal year and for each discrete operational function.

c. Personnel shared as part of an operational function are employees of one of the sharing partners but are not employees of more than one of the sharing partners.

d. If the district shares an operational function with more than one political subdivision, the sharing arrangement is listed only once for purposes of supplementary weighting.

e. If the district shares more than one individual in the same operational function, that operational function shall be listed only once for the purposes of supplementary weighting.

f. No individual personnel shall be included for operational function sharing more than once for supplementary weighting in the same fiscal year.

g. If more than one sharing arrangement is implemented in any one operational function area and the services shared are substantially similar as determined by the department of education, only the sharing arrangement implemented first will be eligible for supplementary weighting.

h. The operational function areas shared include one or more of the areas listed in subrule 97.7(2).  
**97.7(2) Operational function area eligibility.** “Operational function sharing” means sharing of managerial personnel in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, facility operation or maintenance management, curriculum director, master social worker, independent social worker, or school counselor. “Operational function sharing” does not mean sharing of clerical personnel or school principals. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

a. *Superintendent management.*

(1) Shared personnel must perform the services of a superintendent, in the case of a school district, or chief administrator, in the case of an area education agency, or executive administrator, in the case of other political subdivisions. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

(2) Clerical or other support services personnel in the superintendent function area or executive administrator function area shall not be considered shared superintendent management under this subrule.

(3) Shared superintendent services or executive administrator services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

b. *Business management.*

(1) Shared personnel must perform the services of managing the business operations. Managing business operations would include personnel performing the duties of a business manager or school business official, or personnel performing duties including, but not limited to, those listed in Iowa Code chapter 291 for a board secretary or board treasurer.

(2) Services of clerical personnel, school administration managers, superintendents, principals, teachers, board officers except those listed in subparagraph (1), or any other nonbusiness administration personnel shall not be considered shared business management under this subrule.

(3) Shared business management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

c. *Human resources management.*

(1) Shared personnel must perform the services of managing human resources.

(2) Services of clerical personnel, superintendents, principals, curriculum directors, teachers, or board officers shall not be considered shared human resources management under this subrule.

(3) Shared human resources management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

d. *Student transportation management.*

(1) Shared personnel shall include transportation directors or supervisors. Shared personnel must perform services related to transportation.

(2) Services of school business officials, business managers, school administration managers, clerical or paraprofessional personnel, school bus mechanics, and school bus drivers shall not be considered shared student transportation management under this subrule.

(3) Shared transportation management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*e. Facility operations and maintenance.*

(1) Shared personnel shall include facility managers and supervisors of buildings or grounds. Shared personnel must perform services related to facility operations and maintenance.

(2) Services of school business officials, business managers, school administration managers, clerical personnel or custodians shall not be considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*f. Curriculum director.*

(1) Shared personnel must perform the services of a curriculum director.

(2) Technology directors and clerical, paraprofessional, or other support services personnel in the improvement of instruction function area shall not be considered a shared curriculum director under this subrule.

(3) Shared curriculum director services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*g. School counselor.*

(1) Shared personnel must perform the services of a school counselor. An individual performing the function of a school counselor must be properly licensed for that position.

(2) Deans of students, social workers, or clerical, paraprofessional, or other support services personnel in the guidance services function area shall not be considered a shared school counselor under this subrule.

(3) Shared school counselor services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*h. School social worker.*

(1) Shared personnel must perform the services of a school social worker. An individual performing the function of a school social worker must be properly licensed for that position.

(2) Social workers providing services required to be provided by an area education agency shall not be considered a shared school social worker under this subrule.

(3) Shared school social worker services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

**97.7(3) Eligibility.** The supplementary weighting for eligible shared operational functions may be included beginning on October 1, 2013.

*a.* Receipt of supplementary weighting shall be conditioned upon the submission of information provided in the format prescribed by the department of education as part of the BEDS fall data collection.

*b.* The documentation on the BEDS fall data collection shall be filed no later than the published deadline for that data collection.

**97.7(4) Contiguous districts.** School districts that share operational functions with other school districts are not required to be contiguous school districts. If the districts are not contiguous, the district(s) separating those districts is not required to be a party to the operational sharing arrangement.

**97.7(5) Consecutive years.** A school district that is eligible to add a supplementary weighting for a shared operational function is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, 2023.

**97.7(6) Change in sharing partners.** A school district that is eligible to add a supplementary weighting for a shared operational function may enter into an operational function sharing arrangement with one or more different sharing partners.

**97.7(7) Change in shared personnel.** A school district that is eligible to add a supplementary weighting for a shared operational function may enter into an operational function arrangement for a different individual in a substantially similar position.

**97.7(8) *Multiple shared operational functions.*** A school district that implements more than one sharing arrangement within any discrete operational function area shall be eligible for supplementary weighting for only one sharing arrangement in that discrete operational function.

**97.7(9) *Multiple shared individuals within an operational function.*** A school district that implements more than one sharing arrangement within any discrete operational function area, as both the contract holder and the purchaser of services, shall not be eligible for supplementary weighting if the sharing arrangements would not have been necessary had the district utilized its own properly licensed and qualified employee(s).

**97.7(10) *Weighting.*** A school district that shares an operational function in the area of superintendent management shall be assigned a supplementary weighting of eight pupils for the function. A school district that shares an operational function in the area of business management, human resources management, transportation management, or operation and maintenance management shall be assigned a supplementary weighting of five pupils for the function. A school district that shares the operational functions of a curriculum director, master social worker, independent social worker, or school counselor shall be assigned a supplementary weighting of three pupils for the function. The supplementary weighting shall be assigned to each discrete operational function shared. The department shall reserve the authority to determine if an operational sharing arrangement constitutes a discrete arrangement or qualifying operational sharing arrangement if the circumstances have not been clearly described in the Iowa Code or the Iowa Administrative Code.

**97.7(11) *Sharing arrangement duties.*** A school district may receive the additional weighting for the sharing of services of an individual with a political subdivision that is not a school corporation even if the type of operational function performed by the individual for the school district and the type of operational function performed by the individual for the political subdivision are not the same operational function, so long as both operational functions are eligible for weighting. In such case, the school district shall be assigned the additional weighting for the type of operational function that the individual performs for the school district, and the school district shall not receive additional weighting for any other function performed by the individual.

**97.7(12) *Maximum weighting.*** The maximum amount of additional weighting for which a school district participating in operational function sharing shall be eligible in a budget year is an amount corresponding to 21 full-time equivalent pupils. The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function. Each eligible discrete operational function sharing arrangement shall be included in the total of all operational function sharing. If the district's total of all discrete operational function sharing exceeds 21 full-time equivalent pupils, the department shall make a reduction in the total rather than separately adjusting the discrete operational function sharing that made up the total.

**97.7(13) *Uses of funding.*** Additional funds provided through supplementary weighting for operational function sharing shall be used to increase student opportunities.

**97.7(14) *Area education agency maximum funding.*** The provisions of rule 281—97.7(257) also apply to an area education agency except for pupil counts for operational function sharing and maximum weightings.

*a.* An area education agency shall be eligible for a minimum amount of additional funding of \$30,000 in a budget year for the total of all operational function sharing arrangements.

*b.* An area education agency shall be eligible for a maximum amount of additional funding of \$200,000 in a budget year for the total of all operational function sharing arrangements.

*c.* The department of management shall annually set a weighting for each area education agency to generate the approved operational function sharing dollars using each area education agency's special education cost-per-pupil amount and foundation level.

[ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 1119C, IAB 10/16/13, effective 11/20/13; see Delay note at end of chapter; ARC 1486C, IAB 6/11/14, effective 5/15/14; ARC 1596C, IAB 9/3/14, effective 10/8/14; ARC 4297C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12 and Iowa Code chapter 261E.

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[Filed Emergency ARC 1486C, IAB 6/11/14, effective 5/15/14]

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[Filed ARC 4297C (Notice ARC 4156C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

<sup>1</sup> March 28, 2012, effective date of 97.1, “regional academy,” and 97.4(1) “c,” “h” delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

<sup>2</sup> November 20, 2013, effective date of ARC 1119C [97.7] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held November 8, 2013.



CHAPTER 98  
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I  
GENERAL PROVISIONS

**281—98.1(256,257) Definitions.** For the purposes of this chapter, the following definitions apply:

*“Budgetary allocation”* means the portion of the funding that is specifically earmarked for a particular purpose or designated program and that, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves the modified supplemental amount for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil shall be considered transferred to the receiving school district and shall be expended for the specific purpose for which it was earmarked.

*“Categorical funding”* means financial support from state and federal governments that is targeted for particular categories of students, special programs, or special purposes. This support is in addition to school district or area education agency general purpose revenue, is beyond the basic educational program, and most often has restrictions on its use. Where categorical funding requires a local match, that local match also is considered to be categorical funding. Categorical funding includes both grants in aid and budgetary allocations. Although grants in aid and budgetary allocations are both categorical funding, they are defined separately to distinguish unique characteristics of each type of categorical funding.

*“Community education”* means a life-long education process concerning itself with every facet that affects the well-being of all citizens within a given community. It extends the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and coordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.

Community education energizes people to strive for the achievement of determined goals and stimulates capable persons to assume leadership responsibilities. It welcomes and works with all groups, it draws no lines. It is the one institution in the entire community that has the opportunity to reach all people and groups and to gain their cooperation.

*“Grants in aid”* means financial support, usually from state or federal appropriations, that is either allocated to the school district or area education agency or for which a school district or area education agency applies. This support is paid separately from state foundation aid. In the general fund, grants in aid become miscellaneous income and increase budget authority when the support is received as revenue.

*“Supplement, not supplant”* means that the categorical funding shall be in addition to general purpose revenues; that categorical funding shall not be used to provide services required by federal or state law, administrative rule, or local policy; and that general purpose revenues shall not be diverted for other purposes because of the availability of categorical funding. Supplanting is presumed to have occurred if the school district or area education agency uses categorical funding to provide services that it was required to make available under other categorical funding or law, or uses categorical funding to provide

services that it provided in prior years from general purpose revenues, or uses categorical funding to provide services to a particular group of children or programs for which it uses general purpose revenues to provide the same or similar services to other groups of children or programs. These presumptions are rebuttable if the school district or area education agency can demonstrate that it would not have provided the services in question with general purpose revenues if the categorical funding had not been available.

“*Technology*” means hardware, noninstructional software and software required to provide functionality to the hardware, wireless presenters, networking and connectivity systems, computing storage, website development services, hardware carrying equipment, licensing, and technical assistance for installation of hardware, software, or software updates. Technology does not include such items as instructional software or textbook substitutes as defined in Iowa Code chapter 301, professional development, staff providing support to teachers or students, general supplies, district personnel or individuals/companies hired or contracted in lieu of district personnel, travel, printing costs or media services not listed in this definition, insurance, most purchased services, or similar district functions. Maintenance contracts do not meet the definition of “technology” unless they are actually a license renewal fee; Internet subscriptions, licenses, or fees; cable or satellite services; or very similar services. [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.2(256,257) General finance.** The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

**98.2(1) Indirect cost recovery.** Categorical funding provided by the state to school districts or area education agencies is not eligible for indirect cost recovery unless the Iowa Code section authorizing the funding or allocation expressly states that indirect cost recovery is permitted from that source. If the Iowa Code permits indirect cost recovery, the school district or area education agency shall utilize its restricted indirect cost rate developed by the department for federal programs from data submitted by the school district or area education agency on its certified annual report.

**98.2(2) Restriction on supplanting.** Categorical funding shall supplement, but shall not supplant, expenditures in the appropriate fund into which the categorical funding is deposited and accounted for, unless the Iowa Code section authorizing the funding or allocation expressly states that supplanting is permitted from that source.

**98.2(3) Mandatory carryforward.** Notwithstanding the flexibility account as described in rule 281—98.27(257,298A), any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency shall be carried forward as a reserved fund balance and added to the subsequent year’s budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward shall not be used as part of the required local match.

**98.2(4) Discontinued funding.** In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency may do one of, or a combination of, the following:

*a.* Carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This option does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 Iowa Code and 2007 Iowa Code Supplement).

*b.* Transfer the unexpended balance to the flexibility account as described in rule 281—98.27(257,298A).

**98.2(5) Expenditures.** Expenditures from categorical funding shall be limited to direct costs of providing the program or service for which the funding was intended. Expenditures shall not include costs that are allocated costs or that are considered indirect costs or overhead. Expenditures for

the functions of administration, business and central services, operation and maintenance of plant, transportation, enterprise and community service operations, facility acquisition and construction, or debt service generally are not allowed from categorical funding unless expressly allowed by the Iowa Code or if the expenditure represents a direct, allowable cost. In order for costs of administration, business and central services, operation and maintenance of plant, transportation, or enterprise and community service operations to be considered direct costs, the costs must be necessary because of something that is unique to the program that is causing the need for the service, not otherwise needed or not otherwise provided to similar programs; the costs must be in addition to those which are normally incurred; and the costs must be measurable directly without allocating. Where a local match is required for categorical funding, that local match requirement shall not be met by the use of other categorical funding except where expressly allowed by the Iowa Code. Expenditures shall not include reimbursing the school district or area education agency for expenditures it paid in a previous year in excess of the funding available for that year.

**98.2(6) *Restriction on duplication.*** The school district or area education agency shall not charge the same cost to more than one funding source.

**98.2(7) *Excess expenditures.*** The school district or area education agency shall not charge to categorical funding more expenditures than the total of the current year's funding or allocation, plus any carryforward balance from the previous year, plus any moneys designated from the flexibility account as described in rule 281—98.27(257,298A).

**98.2(8) *Commingling prohibited.*** Categorical funding shall not be commingled with other funding. All categorical funding shall be accounted for separately from other funding. School districts and area education agencies shall use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as appropriate or required.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.3 to 98.10** Reserved.

DIVISION II  
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

**281—98.11(257) *Categorical and noncategorical student counts.*** The certified enrollment data collection includes both student counts related to budgetary allocations for the subsequent budget year that are provided for the purpose of offering a program that is in addition to the basic educational program for a specific category of students and student counts that are general in nature and can be used for any legal general fund purpose. Student counts that are general in nature are used to generate funding through the school aid foundation formula and are not intended to fund a specific program or a specific category of students. General student counts include the basic enrollment of full-time resident students.

Counts for part-time nonpublic students participating in public school classes pursuant to Iowa Code section 257.6(3) and counts for part-time dual enrolled competent private instruction students in grades 9 through 12 are the full-time equivalent enrollment of a regularly enrolled student. Counts for dual enrolled competent private instruction students in grades lower than grade 9 are the legislatively set equivalent of a regularly enrolled full-time student. Counts for part-time nonpublic students and for part-time dual enrolled competent private instruction students in grades 9 through 12 who participate in the postsecondary enrollment option Act classes are the full-time equivalent of a regularly enrolled student based on cost. Because these counts are the full-time equivalent of a regularly enrolled student, and are not in addition to the full-time equivalent, the funding generated within the school aid foundation formula based on these counts is considered general in nature.

Student counts related to categorical budgetary allocations are those that generate funding intended to be used for only that specific category of students being counted or for the specific program for which the additional counts are authorized in the Iowa Code.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.12(257,299A) Home school assistance program.** The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1) “a”(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), shall be expended for purposes of providing the home school assistance program. However, a district may use items and materials purchased for the home school assistance program for other purposes so long as this use does not prevent or interfere with the item’s or material’s use by parents or students utilizing the program.

**98.12(1) *Appropriate uses of categorical funding.*** Appropriate uses of the home school assistance program funding include, but are not limited to, the following:

- a. Instruction for students and assistance for parents with instruction.
- b. Services to support students enrolled in a home school assistance program, to support the teaching parents of the students, and to support home school assistance program staff.
- c. Salary and benefits for the supervising teacher of the home school assistance program. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, then the portion of time that is related to providing the home school assistance program can be charged to the program, but the regular classroom portion cannot.
- d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff member’s employment supports other programs of the school district, only that portion of the staff member’s salary and benefits that is related to providing the home school assistance program can be charged to the program.
- e. Staff development for the home school assistance program teacher.
- f. Travel for the home school assistance program teacher.
- g. Resources, materials, computer software, supplies, equipment, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.
- h. A copier and computer hardware that support the home school assistance program.
- i. Student transportation exclusively for home school assistance program-approved field trips or other educational activities.

**98.12(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the home school assistance program funding include, but are not limited to, indirect costs or use charges; operational or maintenance costs other than those necessary to operate and maintain the program; capital expenditures other than equipment or the lease or rental of space to supplement existing schoolhouse facilities for the program; student transportation except in cases of home school assistance program-approved field trips or other educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys or resources paid for with this program funding to parents or students utilizing the program. For capital expenditures for lease or rental of classrooms or facilities for this program, the cost will be expended from a capital projects fund. A reimbursement for that cost related to the program will be an interfund transfer to the capital project fund from the program funding.

**98.12(3) *Flexibility account.*** All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the home school assistance program have been met, including funding all requests for services and materials from parents or guardians of students eligible to access the program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter); ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 0012C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.13(256C,257) Statewide voluntary four-year-old preschool program.** The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

**98.13(1) *Appropriate uses of categorical funding.*** Foundation aid funding provided for the program may be used by approved local programs and community providers for any purpose designated by the board of directors of the school district to meet standards for high-quality preschool instruction and for purposes that directly or indirectly benefit students enrolled in the approved local program. These purposes include, but are not limited to, the following:

- a. Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.
- b. Functions of student support services, including translation services.
- c. Functions of staff support services, including professional development for preschool teachers.
- d. Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.
- e. Food and beverages used by enrolled students.
- f. Safety equipment.
- g. Playground equipment and repair costs.
- h. Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3) "h" may be prorated by the school district.
- i. Other direct costs that enhance the approved local program, including contracting with community providers for such services.
- j. Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which preschool program expenditures are authorized by law, if space and funding are available; however, the child shall not be counted for statewide voluntary preschool program funding purposes.

**98.13(2) *Pass-through funding to community-based providers.*** The school district shall pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per-pupil amount.

a. The community-based provider may use up to 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed as part of the 10 percent under this paragraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule shall be refunded to the district annually on or before July 1.

c. Any portion refunded to the district shall be added to the total amount available for the district's approved local program for the subsequent school year, excluding the portion of such unexpended and unobligated funding that the school district authorizes to be transferred to the district's flexibility account described in rule 281—98.27(257,298A).

**98.13(3) *Inappropriate uses of categorical funding.*** Inappropriate uses of the statewide voluntary four-year-old preschool program funding include, but are not limited to, indirect costs or use charges, capital expenditures other than equipment, facility acquisition not expressly allowed by the Iowa Code, construction, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

**98.13(4) *Flexibility account.*** All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 and described in rule

281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 0518C, IAB 12/12/12, effective 1/16/13; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.14(257) Supplementary weighting.** Supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of students and staff between school districts and providing postsecondary opportunities for qualified students. It is assumed that supplementary weighting covers only a portion of the costs of sharing or providing postsecondary opportunities and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the supplementary weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.15(257) Operational function sharing supplementary weighting.** Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing management-level staff, a curriculum director, or a school counselor and shall be fully expended within the five-year period of sharing. Therefore, school districts are not required to account for the operational function sharing supplementary weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.16(257,280) Limited English proficiency (LEP) weighting.** Limited English proficiency weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of limited English proficiency students above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified supplemental amount to continue funding of the excess costs beyond the five years of weighting. Funding for the limited English proficiency weighting and the modified supplemental amount for limited English proficiency programs are both categorical funding and may have different restrictions than the federal limited English proficiency funding.

**98.16(1) *Appropriate uses of categorical funding.*** Appropriate uses of funding for the limited English proficiency program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures include, but are not limited to, salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in limited English proficiency programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of limited English proficiency students and community services specific to limited English proficiency.

**98.16(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of funding for the limited English proficiency program include, but are not limited to, indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the limited English proficiency program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.17(256B,257) Special education weighting.** Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 2310C, IAB 12/9/15, effective 1/13/16]

**281—98.18(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting.** Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to students identified as at risk, potential or returning dropouts, and secondary students attending an alternative program or alternative school pursuant to Iowa Code section 257.11(4)“a.”

**98.18(1) Appropriate uses of categorical funding.** Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include those identified in subrule 98.21(2).

**98.18(2) Inappropriate uses of categorical funding.** Inappropriate uses of at-risk formula supplementary weighting program funding include those identified in subrule 98.21(3).

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.19(257) Reorganization incentive weighting.** Reorganization incentive weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting reorganization of school districts to increase student learning opportunities. It is assumed that reorganization incentive weighting covers only a portion of the costs of reorganizing and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the reorganization incentive weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.20(257) Gifted and talented program.** Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the supplemental state aid percentage. This amount must account for not more than 75 percent of the school district’s total gifted and talented program budget. The school district must also provide a local match from the school district’s regular program district cost, and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students’ needs beyond those provided by the regular school program pursuant to each gifted student’s individualized plan. The funding shall be used only for expenditures that are directly related to providing the gifted and talented program.

**98.20(1) Appropriate uses of categorical funding.** Appropriate uses of the gifted and talented program funding include, but are not limited to:

*a.* Salary and benefits for the teacher of gifted and talented students. If the teacher is a part-time gifted and talented and a part-time regular classroom teacher, then the portion of time that is related to the gifted and talented program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

*b.* Staff development for the gifted and talented teacher.

*c.* Resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

(2) Are beyond those provided by the regular school program,

- (3) Are necessary to provide the services listed on the gifted students' individualized plans, and
- (4) Will remain with the K through 12 gifted and talented program.

*d.* Student transportation exclusively for approved gifted and talented program field trips or other educational activities.

**98.20(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the gifted and talented program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than field trips exclusive to this program, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount.** A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code sections 257.38, 257.39, 257.40, and 257.41. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

**98.21(1) *Purpose of categorical funding.*** The purpose of the modified supplemental amount is to provide funding to meet the needs of identified students for costs in excess of the amount received under rule 281—98.18(257) pursuant to Iowa Code section 257.11(4). The funding shall be used only for expenditures that are directly related to the district's board-adopted program plan established pursuant to Iowa Code sections 257.38 through 257.41.

*a.* Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

*b.* Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

- (1) High rate of absenteeism, truancy, or frequent tardiness.
- (2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.
- (3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.
- (4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

(5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

**98.21(2) *Appropriate uses of categorical funding.*** Appropriate uses of the funding for a board-adopted program include, but are not limited to:

*a.* Salary and benefits for staff, including but not limited to instructional staff, instructional support staff, administrative staff, and guidance counselors; salary and benefits or contract payments for psychologists licensed under Iowa Code chapter 154B, licensed independent social workers or master social workers under Iowa Code chapter 154C, licensed mental health counselors under Iowa Code chapter 154D; and salaries and benefits for school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the adopted program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person works part-time or on a contract basis with students

who are participating in the approved program and has another unrelated staff assignment, only the portion of the person's time that is related to the program or with such students may be charged to the program funding. The school district shall have the authority to designate in its adopted program plan the portion of the person's time and related salary and benefits or contract payment amount dedicated to this purpose.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk to accelerate through multiple grade levels of achievement within a shortened time frame.

*b.* Professional development for all staff identified in paragraph 98.21(2)“*a*” working with identified students under an adopted program.

*c.* Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

- (1) Meet the needs of K through grade 12 identified students,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's adopted at-risk or returning dropout and dropout prevention program plan, and
- (4) Will remain with the K through grade 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

*d.* Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program outside a student's regular attendance center, located in and provided by another Iowa school district, or an extended school year program.

*e.* The portion of the maximum tuition allowed by Iowa Code section 282.24 that corresponds to the portion exclusively providing direct additional instruction and services to an identified group of students above the costs of instruction of pupils in a regular curriculum.

*f.* Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

- (1) The child does not require special education.
- (2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.
- (3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.
- (4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

*g.* Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

*h.* Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4)“*a*” or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

*i.* School security personnel costs.

*j.* Any purpose determined by the board of directors that directly benefits students participating in the adopted program.

**98.21(3) *Inappropriate uses of categorical funding.*** Inappropriate uses of the modified supplemental amount program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, expenses related to the routine duties and

activities performed by a staff member under paragraph 98.21(2) “a” with identified students that are also provided to all students, or any other expenditures not directly related to providing the board-adopted program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 0518C, IAB 12/12/12, effective 1/16/13; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.22(257) Use of the unexpended general fund balance.** The unexpended general fund balance refers to the fund balance remaining in the general fund at the end of the fiscal year.

**98.22(1) Authorization required.** The school budget review committee may authorize a school district to spend a reasonable and specified amount from its unexpended general fund balance for either of the following purposes:

a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the school district have approved a bond issue as provided by law or the tax levy provided in Iowa Code section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under Iowa Code chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

**98.22(2) Appropriate uses of categorical funding.** Appropriate uses of the unexpended general fund balance include a transfer from the general fund to the capital projects fund in the amount approved by the school budget review committee. The moneys in the capital projects fund shall be used exclusively for furnishing, equipping or constructing a new building or for demolishing an unused building.

**98.22(3) Inappropriate uses of categorical funding.** Inappropriate uses of the unexpended general fund balance include, but are not limited to, expenditures for salaries or recurring costs.

**98.22(4) Mandatory reversion of unused funding.** The portion of the unexpended general fund balance which is authorized to be transferred and expended shall increase budget authority. However, any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended general fund balance, and budget authority will be reduced by the amount not actually spent.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.23(257) Early intervention supplement.**

**98.23(1) Appropriate uses of categorical funding.** Appropriate uses of the early intervention-supplement funding include any general fund-appropriate use described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

**98.23(2) Inappropriate uses of categorical funding.** Inappropriate uses of the early intervention-supplement funding include those which are inappropriate to the general fund as described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

**98.23(3) Deference.** Deference shall be given to the decisions of school districts’ boards of directors in accordance with Iowa Code section 257.10.

This rule is intended to implement Iowa Code section 257.9(8).

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.24(257,284) Teacher salary supplement.** A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

**98.24(1) Appropriate use of categorical funding.** Appropriate use of the teacher salary supplement funding is limited to additional salary for teachers, including amounts necessary for the district to comply with statutory teacher salary minimums; the amount required to pay the employers’ share of the federal social security and Iowa public employees’ retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294; and payments to another school district

or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10, subsection 4. Teacher salary supplement funding shall be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency shall carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

**98.24(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the teacher salary supplement funding include any expenditures other than the appropriate use described in subrule 98.24(1) hereof.

**98.24(3) *Deference.*** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.25(257,284) Teacher leadership supplement.** The purpose of the teacher leadership supplement is to improve instruction and elevate the quality of teaching and student learning.

**98.25(1) *Appropriate uses of categorical funding.*** Appropriate uses of teacher leadership supplement funding shall be used only to increase the payment for a teacher assigned to a leadership role pursuant to a framework or comparable system approved pursuant to Iowa Code section 284.15; to increase the percentages of teachers assigned to leadership roles; to increase the minimum teacher starting salary to \$33,500; to cover the costs for the time mentor and lead teachers are not providing instruction to students in a classroom; for coverage of a classroom when an initial or career teacher is observing or co-teaching with a teacher assigned to a leadership role; for professional development time to learn best practices associated with the career pathways leadership process; and for other costs associated with a framework or comparable system approved by the department of education under Iowa Code section 284.15 with the goals of improving instruction and elevating the quality of teaching and student learning. "Payment for a teacher" as used in this rule means additional salary for teachers and the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294. Appropriate uses also include payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4) and payment to another school district receiving an open enrolled student pursuant to Iowa Code section 282.18.

**98.25(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of teacher leadership supplement funding shall include any expenditures other than the appropriate uses described in subrule 98.25(1).

[ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.26(257,284) Educator quality professional development, also known as professional development supplement.** The purpose of the funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.15.

**98.26(1) *Appropriate uses of categorical funding.*** Appropriate uses of the educator quality professional development funding, and any amount designated for professional development purposes from the flexibility account as described in rule 281—98.27(257,298A), are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; activities and pay to support a beginning teacher mentoring and induction program that meets the requirements of Iowa Code section 284.5; pay for substitute teachers, professional development materials, speakers, and professional development content; textbooks and curriculum materials used for classroom purposes if such textbooks and curriculum materials include professional development; administering assessments pursuant to Iowa Code sections 256.7(21) "b"(1) and 256.7(21) "b"(2) if such assessments include professional development; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). The use of the funds shall be balanced between school district, attendance center,

and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

**98.26(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of educator quality professional development funding include, but are not limited to, any expenditures that supplant professional development opportunities the school district otherwise makes available.

**98.26(3) *Deference.*** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

**98.26(4) *Transfer to flexibility account.*** All or a portion of the moneys received as professional development supplement that remain unexpended and unobligated at the end of a fiscal year may be transferred for deposit to the flexibility account as described in rule 281—98.27(257,298A).

In order to transfer funds to the flexibility account, all requirements of Iowa Code chapter 284 must be met.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.27(257,298A) Flexibility account.** Beginning with the budget year beginning July 1, 2017, in accordance with Iowa Code section 298A.2, a flexibility account shall be established in the general fund of each school corporation if the school corporation has authorized a transfer of all or a portion of its unexpended and unobligated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, and the home school assistance program. Additionally, moneys from any other school district fund or general fund account can be transferred to the flexibility account if the program, purpose, or requirements for expenditure of such moneys have been repealed or are no longer in effect.

**98.27(1) *Requirements for transfer to the flexibility account.*** In order to transfer funds to the flexibility account, the board of directors of the school corporation must determine that the statutory requirements for the source funds have been met.

*a.* To transfer funds from the statewide voluntary preschool program, the school district must have provided preschool programming during the fiscal year for which funding remains unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

*b.* To transfer funds from the home school assistance program, the school district must have funded all requests for services and materials from parents and guardians of students eligible to access the program.

**98.27(2) *Requirements for use of funds deposited to the flexibility account.*** Expenditures from the flexibility account shall be approved by a resolution of the board of directors of the school corporation which meets all requirements stipulated in Iowa Code section 298A.2.

**98.27(3) *Appropriate uses of categorical funding.*** Appropriate uses of funds transferred to the flexibility account are limited to the following:

*a.* Start-up costs for an approved local program under the statewide voluntary preschool program.

*b.* Support of the approved statewide voluntary preschool program.

*c.* Professional development requirements under the professional development supplement.

*d.* Support of the home school assistance program.

*e.* Support of the at-risk program, alternative program or alternative school, and potential or returning dropout prevention program.

*f.* Support of the approved gifted and talented program.

*g.* Deposit into the unpaid student meals account as described in subrule 98.74(4).

*h.* Any other general fund purpose.

**98.27(4) *Inappropriate uses of categorical funding.*** Inappropriate uses of funds within the flexibility account include any expenditures for purposes not specified in Iowa Code section 298A.2.

**98.27(5) *Deference.*** Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

[ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.28 to 98.39** Reserved.

DIVISION III  
APPROPRIATE USE OF GRANTS IN AID

**281—98.40(256,257,298A) Grants in aid.** The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.41** Reserved.

**281—98.42(257,284) Beginning teacher mentoring and induction program.** The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, as established by 2017 Iowa Acts, chapter 172, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.43(257,284A) Beginning administrator mentoring and induction program.** The purpose of the beginning administrator mentoring and induction program is to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

**98.43(1) *Appropriate uses of categorical funding.*** Appropriate uses of the beginning administrator mentoring and induction program funding include costs to provide each mentor with the statutory award for participation in the school district's beginning administrator mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district.

**98.43(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of beginning administrator mentoring and induction program funding shall include any costs that are not listed in subrule 98.43(1) as appropriate uses.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.44(257,301) Nonpublic textbook services.** Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

**98.44(1) *Appropriate uses of categorical funding.*** The appropriate use of the nonpublic textbook services funding shall be for the public school district to purchase nonsectarian textbooks for the use of pupils attending accredited nonpublic schools located within the boundaries of the public school district. "Textbooks" means books and loose-leaf or bound manuals, systems of reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process, or electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, other computer courseware and magnetic media, and laptop computers or other portable personal computing devices which are used for nonreligious instructional use only.

In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code shall be transferred to the school district in which the accredited nonpublic school has relocated and may be made available to the accredited nonpublic school by the school district in which the nonpublic school has relocated. Funds distributed to a former school district

for purposes of purchasing textbooks and that are unexpended shall also be transferred from the former school district to the school district in which the accredited nonpublic school has relocated.

In the event that a participating accredited nonpublic school ceases operation, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code shall be returned to the public school district in which the nonpublic school was located. Funds provided for the purpose of purchasing textbooks for the nonpublic school that are unexpended shall be reverted to the department of education.

**98.44(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of nonpublic textbook services funding include, but are not limited to, reimbursements to accredited nonpublic schools for purchases made by the accredited nonpublic school, sectarian textbooks, computer hardware other than laptop computers or other portable personal computing devices which are used for nonreligious instructional use only, installation of hardware or other purchased services, teacher manuals or any other materials not available to the students attending the accredited nonpublic school, or any other expenditure that does not fit the definition of textbook. Funding provided for one nonpublic school located within the boundaries of the public school district shall not be used for another accredited nonpublic school, even if the accredited nonpublic school is associated with the same parent organization.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.45(279) Early literacy.** School districts shall provide intensive supplemental reading instruction to any student who has been identified as persistently at risk in reading, based upon an assessment or through teacher observations. The student's reading proficiency shall be reassessed by locally determined or statewide assessments. The student shall continue to be provided with intensive reading instruction, at grade levels beyond grade three if necessary, until the student is reading at grade level.

**98.45(1) *Appropriate uses of categorical funding.*** Appropriate uses of early literacy program funding include, but are not limited to:

- a. Intensive supplemental instructional programs, instructional support, and assessment for identified students;
- b. Professional development for staff regarding early literacy program requirements, instructional materials, and assessments;
- c. Purchase of supplemental or specialized curriculum or instructional materials and assessments that are scientific, research-based and meet the standards of Iowa Code section 279.68 for identified students;
- d. If not already being provided with other sources of funding or general program funding, tutoring, mentoring, and extended school day, week, or year programs for identified students;
- e. Intensive summer literacy programs for identified students;
- f. Transportation services for identified students participating in intensive summer literacy programs;
- g. The fee charged by the department for implementation of the early warning assessment for literacy provided in accordance with Iowa Code sections 256.7(31) and 279.68, effective with the budget year beginning July 1, 2017, pursuant to 2017 Iowa Acts, chapter 172.

**98.45(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of early literacy program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.45(1), or administrative costs.

[ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.46 to 98.59** Reserved.

DIVISION IV  
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

**281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds.** Tax levies or funds that are required by law to be expended only for the specific items listed in statute shall be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund shall be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically authorized in statute, and transfers between funds shall be accomplished only as authorized in statute or as approved by the school budget review committee. Public funds shall not be used for private purposes. [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund.** All moneys received by a school corporation from taxes and other sources shall be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency shall have only one general fund.

**98.61(1) Sources of revenue in the general fund.** Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks shall be accounted for in the general fund. Proceeds for loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as “miscellaneous income” or related to the modified supplemental amount is restricted to the general fund.

**98.61(2) Appropriate uses of the general fund.** Appropriate expenditures in the general fund include, but are not limited to, the following:

- a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.
- b. Purchasing school buses from unobligated funds on hand.
- c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.
- d. Employing public health nurses.
- e. Funding insurance agreements if the district has not certified a district management levy.
- f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.
- g. Purchasing safety eye-protective devices and safety ear-protective devices.
- h. Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.
- i. Paying assessed costs related to changes in boundaries, reorganization, or dissolution.
- j. Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.
- k. Engraving and printing school bonds, in the case of a school district.
- l. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.
- m. Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

*n.* Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation as authorized by the school budget review committee in the case of a school district.

*o.* Funding energy conservation projects entered into with the department of natural resources or its duly authorized agents or representatives pursuant to Iowa Code section 473.20, in the case of a school district.

*p.* Transferring to a capital projects fund as authorized by the school budget review committee, in the case of a school district.

*q.* Transferring to a capital projects fund as funds are due to be expended on a capital project authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

*r.* Start-up costs, other than land purchase, for the first year of a new student construction program.

*s.* Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase or, beginning with the budget year beginning July 1, 2018, recondition protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 pursuant to Iowa Code section 298A.8(2).

*t.* Paying any other costs not required to be accounted for in another fund.

**98.61(3)** *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

*a.* Purchasing land or improvements.

*b.* Purchasing or constructing buildings or for capital improvements to real property except under special circumstances authorized by the school budget review committee, in the case of a school district, or except as authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

*c.* Modifying or remodeling school buildings or classrooms even if to make them accessible.

*d.* Paying interest and principal on long-term indebtedness for which the original proceeds were not accounted for in the general fund.

*e.* Funding lease-purchases.

*f.* Purchasing portable buildings.

*g.* Paying individuals or private organizations that are not audited and allowed and related to goods received or services rendered.

*h.* Paying other costs that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code.

**98.61(4)** *Special levies.* The general fund includes two special levy programs available to school districts, but not to area education agencies, that are restricted by the Iowa Code.

*a.* *Instructional support program.* The instructional support program is a district-initiated program to provide additional funding to the district's general fund.

(1) Appropriate uses of instructional support program funding. Moneys received by a district for the instructional support program may be used for any general fund purpose except those listed as inappropriate uses in paragraph "b," subparagraph (2).

(2) Inappropriate uses of instructional support program funding. Moneys received by a district for the instructional support program shall not be used as, or in a manner which has the effect of, supplanting funds authorized to be received under Iowa Code sections 257.41 (returning dropouts and dropout prevention programs), 257.46 (gifted and talented programs), 298.4 (management fund levy), and 298.2 (physical plant and equipment fund levy), or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under Iowa Code section 256B.9.

*b.* *Educational improvement program.* The educational improvement program is a district-initiated program available to districts in special circumstances to provide additional funding to the district's general fund if the district already has the instructional support program in place.

(1) Appropriate uses of educational improvement program funding. Moneys received by a district for the educational improvement program may be used for any general fund purpose.

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund. [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.62(279,296,298,670) Management fund.** The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

**98.62(1) Sources of revenue in the management fund.** Sources of revenue in the management fund include a property tax and interest on the investment of those moneys.

**98.62(2) Appropriate uses of the management fund.** Appropriate expenditures in the management fund include the following:

- a. Costs of unemployment benefits as provided in Iowa Code section 96.31.
- b. Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.
- c. Costs of a final court judgment entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.
- d. Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.
- e. Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees 55 years of age or older who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.
- f. Costs of a physical inventory conducted solely for the purpose of insurance.
- g. Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.
- h. Transfers to the appropriate fund for the portion of an insurance claim which was eligible under the insurance agreement but was denied because it was within the deductible limit.
- i. Payment of costs of mediation and arbitration, including but not limited to legal fees associated with such mediation or arbitration, but not including the results of the mediation or arbitration if those costs do not qualify under paragraph 98.62(2) "c" above.

**98.62(3) Inappropriate uses of the management fund.** Inappropriate expenditures in the management fund include the following:

- a. Costs for employee health benefit plans.
- b. Costs to conduct physical inventories of property for purposes other than insurance.
- c. Costs to conduct actuarial studies.
- d. Costs for supplies or capital outlay.
- e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.
- f. Any other costs not expressly authorized in the Iowa Code.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16]

**281—98.63(298) Library levy fund.** The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district and pay the library the amount agreed upon for the use of the library as provided

by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the agreed-upon consideration.

**98.63(1) Sources of revenue in the library levy fund.** Sources of revenue in the library levy fund include a property tax not to exceed \$0.20 per \$1000 of assessed value of the taxable property of the district and interest on the investment of those moneys.

**98.63(2) Appropriate uses of the library levy fund.** Appropriate expenditures in the library levy fund include expenditures necessary to provide a free public library.

**98.63(3) Inappropriate uses of the library levy fund.** Inappropriate expenditures in the library levy fund include the following:

- a. Capital expenditures related to land or buildings.
- b. Debt service.
- c. Any other costs not necessary to provide a free public library.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund.** The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed \$0.33 per \$1000 of assessed valuation and a voter-approved PPEL not to exceed \$1.34 per \$1000 of assessed valuation, for a total of \$1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

**98.64(1) Sources of revenue in the PPEL fund.** Sources of revenue in the PPEL fund include a property tax, income surtax, and interest on the investment of those moneys, and proceeds from loan agreements in anticipation of the collection of the voter-approved property. Proceeds from the condemnation, sale or disposition of real property are revenue to the PPEL fund. Proceeds from loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the PPEL fund. If the school board intends to enter into a rental, lease, or loan agreement, only a property tax shall be levied for those purposes.

**98.64(2) Appropriate uses of the PPEL fund.** Appropriate expenditures in the PPEL fund include the following:

a. Purchase of grounds including the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental in the property acquisition.

b. Improvement of grounds including grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements.

c. Construction of schoolhouses or buildings.

d. Construction of roads to schoolhouses or buildings.

e. Purchasing, leasing, or lease-purchasing equipment or technology exceeding \$500 in value per purchase, lease, or lease-purchase transaction.

(1) "Equipment" means both equipment and furnishings. The cost limitation for equipment does not apply to recreational equipment pursuant to paragraph 98.64(2) "n" or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building pursuant to paragraph 98.64(2) "h."

(2) "Transaction" means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding \$500 per transaction.

f. Transferring to debt service for payments, when due, of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

g. Procuring or acquisition of library facilities.

*h.* Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. “Repairing” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. “Reconstructing” means rebuilding or restoring as an entity a thing which was lost or destroyed. “Maintenance” means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.

*i.* Energy conservation projects.

*j.* Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48, for loans in anticipation of the collection of the voter-approved property under Iowa Code section 297.36, and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, when the original proceeds were accounted for in the PPEL fund.

*k.* The rental of facilities under Iowa Code chapter 28E.

*l.* Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds \$2,500. “Repairing,” for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds \$2,500.

*m.* Purchase of buildings or lease-purchase option agreements for school buildings.

*n.* Purchase of equipment for recreational purposes.

*o.* Payments to a municipality or other entity as required under Iowa Code section 403.19, subsection 2.

*p.* Asbestos projects including costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, development of management plans and record-keeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.

*q.* Purchase, erect, or acquire a building for use as a school meal facility, and equip a building for that use.

*r.* Purchase of land as part of start-up costs for a new student construction program or if the sale proceeds of the previous student construction were insufficient to purchase land, but not for materials and supplies for a facility intended to be sold.

*s.* Construction materials and supplies for a student-constructed building or shed intended to be retained by and used by the district.

*t.* Demolition of a district-owned building.

*u.* Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

**98.64(3)** *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

*a.* Student construction materials and supplies for a facility intended to be sold.

*b.* Salaries and benefits.

*c.* Travel.

*d.* Supplies.

*e.* Facility, vehicle, or equipment maintenance.

*f.* Printing costs or media services.

*g.* Any other purpose not expressly authorized in the Iowa Code.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 0012C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16]

**281—98.65(276,300) Public educational and recreational levy (PERL) fund.** Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program shall be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. The authority to establish a levy for a PERL fund is available to school districts but not to area education agencies.

**98.65(1) Sources of revenue in the PERL fund.** Sources of revenue in the PERL fund include a property tax levy not to exceed \$0.135 per \$1000 of assessed valuation, any appropriation by the agencies involved in a cooperative effort under Iowa Code chapter 28E, federal grants, donations, and interest on the investment of those moneys.

**98.65(2) Appropriate uses of the PERL fund.** Appropriate expenditures in the PERL fund include the following:

*a.* Establishing and maintaining free public recreation places and playgrounds, including necessary accommodations.

*b.* Providing free public educational and recreational activities.

*c.* Establishing and supervising a free community education program.

*d.* Providing a community education director if a community education program is established.

**98.65(3) Inappropriate uses of the PERL fund.** Inappropriate expenditures in the PERL fund include the following:

*a.* Programs for which a fee may be charged such as before- and after-school programs and preschool programs.

*b.* Any other costs not necessary to provide free programs for community education and for public recreation places, playgrounds, and programs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.66(257,279,298A,565) District support trust fund.** The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency shall not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

**98.66(1) Sources of revenue in the district support trust fund.** Sources of revenue in the district support trust fund include donations of cash, investment instruments, property, and interest on investments held. In a district support trust fund, both principal and interest are available to benefit the school district's programs.

**98.66(2) Appropriate uses of the district support trust fund.** Appropriate expenditures in the district support trust fund include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

**98.66(3) Inappropriate uses of the district support trust fund.** Inappropriate expenditures in the district support trust fund include transfers to nonprofit or private organizations or any expenditure which is not consistent with the terms of the agreement, legal to a school district, or for the benefit of the school district.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.67(257,279,298A,565) Permanent funds.** Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency shall not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

**98.67(1) Sources of revenue in the permanent funds.** Sources of revenue in the permanent funds include donations of cash, investment instruments, property, and interest on investments held. In permanent funds, only interest is available to benefit the school district's programs.

**98.67(2) Appropriate uses of the permanent funds.** Appropriate expenditures in the permanent funds include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

**98.67(3) Inappropriate uses of the permanent funds.** Inappropriate expenditures in the permanent funds include transfers to nonprofit or private organizations, expenditure from principal, or any expenditure which is not consistent with the terms of the agreement, or legal to a school district, or for the benefit of the school district, or any expenditure from the principal portion.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.68(76,274,296,298,298A) Debt service fund.** A debt service fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest. A school district or area education agency shall have only one debt service fund.

**98.68(1) Sources of revenue in the debt service fund.** Sources of revenue in the debt service fund include the levy on taxable property authorized by the voters pursuant to Iowa Code section 298.21 and necessary to service bonds that mature in the current year, transfers from other funds for payments of interest and principal when due that are required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code, and earnings from temporary investment of moneys in the debt service fund.

**98.68(2) Appropriate uses of the debt service fund.** Appropriate expenditures in the debt service fund include the following:

*a.* Payment of principal and interest of the lawful bonded indebtedness maturing in the current year as it becomes due. In determining how much is necessary to service bonds that mature in the current year, the board of directors shall consider the amount of earnings from temporary investments of debt service funds and beginning cash balances.

*b.* Payment of costs of registration of public bonds or obligations.

*c.* Payment of additional amounts as the board deems necessary to apply on the principal.

*d.* Payment of principal and interest when due that are required under a loan agreement, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code other than bonded indebtedness paid from resources transferred for that purpose to the debt service fund from other funds.

*e.* Payment of transfers to the PPEL fund by board resolution when funds remain in the debt service fund after payment of the entire balance of outstanding debt in accordance with the original purpose of the bonded indebtedness and after return of any excess amount transferred into the debt service fund from another fund or other indebtedness. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund pursuant to Iowa Code subsection 278.1(1)“e.”

**98.68(3) *Inappropriate uses of the debt service fund.*** Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).  
[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.69(76,273,298,298A,423E,423F) Capital projects fund.** Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the previous local option sales and services tax for school infrastructure and the current state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

**98.69(1) *Sources of revenue in the capital projects fund.*** Sources of revenue in a capital projects fund include sale of general obligation bonds, grants and donations for capital facility projects, and transfers from other funds which authorized indebtedness for capital facility projects or which initiated a capital facility project or which received grants or other funding for capital projects, and tax receipts or revenue bonds issued for the state sales and services tax for school infrastructure. In the case of an area education agency, transfers from the general fund to a capital projects fund are limited to payments from proceeds accounted for in the general fund when payments are due on a capital project under a lease-purchase agreement pursuant to Iowa Code subsection 273.3(7).

**98.69(2) *Appropriate uses of the capital projects fund.***

*a.* Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s).

(2) Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

(3) Transferring to the PPEL fund or debt service fund by board resolution any balance remaining in a capital projects fund after the capital project is completed and after return of any excess amount transferred into the capital projects fund from another fund. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund or debt service fund pursuant to Iowa Code subsection 278.1(1) "e."

(4) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

*b.* Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists; otherwise, appropriate expenditures include the following in order:

(1) Payment of principal and interest on revenue bonds issued pursuant to Iowa Code sections 423E.5 and 423F.4 for which the revenue has been pledged.

(2) Reduction of debt service levies.

(3) Reduction of regular and voter-approved PPEL levies.

(4) Reduction of the PERL levy.

(5) Reduction of any schoolhouse tax levy under Iowa Code subsection 278.1(1) "e."

(6) Any authorized infrastructure purpose of the district pursuant to Iowa Code subsection 423F.3(6), which includes the following:

1. Payment or retirement of outstanding general obligation bonded indebtedness issued for school infrastructure purposes.

2. Payment or retirement of outstanding revenue bonds issued for school infrastructure purposes.

3. Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, remodeling, or demolition of a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, or school bus garage.

4. Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.
5. Expenditures listed in Iowa Code section 298.3.
6. Expenditures listed in Iowa Code section 300.2.
- (7) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

**98.69(3) *Inappropriate uses of the capital projects fund.*** Inappropriate expenditures in a capital projects fund include any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state/local options sales and services tax supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act. Expenditures from the state/local options sales and services tax revenues have the same restriction as expenditures from the supplemental school infrastructure amount, excluding the restriction on payments for bonds issued for new construction.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.70(279,280,298A) Student activity fund.** The student activity fund must be established in any school district receiving moneys from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies.

**98.70(1) *Sources of revenue in the student activity fund.*** Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys, and amounts transferred from the general fund under Iowa Code section 298A.2 as described in paragraph 98.61(2) "s."

**98.70(2) *Appropriate uses of the student activity fund.*** Appropriate expenditures in the student activity fund include ordinary and necessary expenses of operating school district-sponsored and district-supervised student cocurricular and extracurricular activities, including purchasing services from another school district to provide for the eligibility of enrolled students in interscholastic activities provided by the other school district when that school district does not provide an interscholastic activity for its students.

**98.70(3) *Inappropriate uses of the student activity fund.*** Inappropriate expenditures in the student activity fund include the following:

- a. Maintenance of funds raised by outside organizations.
- b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.
- c. Expenditures that lack public purpose.
- d. Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.

- e.* Transfers to any other fund of any surplus within the fund.
  - f.* Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.
  - g.* Use of the student activity fund as a clearing account for any other fund.
  - h.* Cash payments to student members of activity groups.
  - i.* The cost of optional equipment or customizing uniforms.
  - j.* The cost of uniforms when the following two tests are not met:
    - (1) The activity is a part of the school's educational program, and
    - (2) The wearing of the uniform or equipment is necessary in order to participate.
  - k.* Hospital or medical claims for student injuries or procurement of student medical insurance.
  - l.* Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.
  - m.* Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.
  - n.* Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.
- [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.71(298A) Entrepreneurial education fund.** The entrepreneurial education fund is used to enhance student learning by encouraging students to develop and practice entrepreneurial skills at an early age and to foster a business-ready workforce in this state. A school corporation may establish an entrepreneurial education fund at the request of a student organization or club and upon approval by the school board.

**98.71(1) Sources of revenue in the entrepreneurial education fund.** Sources of revenue in the entrepreneurial education fund shall consist only of moneys earned through entrepreneurial activities or returns on investments made for entrepreneurial purposes by the student organization or club, private donations and private contributions, and any interest earned on such moneys that are deposited in the fund. At the request of a student organization or club and upon approval by the school board, a school corporation shall transfer moneys in a student activity fund established under Iowa Code section 298A.8, for deposit by the student organization or club in an entrepreneurial education fund. However, a school corporation shall not transfer such moneys unless the moneys are attributable through appropriate documentation to the specific student organization or club and unless the student organization or club shows through appropriate documentation that the student organization or club earned the moneys through entrepreneurial activities of starting, maintaining, or expanding a business venture, including a seasonal business venture, or rendering other labor or services in return for compensation. Entrepreneurial activities do not include charitable contributions or other donations or gifts received by the student organization or club for which no labor or services are rendered.

**98.71(2) Appropriate uses of the entrepreneurial education fund.** Appropriate uses of the entrepreneurial education fund are limited to expending only for investments made, or activities undertaken, for board-approved entrepreneurial purposes which include investing in a start-up company, early-stage company, or existing company developing a new product or new technology if the investment is in keeping with the education program of the school corporation; if the student organization or club or its members will, as a stated condition of the investment, take an active role in the company which active role directly relates to and furthers the educational purposes for which the student organization or club is established; and if a reasonable return upon the investment is expected.

**98.71(3) Inappropriate uses of the entrepreneurial education fund.** A student organization or club shall not invest moneys from an entrepreneurial education fund for an entrepreneurial purpose in which a member of the student organization or club, an advisor or supervisor of the student organization or club, or an immediate family member of such persons, has a financial interest.

**98.71(4) *Fund closure.*** An entrepreneurial education fund may be closed at the request of the student organization or club for which the school corporation established the fund. All moneys in the fund on the date of closure and any subsequent return on an investment made with moneys from the fund shall be deposited in the school district's student activity fund.

[ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.72(256B,257,298A) Special education instruction fund.** The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code subsection 273.9(2). This does not include special education support services as provided by Iowa Code subsection 274.9(3) which are accounted for in the general fund.

**98.72(1) *Sources of revenue in the special education instruction fund.*** Sources of revenue in the special education instruction fund include sales of instructional services to districts with students in the special education instruction program and interest on the investment of those moneys.

**98.72(2) *Appropriate uses of the special education instruction fund.*** Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41 and included in the written agreement with the school districts.

**98.72(3) *Inappropriate uses of the special education instruction fund.*** Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41, expenditures for special education support services provided pursuant to Iowa Code subsection 273.9(3), or expenditures for costs not included in the written agreement with the school districts.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.73(282,298A) Juvenile home program instruction fund.** The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant, expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant, the juvenile home program are included in the general fund, rather than the juvenile home fund. Educational program costs for students served pursuant to individualized education programs (IEPs) shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident district. Educational program costs for out-of-state resident students shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident state agency. The area education agency (AEA) is responsible for stewardship of public funds and ensuring that all costs are ordinary and necessary costs of instruction and that classrooms are not overstaffed for the number of students. The AEA shall compare its costs, services, and staffing to the costs, services, and staffing of a similar classroom in the school district in which the juvenile home is located to ensure that they are comparable.

**98.73(1) *Sources of revenue in the juvenile home program instruction fund.*** Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to Iowa resident districts or to out-of-state agencies, grants in aid and interest on the investment of those moneys.

**98.73(2) *Appropriate uses of the juvenile home program instruction fund.*** Appropriate expenditures in the juvenile home program instruction fund are ordinary and necessary expenditures approved by the department to provide an instructional program to students residing in juvenile homes and include:

*a.* Salary and benefits for classroom teachers and aides providing instruction to students placed in a juvenile home.

*b.* Professional development which is specific to strategies to meet the needs of students in placement for all classroom teachers and aides working with students placed in a juvenile home.

*c.* Research-based resources, materials, software, supplies, and equipment, and purchased services that are customarily considered instructional and that meet all of the following criteria:

(1) Meet the needs of school-age students placed in juvenile homes,

- (2) Will remain with the AEA juvenile home program, and
- (3) Do not duplicate support services responsibilities of the AEA or the responsibilities of the juvenile home in its agreement with the placement agencies.

*d.* Summer school when necessary for a valid, established educational reason such as being included in the student's IEP or required pursuant to Iowa Code section 279.68.

*e.* Student support and instructional support expenditures to the extent that they are exclusively devoted to the juvenile home instructional program and are not administrative or clerical. This would include guidance services, curriculum development and instructional technology.

*f.* Administrative support to the extent the administrator is exclusively assigned to the juvenile home locations and is exclusively providing school-level administrative services directly for the student placed in the juvenile home or the classroom teachers. If the administrator is assigned part-time to the juvenile home locations, then the portion of time that is exclusively and directly related to the juvenile home instructional programs may be charged to the program, but the portion of time that is related to other purposes shall not. The total administrative cost shall not exceed 10 percent of the total of all allowable costs for the juvenile home program.

*g.* When the students are not required by the placement agency to remain at the juvenile home facility and the juvenile home has no responsibility for treatment in its agreement with the placement agency beyond custodial care, then rent may be allowed. Rent must be approved by the department. The space must be classroom space occupied exclusively by the AEA's instructional program and not include restrooms or any other common spaces. Only if rent is approved may any costs for operation or maintenance of that classroom space be allowed. The total administrative cost in paragraph 98.73(2) "*f*" and the total of rent and associated operation and maintenance shall not exceed 20 percent of the total of all allowable costs for the juvenile home program.

*h.* Transportation provided by the AEA exclusively to transport students placed at the juvenile home to the students' resident school districts located in Iowa or to the school district in which the juvenile home is located.

**98.73(3)** *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

*a.* Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.

*b.* Costs that are not ordinary and necessary to provide instruction.

*c.* Costs related to the juvenile home facility, its responsibilities under the Iowa Code or its agreements with the placement agencies.

*d.* Costs that were or could have been filed with Medicaid for reimbursement.

*e.* Debt service.

*f.* Capital outlay related to facilities. This includes any costs for facility acquisition or construction services, including remodeling and facility repair.

*g.* Support services that are AEA responsibilities pursuant to the Iowa Code.

*h.* Rental when adequate space is available at the AEA or at the district of location or when the students require treatment provided by the juvenile home or are required to remain at the juvenile home pursuant to the agreement between the juvenile home and the placement agency.

*i.* Costs of an audit.

*j.* Indirect costs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.74(283A,298A) School nutrition fund.** All school districts shall operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

**98.74(1)** *Sources of revenue in the school nutrition fund.* Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the

operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

**98.74(2) *Appropriate uses of the school nutrition fund.*** Appropriate expenditures in the school nutrition fund include the following:

*a.* Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.

*b.* Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

**98.74(3) *Inappropriate uses of the school nutrition fund.*** Inappropriate expenditures in the school nutrition fund include the following:

*a.* Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

*b.* Operating transfers to any other fund.

*c.* Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

*d.* Costs estimated or allocated that are expenditures of the district.

**98.74(4) *Unpaid student meals account.*** Beginning with the budget year beginning July 1, 2018, in accordance with Iowa Code section 283A.11, a school district may establish an unpaid student meals account in the school nutrition fund and may deposit in the account moneys received from private sources for purposes of paying student meal debt accrued by individual students as well as amounts designated for the account from the school district's flexibility account as described in rule 281—98.27(257,298A). Moneys deposited in the unpaid student meals account shall be used by the school district only to pay individual student meal debt. The school district shall set fair and equitable procedures for such expenditures.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.75(279,298A) *Child care and before- and after-school programs fund.*** The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

**98.75(1) *Sources of revenue in the child care fund.*** Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

**98.75(2) *Appropriate uses of the child care fund.*** Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

Effective with the budget year beginning July 1, 2018, if the balance in the before- and after-school program exceeds the amount necessary to operate the before- and after-school program, the excess amount may, following a public hearing, be transferred to the general fund by a resolution of the board of directors of the school corporation which meets all requirements stipulated in Iowa Code section

298A.12. A transfer under this subrule does not increase a school district's authorized expenditures as defined in Iowa Code section 257.7.

**98.75(3) *Inappropriate uses of the child care fund.*** Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.76(298A) Regular education preschool fund.** The board of directors of a school district may establish a preschool for students who are not of school age.

**98.76(1) *Sources of revenue in the regular education preschool fund.*** Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C shall not be accounted for in the regular education preschool fund.

**98.76(2) *Appropriate uses of the regular education preschool fund.*** Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

**98.76(3) *Inappropriate uses of the regular education preschool fund.*** Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.77(298A) Student construction fund.** If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.78(298A) Other enterprise funds.** Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.74(283A,298A) through 281—98.77(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.79 to 98.81** Reserved.

**281—98.82(298A) Internal service funds.** Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in

an enterprise fund rather than an internal service fund. Internal service funds include, but are not limited to, self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.  
[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.83 to 98.91** Reserved.

**281—98.92(257,279,298A,565) Private purpose trust funds.** Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district shall use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency shall not transfer its own resources to a private purpose trust fund.

**98.92(1) Sources of revenue in private purpose trust funds.** Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

**98.92(2) Appropriate uses of private purpose trust funds.** Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

**98.92(3) Inappropriate uses of private purpose trust funds.** Inappropriate expenditures in the private purpose trust fund include any expenditure which is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.93(298A) Other trust funds.** Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.94 to 98.100** Reserved.

**281—98.101(298A) Agency funds.** Agency funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments. Agency funds may include moneys collected for another government, a grant consortium when the school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization which has its own federal identification number (FIN). In an agency fund, the school district or area education agency merely renders a service as a

custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Agency funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

**98.101(1) Sources of receipts in agency funds.** Sources of receipts in the agency funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

**98.101(2) Appropriate uses of agency funds.** Appropriate disbursements from an agency fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

**98.101(3) Inappropriate uses of agency funds.** Inappropriate disbursements from agency funds include any disbursement which is not consistent with the terms of the agreement, not legal to a school district, or that exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.102 to 98.110** Reserved.

**281—98.111(24,29C,257,298A) Emergency levy fund.** A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code subsection 29C.2(1).

**98.111(1) Sources of revenue in the emergency levy fund.** Sources of revenue for the emergency levy fund include a tax levy not to exceed \$0.27 per \$1000 of assessed value of taxable property, and interest on those moneys.

**98.111(2) Appropriate uses of emergency levy fund.** Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

**98.111(3) Inappropriate uses of emergency levy fund.** Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.112(275) Equalization levy fund.** If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district shall transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

**98.112(1) Sources of revenue for the equalization levy fund.** Sources of revenue for the equalization levy fund include a tax levy pursuant to Iowa Code section 275.31, and interest on those moneys.

**98.112(2) Appropriate uses of the equalization levy fund.** Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

**98.112(3) Inappropriate uses of the equalization levy fund.** Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

[ARC 8054B, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter)]

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565, and 670 and Iowa Code sections 11.6(1) "a"(1), 256C.4(1) "c," 256D.4(3) and 284.13.

[Filed ARC 8054B (Notice ARC 7781B, IAB 5/20/09), IAB 8/26/09, effective 9/30/09]<sup>1</sup>

[Editorial change: IAC Supplement 9/23/09]

[Editorial change: IAC Supplement 12/30/09]

[Filed ARC 9267B (Notice ARC 9017B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]

[Filed ARC 0012C (Notice ARC 9793B, IAB 10/5/11), IAB 2/22/12, effective 3/28/12]<sup>2</sup>

[Editorial change: IAC Supplement 3/21/12]

[Filed ARC 0518C (Notice ARC 0387C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]

[Filed ARC 1967C (Notice ARC 1881C, IAB 2/18/15), IAB 4/15/15, effective 5/20/15]

[Filed ARC 2310C (Notice ARC 2184C, IAB 10/14/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 3632C (Notice ARC 3270C, IAB 8/30/17), IAB 2/14/18, effective 3/21/18]

[Filed ARC 4298C (Notice ARC 4160C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

<sup>1</sup> September 30, 2009, effective date of 281—98.12(257,299A) and 281—98.112(275) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 8, 2009. At its meeting held December 8, 2009, the Committee voted to delay the effective date of 281—98.12(257,299A) until the adjournment of the 2010 Session of the General Assembly.

<sup>2</sup> March 28, 2012, effective date of 98.12 and 98.64(2)“e,” “h” delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.



CHAPTER 25  
CODE OF PROFESSIONAL CONDUCT AND ETHICS

**282—25.1(272) Scope of standards.** This code of professional conduct and ethics constitutes mandatory minimum standards of practice for all licensed practitioners as defined in Iowa Code chapter 272. The adherence to certain professional and ethical standards is essential to maintaining the integrity of the education profession.

**282—25.2(272) Definitions.** Except where otherwise specifically defined by law:

“*Administrative and supervisory personnel*” means any licensed employee such as superintendent, associate superintendent, assistant superintendent, principal, associate principal, assistant principal, or other person who does not have as a primary duty the instruction of pupils in the schools.

“*Board*” means the Iowa board of educational examiners.

“*Discipline*” means the process of sanctioning a license, certificate or authorization issued by the board.

“*Ethics*” means a set of principles governing the conduct of all persons governed by these rules.

“*Fraud*” means knowingly providing false information or representations on an application for licensure or employment, or knowingly providing false information or representations made in connection with the discharge of duties.

“*License*” means any license, certificate, or authorization granted by the board.

“*Licensee*” means any person holding a license, certificate, or authorization granted by the board.

“*Practitioner*” means an administrator, teacher, or other licensed professional, including an individual who holds a statement of professional recognition, who provides educational assistance to students.

“*Responsibility*” means a duty for which a person is accountable by virtue of licensure.

“*Right*” means a power, privilege, or immunity secured to a person by law.

“*Student*” means a person, regardless of age, enrolled in a prekindergarten through grade 12 school, who is receiving direct or indirect assistance from a person licensed by the board.

“*Teacher*” means any person engaged in the instructional program for prekindergarten through grade 12 children, including a person engaged in teaching, administration, and supervision, and who is required by law to be licensed for the position held.

[ARC 7979B, IAB 7/29/09, effective 9/2/09]

**282—25.3(272) Standards of professional conduct and ethics.** Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

**25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse.** Violation of this standard includes:

a. *Fraud.* Fraud means the same as defined in rule 282—25.2(272).

b. *Criminal convictions.* The commission of or conviction for a criminal offense as defined by Iowa law provided that the offense is relevant to or affects teaching or administrative performance.

(1) Disqualifying criminal convictions. The board shall deny an application for licensure and shall revoke a previously issued license if the applicant or licensee has, on or after July 1, 2002, been convicted of, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

1. Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

2. Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

- First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
  - Lascivious acts with a child;
  - Assault with intent to commit sexual abuse;
  - Indecent contact with a child;
  - Sexual exploitation by a counselor;
  - Lascivious conduct with a minor;
  - Sexual exploitation by a school employee;
  - Enticing a minor under Iowa Code section 710.10; or
  - Human trafficking under Iowa Code section 710A.2;
  - 3. Incest involving a child as prohibited by Iowa Code section 726.2;
  - 4. Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2;
  - 5. Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15;
  - 6. Any offense specified in the laws of another jurisdiction, or any offense that may be prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in subparagraph 25.3(1) “b”(1); or
  - 7. Any offense under prior laws of this state or another jurisdiction, or any offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in subparagraph 25.3(1) “b”(1).
- (2) Other criminal convictions and founded child abuse. In determining whether a person should be denied a license or whether a licensee should be disciplined based upon any other criminal conviction, including a conviction for an offense listed in 25.3(1) “b”(1) which occurred before July 1, 2002, or a founded report of abuse of a child, the board shall consider:
1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
  2. The time elapsed since the crime or founded abuse was committed;
  3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
  4. The likelihood that the person will commit the same crime or abuse again;
  5. The number of criminal convictions or founded abuses committed; and
  6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.
- c. Sexual involvement or indecent contact with a student.* Sexual involvement includes, but is not limited to, the following acts, whether consensual or nonconsensual: fondling or touching the inner thigh, groin, buttocks, anus or breasts of a student; permitting or causing to fondle or touch the practitioner’s inner thigh, groin, buttocks, anus, or breasts; or the commission of any sex act as defined in Iowa Code section 702.17.
- d. Sexual exploitation of a minor.* The commission of or any conviction for an offense prohibited by Iowa Code section 728.12, Iowa Code chapter 709 or 18 U.S.C. Section 2252A(a)(5)(B).
- e. Student abuse.* Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:
- (1) Committing any act of physical abuse of a student;
  - (2) Committing any act of dependent adult abuse on a dependent adult student;
  - (3) Committing or soliciting any sexual or otherwise indecent act with a student or any minor;
  - (4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student;
  - (5) Furnishing alcohol or illegal or unauthorized drugs or drug paraphernalia to any student or knowingly allowing a student to consume alcohol or illegal or unauthorized drugs in the presence of the licensee;
  - (6) Failing to report any suspected act of child or dependent adult abuse as required by state law; or

(7) Committing or soliciting any sexual conduct as defined in Iowa Code section 709.15(3) “b” or soliciting, encouraging, or consummating a romantic relationship with any person who was a student within 90 days prior to any conduct alleged in the complaint, if that person was taught by the practitioner or was supervised by the practitioner in any school activity when that person was a student.

**25.3(2) Standard II—alcohol or drug abuse.** Violation of this standard includes:

a. Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming illegal or unauthorized drugs or abusing legal drugs.

b. Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol.

**25.3(3) Standard III—misrepresentation, falsification of information.** Violation of this standard includes:

a. Falsifying or deliberately misrepresenting or omitting material information regarding professional qualifications, criminal history, college credit, staff development credit, degrees, academic award, or employment history when applying for employment or licensure.

b. Falsifying or deliberately misrepresenting or omitting material information regarding compliance reports submitted to federal, state, and other governmental agencies.

c. Falsifying or deliberately misrepresenting or omitting material information submitted in the course of an official inquiry or investigation.

d. Falsifying any records or information submitted to the board in compliance with the license renewal requirements imposed under 282—Chapter 20.

e. Falsifying or deliberately misrepresenting or omitting material information regarding the evaluation of students or personnel, including improper administration of any standardized tests, including, but not limited to, changing test answers, providing test answers, copying or teaching identified test items, or using inappropriate accommodations or modifications for such tests.

**25.3(4) Standard IV—misuse of public funds and property.** Violation of this standard includes:

a. Failing to account properly for funds collected that were entrusted to the practitioner in an educational context.

b. Converting public property or funds to the personal use of the practitioner.

c. Submitting fraudulent requests for reimbursement of expenses or for pay.

d. Combining public or school-related funds with personal funds.

e. Failing to use time or funds granted for the purpose for which they were intended.

**25.3(5) Standard V—violations of contractual obligations.**

a. Violation of this standard includes:

(1) Asking a practitioner to sign a written professional employment contract before the practitioner has been unconditionally released from a current contract, unless the practitioner provided notice to the practitioner’s employing board as set forth in subparagraph 25.3(5) “b”(2).

(2) Abandoning a written professional employment contract without prior unconditional release by the employer.

(3) As an employer, executing a written professional employment contract with a practitioner which requires the performance of duties that the practitioner is not legally qualified to perform.

(4) As a practitioner, executing a written professional employment contract which requires the performance of duties that the practitioner is not legally qualified to perform.

b. In addressing complaints based upon contractual obligations, the board shall consider factors beyond the practitioner’s control. For purposes of enforcement of this standard, a practitioner will not be found to have abandoned an existing contract if:

(1) The practitioner obtained a release from the employing board before discontinuing services under the contract; or

(2) The practitioner provided notice to the employing board no later than the latest of the following dates:

1. The practitioner’s last work day of the school year;

2. The date set for return of the contract as specified in statute; or

3. June 30.

**25.3(6) Standard VI—unethical practice toward other members of the profession, parents, students, and the community.** Violation of this standard includes:

- a. Denying the student, without just cause, access to varying points of view.
- b. Deliberately suppressing or distorting subject matter for which the educator bears responsibility.
- c. Failing to make reasonable effort to protect the health and safety of the student or creating conditions harmful to student learning.
- d. Conducting professional business in such a way that the practitioner repeatedly exposes students or other practitioners to unnecessary embarrassment or disparagement.
- e. Engaging in any act of illegal discrimination, or otherwise denying a student or practitioner participation in the benefits of any program on the grounds of race, creed, color, religion, age, sex, sexual orientation, gender identity, disability, marital status, or national origin.
- f. Soliciting students or parents of students to purchase equipment, supplies, or services from the practitioner for the practitioner's personal advantage.
- g. Accepting gifts from vendors or potential vendors where there may be the appearance of or an actual conflict of interest.
- h. Intentionally disclosing confidential information including, but not limited to, unauthorized sharing of information concerning student academic or disciplinary records, health and medical information, assessment or testing results, or family income. Licensees shall comply with state and federal laws and local school board policies relating to the confidentiality of student records, unless disclosure is required or permitted by law.
- i. Refusing to participate in a professional inquiry when requested by the board.
- j. Aiding, assisting, or abetting an unlicensed person in the completion of acts for which licensure is required.
- k. Failing to self-report to the board within 60 days any founded child abuse report, or any conviction for a criminal offense listed in 25.3(1) "b"(1) which requires revocation of the practitioner's license.
- l. Delegating tasks to unqualified personnel.
- m. Failing to comply with federal, state, and local laws applicable to the fulfillment of professional obligations.
- n. Allowing another person to use one's practitioner license for any purpose.
- o. Performing services beyond the authorized scope of practice for which the individual is licensed or prepared or performing services without holding a valid license.
- p. Falsifying, forging, or altering a license issued by the board.
- q. Failure of the practitioner holding a contract under Iowa Code section 279.13 to disclose to the school official responsible for determining assignments a teaching assignment for which the practitioner is not properly licensed.
- r. Failure of a school official responsible for assigning licensed practitioners holding contracts under Iowa Code section 279.13 to adjust an assignment if the practitioner discloses to the official that the practitioner is not properly licensed for an assignment.

**25.3(7) Standard VII—compliance with state law governing obligations to state or local governments, student loan obligations, child support obligations, and board orders.** Violation of this standard includes:

- a. Failing to comply with 282—Chapter 8 concerning payment of debts to state or local governments.
- b. Failing to comply with 282—Chapter 9 concerning repayment of student loans.
- c. Failing to comply with 282—Chapter 10 concerning child support obligations.
- d. Failing to comply with a board order.

**25.3(8) Standard VIII—incompetence.** Violation of this standard includes, but is not limited to:

- a. Willfully or repeatedly departing from or failing to conform to the minimum standards of acceptable and prevailing educational practice in the state of Iowa.

*b.* Willfully or repeatedly failing to practice with reasonable skill and safety.

[ARC 8136B, IAB 9/9/09, effective 10/14/09; ARC 8137B, IAB 9/9/09, effective 10/14/09; ARC 9208B, IAB 11/3/10, effective 12/8/10; ARC 0025C, IAB 3/7/12, effective 4/11/12; ARC 0026C, IAB 3/7/12, effective 4/11/12; ARC 0853C, IAB 7/24/13, effective 8/28/13; ARC 1170C, IAB 11/13/13, effective 12/18/13; see Delay note at end of chapter; ARC 4302C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code section 272.2(1) "a."

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[Filed ARC 1170C (Notice ARC 0992C, IAB 9/4/13), IAB 11/13/13, effective 12/18/13]<sup>1</sup>

[Filed ARC 4302C (Notice ARC 4147C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

<sup>1</sup> December 18, 2013, effective date of ARC 1170C [25.3(1)] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held December 10, 2013.



*PHYSICIAN ASSISTANTS*

CHAPTER 326	LICENSURE OF PHYSICIAN ASSISTANTS
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## CHAPTER 326

## LICENSURE OF PHYSICIAN ASSISTANTS

[Prior to 8/7/02, see 645—325.2(148C) to 645—325.5(148C) and 645—325.16(148C)]

**645—326.1(148C) Definitions.**

“*Active license*” means a license that is current and has not expired.

“*Approved program*” means a program for the education of physician assistants which has been accredited by the American Medical Association’s Committee on Allied Health Education and Accreditation, by its successor, the Commission on Accreditation of Allied Health Education Programs, or by its successor, the Accreditation Review Commission on Education for the Physician Assistant, or its successor.

“*Board*” means the board of physician assistants.

“*CME*” means continuing medical education.

“*Department*” means the department of public health.

“*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or activity.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means a person licensed by the board as a physician assistant to provide medical services under the supervision of one or more physicians.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice as a physician assistant to an applicant who is or has been licensed in another state.

“*Locum tenens*” means the temporary substitution of one licensed physician assistant for another.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of physician assistants who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NCCPA*” means the National Commission on Certification of Physician Assistants.

“*Opioid*” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician supervising a physician assistant practicing in a federal facility or under federal authority shall not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

“*Physician assistant*” means a person licensed as a physician assistant by the board.

“*Prescription monitoring program database*” or “*PMP database*” means the Iowa prescription monitoring program database administered by the Iowa board of pharmacy pursuant to Iowa Code chapter 124, subchapter VI, and 657—Chapter 37.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—326.19(17A,147,272C) by which an inactive license is restored to active status.

*“Reinstatement”* means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

*“Remote medical site”* means a medical clinic for ambulatory patients which is away from the main practice location of a supervising physician and in which a supervising physician is present less than 50 percent of the time the site is open. “Remote medical site” will not apply to nursing homes, patient homes, hospital outpatient departments, outreach clinics, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility).

*“Supervising physician”* means a physician who supervises the medical services provided by the physician assistant and who accepts ultimate responsibility for the medical care provided by the physician/physician assistant team.

*“Supervision”* means that a supervising physician retains ultimate responsibility for patient care, although a physician need not be physically present at each activity of the physician assistant or be specifically consulted before each delegated task is performed. Supervision shall not be construed as requiring the personal presence of a supervising physician at the place where such services are rendered except insofar as the personal presence is expressly required by these rules or by Iowa Code chapter 148C.

*“Supply prescription drugs”* means to deliver to a patient or the patient’s representative a quantity of prescription drugs or devices that are properly packaged and labeled.

[ARC 4299C, IAB 2/13/19, effective 3/20/19]

#### **645—326.2(148C) Requirements for licensure.**

**326.2(1)** The following criteria shall apply to licensure:

*a.* An applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s website ([www.idph.state.ia.us/licensure](http://www.idph.state.ia.us/licensure)) or directly from the board office. All applications shall be sent to the Board of Physician Assistants, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* An applicant shall complete the application form according to the instructions contained in the application.

*c.* Each application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Board of Physician Assistants. The fees are nonrefundable.

*d.* Each applicant shall provide official copies of academic transcripts that have been sent to the board directly from an approved program for the education of physician assistants. EXCEPTION: An applicant who is not a graduate of an approved program but who passed the NCCPA initial certification examination prior to 1986 is exempt from the graduation requirement.

*e.* An applicant shall provide a copy of the initial certification from NCCPA, or its successor agency, sent directly to the board from the NCCPA, or its successor agency.

*f.* Prior to beginning practice, the physician assistant shall notify the board of the identity of the supervising physician(s) on the board-approved form.

*g.* In lieu of paragraphs “d” and “e,” an applicant for licensure may provide documentation from the Federation Credentials Verification Service (FCVS) of the Federation of State Medical Boards as primary source verification for identity, education and national certification information.

**326.2(2)** Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

**326.2(3)** Incomplete applications that have been on file in the board office for more than two years shall be:

*a.* Considered invalid and shall be destroyed; or

*b.* Maintained upon written request of the candidate.

#### **645—326.3(148C) Temporary licensure.**

**326.3(1)** A temporary license may be issued for an applicant who has not taken the NCCPA initial certification examination or successor agency examination or is waiting for the results of the examination.

**326.3(2)** The applicant must comply with subrule 326.2(1), with the exception of paragraphs “d” and “e.”

**326.3(3)** A temporary license shall be valid for one year from the date of issuance.

**326.3(4)** The temporary license shall be renewed only once upon the applicant’s showing proof that, through no fault of the applicant, the applicant was unable to take the certification examination recognized by the board. Proof of inability to take the certification examination shall be submitted to the board office with written request for renewal of a temporary license, accompanied by the temporary license renewal fee.

**326.3(5)** If the temporary licensee fails the certification examination, the temporary licensee must cease practice immediately and surrender the temporary license by the next business day.

**326.3(6)** There is no additional fee for converting temporary licensure to permanent licensure.

**326.3(7)** The applicant shall ensure that certification of completion is sent to the board directly from an approved program for the education of physician assistants. The certification of completion must be signed by a designee from the approved program.

**645—326.4(148C) Licensure by endorsement.** An applicant who has been licensed under the laws of another jurisdiction shall file an application for licensure by endorsement. An applicant shall:

**326.4(1)** Submit to the board a completed application according to the instructions on the application.

**326.4(2)** Pay the nonrefundable licensure fee.

**326.4(3)** Provide an official copy of the transcript sent directly to the board from an approved program for the education of physician assistants or qualify for the exception stated in paragraph 326.2(1)“d.”

**326.4(4)** Provide a copy of the initial certification from NCCPA, or its successor agency, sent directly to the board from the NCCPA, or its successor agency. Additionally, provide one of the following documents:

*a.* Copy of current certification from the NCCPA, or its successor agency, sent directly to the board from the NCCPA, or its successor agency; or

*b.* Proof of completion of 100 CME hours for each biennium since initial certification.

**326.4(5)** Provide verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

*a.* Licensee’s name;

*b.* Date of initial licensure;

*c.* Current licensure status; and

*d.* Any disciplinary action taken against the license.

**326.4(6)** Prior to beginning practice, the physician assistant shall notify the board of the identity of the supervising physician(s) on the board-approved form.

**645—326.5(148C) Licensure by reciprocal agreement.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—326.6(148C) Examination requirements.** The applicant for licensure as a physician assistant shall successfully pass the certifying examination for physician assistants conducted by the National Commission on Certification of Physician Assistants or a successor examination approved by the board.

**645—326.7(148C) Educational qualifications.** An applicant for licensure as a physician assistant shall submit official copies of academic transcripts from an approved program for education of physician assistants, or the applicant shall qualify for the exception stated in paragraph 326.2(1)“d.”

**645—326.8(148C) Supervision requirements.**

**326.8(1)** Notification requirements. Physician assistants shall use the board-approved forms to notify the board of the identity of their supervising physicians at the following times:

- a. Prior to beginning practice in Iowa.
- b. At the time of license renewal. The physician assistant shall notify the board of the identity of each of the physician assistant's supervising physicians and of any change in the status of the supervisory relationships during the physician assistant's current biennium. In addition, the physician assistant shall maintain a list of supervising physicians to provide to the board upon request.

c. At the time of license reactivation.

**326.8(2)** The physician assistant shall maintain documentation of current supervising physicians, which shall be made available to the board upon request.

**326.8(3)** A physician assistant who provides medical services shall be supervised by one or more physicians; but a physician shall not supervise more than five physician assistants at the same time.

**326.8(4)** It shall be the responsibility of the physician assistant and a supervising physician to ensure that the physician assistant is adequately supervised. Upon agreeing to supervise a physician assistant, a supervising physician will be advised that the physician's name will be listed with the board as a supervising physician. In regard to scheduling, the physician assistant may not practice if supervision is unavailable, except as otherwise provided in Iowa Code chapter 148C or these rules, and must be in compliance with the requirement that no more than five physician assistants shall be supervised by a physician at the same time, pursuant to subrule 326.8(3). The physician assistant and the supervising physician are each responsible for knowing and complying with the supervision provisions of these rules.

a. Patient care provided by the physician assistant shall be reviewed with a supervising physician on an ongoing basis as indicated by the clinical condition of the patient. Although every chart need not be signed nor every visit reviewed, nor does the supervising physician need to be physically present at each activity of the physician assistant, it is the responsibility of the supervising physician and physician assistant to ensure that each patient has received the appropriate medical care.

b. Patient care provided by the physician assistant may be reviewed with a supervising physician in person, by telephone or by other telecommunicative means.

c. When signatures are required, electronic signatures are allowed if:

- (1) The signature is transcribed by the signer into an electronic record and is not the result of electronic regeneration; and
- (2) A mechanism exists allowing confirmation of the signature and protection from unauthorized reproduction.

d. When the physician assistant is being trained to perform new medical procedures, the training shall be carried out under the supervision of a physician or another qualified individual. Upon completing the supervised training, a physician assistant may perform the new medical procedures if delegated by a supervising physician, except as otherwise provided in Iowa Code chapter 148C or these rules. New medical procedures may be delegated to a physician assistant after a supervising physician determines that the physician assistant is competent to perform the task.

[ARC 0462C, IAB 11/28/12, effective 1/2/13]

#### **645—326.9(148C) License renewal.**

**326.9(1)** The biennial license renewal period for a license to practice as a physician assistant shall begin on October 1 and end on September 30 two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

**326.9(2)** An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

**326.9(3)** A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—328.2(148C) and the mandatory reporting requirements of subrule 326.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

**326.9(4)** Mandatory reporter training requirements.

*a.* A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

*b.* A licensee who, in the course of employment responsibilities, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

*c.* A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

*d.* The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

*e.* The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 328.

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

**326.9(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

**326.9(6)** A person licensed to practice as a physician assistant shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

**326.9(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 330.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**326.9(8)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a physician assistant in Iowa until the license is reactivated. A licensee who practices as a physician assistant in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[ARC 9665B, IAB 8/10/11, effective 9/14/11]

**645—326.10(272C) Exemptions for inactive practitioners.** Rescinded IAB 8/17/05, effective 9/21/05.

**645—326.11(272C) Lapsed license.** Rescinded IAB 8/17/05, effective 9/21/05.

**645—326.12(147) Duplicate certificate or wallet card.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—326.13(147) Reissued certificate or wallet card.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—326.14(272C) License denial.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—326.15(148C) Use of title.** A physician assistant licensed under Iowa Code chapter 148C may use the words “physician assistant” after the person’s name or signify the same by the use of the letters “PA.”

**645—326.16(148C) Address change.** The physician assistant shall notify the board of any change in permanent address within 30 days of its occurrence.

**645—326.17(148C) Student physician assistant.**

**326.17(1)** Any person who is enrolled as a student in an approved program shall comply with the rules set forth in this chapter. A student is exempted from licensure requirements.

**326.17(2)** Notwithstanding any other provisions of these rules, a student may perform medical services when they are rendered within the scope of an approved program.

**645—326.18(148C) Recognition of an approved program.** The board shall recognize a program for education and training of physician assistants if it is accredited by the American Medical Association’s Committee on Allied Health Education and Accreditation, by its successor, the Commission on Accreditation of Allied Health Educational Programs, or by its successor, the Accreditation Review Commission on Education for the Physician Assistant, or its successor.

This rule is intended to implement Iowa Code section 148C.2.

**645—326.19(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**326.19(1)** Submit a reactivation application on a form provided by the board.

**326.19(2)** Pay the reactivation fee that is due as specified in 645—Chapter 330.

**326.19(3)** Provide verification of current competence to practice as a physician assistant by satisfying one of the following criteria:

*a.* If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 100 hours of continuing education within two years of application for reactivation or NCCPA or successor agency certification.

*b.* If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 200 hours of continuing education within two years of application for reactivation, of which at least 40 percent of the hours completed shall be in Category I, or NCCPA or successor agency certification; and

(3) Information on each supervising physician.

**645—326.20(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—326.19(17A,147,272C) prior to practicing as a physician assistant in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148C and 272C.

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[Filed ARC 4299C (Notice ARC 4128C, IAB 11/21/18), IAB 2/13/19, effective 3/20/19]

<sup>0</sup> Two or more ARCs

<sup>1</sup> Effective date of 326.1, “remote medical site,” delayed 70 days by the Administrative Rules Review Committee at its meeting held June 7, 2004.



## CHAPTER 327

## PRACTICE OF PHYSICIAN ASSISTANTS

[Prior to 8/7/02, see 645—325.6(148C) to 645—325.9(148C) and 645—325.18(148C)]

**645—327.1(148C) Duties.**

**327.1(1)** The medical services to be provided by the physician assistant are those delegated by a supervising physician. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills and abilities necessary to provide those services appropriate to the practice setting. The physician assistant's services may be utilized in any clinical settings including, but not limited to, the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities and nursing homes. Diagnostic and therapeutic medical tasks for which the supervising physician has sufficient training or experience may be delegated to the physician assistant after a supervising physician determines the physician assistant's proficiency and competence. The medical services to be provided by the physician assistant include, but are not limited to, the following:

- a.* The initial approach to a patient of any age group in any setting to elicit a medical history and perform a physical examination.
- b.* Assessment, diagnosis and treatment of medical or surgical problems and recording the findings.
- c.* Order, interpret, or perform laboratory tests, X-rays or other medical procedures or studies.
- d.* Performance of therapeutic procedures such as injections, immunizations, suturing and care of wounds, removal of foreign bodies, ear and eye irrigation and other clinical procedures.
- e.* Performance of office surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.
- f.* Assisting in surgery.
- g.* Prenatal and postnatal care and assisting a physician in obstetrical care.
- h.* Care of orthopedic problems.
- i.* Performing and screening the results of special medical examinations including, but not limited to, electrocardiogram or Holter monitoring, radiography, audiometric and vision screening, tonometry, and pulmonary function screening tests.
- j.* Instruction and counseling of patients regarding physical and mental health on matters such as diets, disease, therapy, and normal growth and development.
- k.* Function in the hospital setting by performing medical histories and physical examinations, making patient rounds, recording patient progress notes and other appropriate medical records, assisting in surgery, performing or assisting with medical procedures, providing emergency medical services and issuing, transmitting and executing patient care orders as delegated by the supervising physician.
- l.* Providing services to patients requiring continuing care (i.e., home, nursing home, extended care facilities).
- m.* Referring patients to specialty or subspecialty physicians, medical facilities or social agencies as indicated by the patients' problems.
- n.* Immediate evaluation, treatment and institution of procedures essential to providing an appropriate response to emergency medical problems.
- o.* Order drugs and supplies in the office, and assist in keeping records and in the upkeep of equipment.
- p.* Admit patients to a hospital or health care facility.
- q.* Order diets, physical therapy, inhalation therapy, or other rehabilitative services as indicated by the patient's problems.
- r.* Administer any drug (a single dose).
- s.* Prescribe drugs and medical devices under the following conditions:

(1) The physician assistant shall have passed the national certifying examination conducted by the National Commission on the Certification of Physician Assistants or its successor examination approved by the board. Physician assistants with a temporary license may order drugs and medical devices only with the prior approval and direction of a supervising physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen by the physician assistant.

(2) The physician assistant may not prescribe Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124. The physician assistant may order Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124 only with the prior approval and direction of a physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen by the physician assistant.

(3) The physician assistant shall inform the board of any limitation on the prescriptive authority of the physician assistant in addition to the limitations set out in 327.1(1) "s"(2).

(4) A physician assistant shall not prescribe substances that the supervising physician does not have the authority to prescribe except as allowed in 327.1(1) "n."

(5) The physician assistant may prescribe, supply and administer drugs and medical devices in all settings including, but not limited to, hospitals, health care facilities, health care institutions, clinics, offices, health maintenance organizations, and outpatient and emergency care settings except as limited by 327.1(1) "s"(2).

(6) A physician assistant who is an authorized prescriber may request, receive, and supply sample drugs and medical devices except as limited by 327.1(1) "s"(2).

(7) The board of physician assistants shall be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances and medical devices.

*t.* Supply properly packaged and labeled prescription drugs, controlled substances or medical devices when pharmacist services are not reasonably available or when it is in the best interests of the patient as delegated by a supervising physician.

(1) When the physician assistant is the prescriber of the medications under 327.1(1) "s," these medications shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs as they relate to supplying prescription drugs to the patient and not at a profit to the physician or physician assistant.

(2) When a physician assistant supplies medication on the direct order of a physician, subparagraph (1) does not apply.

(3) A nurse or staff assistant may assist the physician assistant in supplying medications when prescriptive drug supplying authority is delegated by a supervising physician to the physician assistant under 327.1(1) "s."

*u.* When a physician assistant supplies medications as delegated by a supervising physician in a remote site, the physician assistant shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage and appropriate use of prescription drugs, controlled substances, and medical devices.

*v.* May, at the request of the peace officer, withdraw a specimen of blood from a patient for the purpose of determining the alcohol concentration or the presence of drugs.

*w.* Direct medical personnel, health professionals and others involved in caring for patients in the execution of patient care.

*x.* May authenticate medical forms by signing the form and including a supervising physician's name.

*y.* Perform other duties appropriate to a physician's practice.

*z.* Health care providers shall consider the instructions of the physician assistant to be instructions of a supervising physician if the instructions concern duties delegated to the physician assistant by the supervising physician.

**327.1(2)** Emergency medicine duties.

- a. A physician assistant may be a member of the staff of an ambulance or rescue squad pursuant to Iowa Code chapter 147A.
- b. A physician assistant shall document skills, training and education equivalent to that required of a certified advanced emergency medical technician or a paramedic.
- c. A physician assistant must apply for approval of advanced care training equivalency on forms supplied by the board of physician assistants.
- d. Exceptions to this subrule include:
  - (1) A physician assistant who accompanies and is responsible for a transfer patient;
  - (2) A physician assistant who serves on a basic ambulance or rescue squad service; and
  - (3) A physician assistant who renders aid within the physician assistant's skills during an emergency.

**645—327.2(148C) Prohibition.** No physician assistant shall be permitted to prescribe lenses, prisms or contact lenses for the aid, relief or correction of human vision. No physician assistant shall be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where these services are rendered.

**645—327.3(148C) Free medical clinic.** Rescinded IAB 9/15/04, effective 8/25/04.

**645—327.4(148C) Remote medical site.**

**327.4(1)** A physician assistant may provide medical services in a remote medical site if one of the following three conditions is met:

- a. The physician assistant has a permanent license and at least one year of practice as a physician assistant; or
- b. The physician assistant with less than one year of practice has a permanent license and meets the following criteria:
  - (1) The physician assistant has practiced as a physician assistant for at least six months; and
  - (2) The physician assistant and supervising physician have worked together at the same location for a period of at least three months; and
  - (3) The supervising physician reviews patient care provided by the physician assistant at least weekly; and
  - (4) The supervising physician signs all patient charts unless the medical record documents that direct consultation with the supervising physician occurred; or
- c. The physician assistant and supervising physician provide a written statement sent directly to the board that the physician assistant is qualified to provide the needed medical services and that the medical care will be unavailable at the remote site unless the physician assistant is allowed to practice there. In addition, for three months the supervising physician must review patient care provided by the physician assistant at least weekly and must sign all patient charts unless the medical record documents that direct consultation with the supervising physician occurred.

**327.4(2)** The supervising physician must visit a remote site or communicate with the physician assistant at the remote site via electronic communications to provide additional medical direction, medical services and consultation at least every two weeks. For purposes of this rule, communication may consist of, but shall not be limited to, in-person meetings, two-way interactive communication directly between the supervising physician and the physician assistant via the telephone, secure messaging, electronic mail, or chart review. At least one supervising physician must meet in person with the physician assistant at the remote medical site at least once every six months to evaluate and discuss the medical facilities, resources, and medical services provided at the remote medical site.

[ARC 1909C, IAB 3/18/15, effective 4/22/15; see Delay note at end of chapter; ARC 2436C, IAB 3/16/16, effective 2/16/16; ARC 4300C, IAB 2/13/19, effective 3/20/19]

**645—327.5(147) Identification as a physician assistant.** The physician assistant shall be identified as a physician assistant to patients and to the public.

**645—327.6(147) Prescription requirements.**

**327.6(1)** Each written outpatient prescription drug order issued by a physician assistant shall contain the following:

- a. The date of issuance.
- b. The name and address of the patient for whom the drug is prescribed.
- c. The name, strength, and quantity of the drug, medicine, or device prescribed and directions for use.
- d. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Notification may include, but is not limited to, including the physician's name on the prescription, including the physician's name in the memo section of an electronic prescription, or providing the physician's name by telephone or other electronic means. If, in an electronic prescription record, the record does not include a dedicated field for the name of the supervising physician, a memo or comment field may be used to record the supervising physician's name by entering the code "SP01" and then the supervising physician's name prior to any other comment in the memo or comment field.
- e. The physician assistant's name and the practice address.
- f. The signature of the physician assistant followed by the initials "PA."
- g. The Drug Enforcement Administration (DEA) number of the physician assistant if the prescription is for a controlled substance.

All other prescriptions shall comply with paragraph "d."

**327.6(2)** Each oral prescription drug order issued by a physician assistant shall include the same information required for a written prescription, except for the written signature of the physician assistant and the address of the practitioners.

**327.6(3)** Prior to prescribing an opioid, a physician assistant shall review the patient's information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility patient care.

[ARC 9217B, IAB 11/3/10, effective 12/8/10; ARC 9844B, IAB 11/16/11, effective 12/21/11; ARC 4299C, IAB 2/13/19, effective 3/20/19]

**645—327.7(147) Supplying—requirements for containers, labeling, and records.**

**327.7(1) Containers.** A prescription drug shall be supplied in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. §§1471-1476 (1976), which relate to childproof closure, unless otherwise requested by the patient. The containers must also meet the requirements of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§301 et seq. (1976), which pertain to light resistance and moisture resistance needs of the drug supplied.

**327.7(2) Labeling.** A label bearing the following information shall be affixed to a container in which a prescription drug is supplied:

- a. The name and practice address of the supervising physician and physician assistant.
- b. The name of the patient.
- c. The date supplied.
- d. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician assistant.
- e. The name, strength and quantity of the prescription drug in the container.
- f. When supplying Schedule II, III, or IV controlled substances, the federal transfer warning statement must appear on the label as follows: "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

**327.7(3) Samples.** Prescription sample drugs will be provided without additional charge to the patient. Prescription sample drugs supplied in the original container or package shall be deemed to conform to labeling and packaging requirements.

**327.7(4) Records.** A record of prescription drugs supplied by the physician assistant to a patient shall be kept which contains the label information required by paragraphs 327.7(2) “b” to “e.” Noting such information on the patient’s chart or record is sufficient.

**645—327.8(148C) Sharing information.** When the board receives a complaint alleging that inadequate supervision by a physician assistant’s supervising physician may have occurred, the board shall forward a copy of that complaint to the board of medicine. Any response to the complaint, filed with the board by the physician assistant, will also be shared with the board of medicine.

[ARC 3642C, IAB 2/14/18, effective 3/21/18]

These rules are intended to implement Iowa Code section 147.107 and chapters 148C and 272C.

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[Filed Emergency ARC 2436C, IAB 3/16/16, effective 2/16/16]

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[Filed ARC 4300C (Notice ARC 4130C, IAB 11/21/18), IAB 2/13/19, effective 3/20/19]

<sup>1</sup> June 16, 2004, effective date of amendments published in ARC 3345B delayed 70 days by the Administrative Rules Review Committee at its meeting held June 7, 2004.

<sup>2</sup> April 22, 2015, effective date of ARC 1909C [327.4(2)] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at a special meeting held April 20, 2015. At its meeting held February 5, 2016, the Committee extended the delay 70 days beyond the adjournment of the 2016 General Assembly.



CHAPTER 328  
CONTINUING EDUCATION FOR PHYSICIAN ASSISTANTS

**645—328.1(148C) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of physician assistants.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a physician assistant in the state of Iowa.

**645—328.2(148C) Continuing education requirements.**

**328.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on October 1 of each year and ending on September 30 two years later. Each biennium, each licensee shall be required to complete a minimum of 100 hours of continuing education approved by the board.

**328.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. The new licensee will be required to complete a minimum of 100 hours of continuing education per biennium for each subsequent license renewal.

**328.2(3)** A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

**645—328.3(148C,272C) Standards.**

**328.3(1) General criteria.** A continuing education activity is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides an individual certificate of completion or evidence of successful completion of the course provided by the course sponsor. This documentation must contain the course title, date(s), contact hours, sponsor and licensee’s name.

**328.3(2) Specific criteria.** Continuing education requirements are as follows:

- a. The licensee shall complete a minimum of 50 hours of credit designated as Category I by the American Academy of Physician Assistants, the American Medical Association, the American Osteopathic Association Council on Continuing Medical Education, the American Academy of Family

Physicians or other organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME).

*b.* For the remaining 50 hours of required continuing medical education (CME), Category I or Category II credit, as accepted by the National Commission on Certification for Physician Assistants (NCCPA), shall satisfy the CME requirements. In case of audit, licensees shall provide evidence of NCCPA certification during the time period being audited or an activity log for all Category II credits for which a certificate of completion is not available. The activity log shall list for each activity the date and type of activity and number of hours claimed per activity.

*c.* Licensees who maintain certification by the National Commission on Certification for Physician Assistants (NCCPA) may show proof of meeting the board's CME requirements by providing proof of current certification by the NCCPA for the time period being reviewed or audited.

*d.* A licensee who has prescribed opioids to a patient during the renewal cycle shall complete a minimum of two hours of continuing education regarding the guidelines for prescribing opioids for chronic pain, as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, as a condition of license renewal. These hours may count toward the 100 hours of continuing education required for license renewal. The licensee shall maintain documentation of these hours, which may be subject to audit.

[ARC 9517B, IAB 5/18/11, effective 6/22/11; ARC 4299C, IAB 2/13/19, effective 3/20/19]

**645—328.4(148C,272C) Audit of continuing education report.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—328.5(148C,272C) Automatic exemption.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—328.6(148C,272C) Continuing education exemption for disability or illness.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—328.7(148C,272C) Grounds for disciplinary action.** Rescinded IAB 8/13/08, effective 9/17/08.

**645—328.8(148C) Continuing education exemption for inactive practitioners.** Rescinded IAB 8/17/05, effective 9/21/05.

**645—328.9(148C) Reinstatement of inactive practitioners.** Rescinded IAB 8/17/05, effective 9/21/05.

**645—328.10(272C) Hearings.** Rescinded IAB 8/17/05, effective 9/21/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148C.

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CHAPTER 329  
DISCIPLINE FOR PHYSICIAN ASSISTANTS  
[Prior to 8/7/02, see 645—325.11(148C,272C)]

**645—329.1(148C) Definitions.**

“*Board*” means the board of physician assistants.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a physician assistant in Iowa.

**645—329.2(148C,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—329.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses.

**329.2(1) Fraud in procuring a license.** Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state which includes the following:

*a.* False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**329.2(2) Professional incompetency.** Professional incompetency includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physician assistants in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average physician assistant acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a physician assistant in this state.

*e.* Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**329.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public.** Proof of actual injury need not be established.

**329.2(4) Practice outside the scope of the profession.**

**329.2(5) Use of untruthful or improbable statements in advertisements.** Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**329.2(6) Habitual intoxication or addiction to the use of drugs.**

**329.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.**

**329.2(8) Falsification of client records.**

**329.2(9) Acceptance of any fee by fraud or misrepresentation.**

**329.2(10) Negligence by the licensee in the practice of the profession.** Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**329.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee’s ability to practice within the profession,**

regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**329.2(12)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**329.2(13)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**329.2(14)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**329.2(15)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**329.2(16)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

**329.2(17)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**329.2(18)** Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

**329.2(19)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**329.2(20)** Failure to pay costs assessed in any disciplinary action.

**329.2(21)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**329.2(22)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**329.2(23)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a physician assistant.

**329.2(24)** Failure to report a change of name or address within 30 days after it occurs.

**329.2(25)** Representing oneself as a physician assistant when one's license has been suspended or revoked, or when one's license is on inactive status.

**329.2(26)** Permitting another person to use the licensee's license for any purpose.

**329.2(27)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**329.2(28)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

*a.* Verbally or physically abusing a patient or client or coworker.

*b.* Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

*c.* Betrayal of a professional confidence.

*d.* Engaging in a professional conflict of interest.

**329.2(29)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

**329.2(30)** The performance of a medical function without approved supervision except in cases requiring performance of evaluation and treatment procedures essential to providing an appropriate response to an emergency situation.

**329.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

**329.2(32)** Prescribing opioids in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

[ARC 8588B, IAB 3/10/10, effective 4/14/10; ARC 9666B, IAB 8/10/11, effective 9/14/11; ARC 4299C, IAB 2/13/19, effective 3/20/19]

**645—329.3(147,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a mental, physical, or clinical competency examination, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1,000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**645—329.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—329.5(148C) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** Rescinded IAB 8/13/08, effective 9/17/08.

These rules are intended to implement Iowa Code chapters 147, 148C and 272C.

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**NURSING BOARD[655]**

[Prior to 8/26/87, see Nursing, Board of[590], renamed Nursing Board[655]  
under the “umbrella” of Public Health Department by 1986 Iowa Acts, ch 1245]

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CHAPTER 7  
ADVANCED REGISTERED NURSE PRACTITIONERS  
[Prior to 8/26/87, Nursing Board[590] Ch 7]

**655—7.1(17A,124,147,152) Definitions.**

“*Advanced registered nurse practitioner*” or “*ARNP*” means a person who is currently licensed as a registered nurse under Iowa Code chapter 152 or chapter 152E who is licensed by the board as an advanced registered nurse practitioner.

“*Board*” as used in this chapter means the Iowa board of nursing.

“*Collaboration*” is the process whereby an ARNP and physician jointly manage the care of a client.

“*Controlled substance*” means a drug in Schedules II through V of subchapter II of Iowa Code chapter 124.

“*Dispense*” means to provide a prescription drug to a patient for self-use outside of the ARNP’s practice location. “Dispense” does not include administration.

“*National professional certification organization*” means the American Academy of Nurse Practitioners, the American Association of Critical Care Nurses, the American Midwifery Certification Board, the American Nurses Credentialing Center, the National Board of Certification and Recertification for Nurse Anesthetists, the National Certification Corporation, and the Pediatric Nursing Certification Board.

“*Opioid*” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“*Prescription monitoring program database*” or “*PMP database*” means a centralized database of reportable controlled substance prescriptions dispensed to patients and includes data access logs, security tracking information, and records of each individual who requests prescription monitoring program (PMP) information as operated by the board of pharmacy.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.2(152) Requirements for licensure as an ARNP.**

**7.2(1) Qualifications.** An applicant for an ARNP license shall meet the following qualifications:

a. Hold an active unrestricted license as a registered nurse in accordance with 655—Chapter 3.  
b. Graduation from an accredited graduate or postgraduate advanced practice educational program in one of the following roles, except as provided by subrule 7.2(2):

- (1) Certified nurse-midwife.
- (2) Certified registered nurse anesthetist.
- (3) Certified nurse practitioner.
- (4) Clinical nurse specialist.

c. Current certification issued by a national professional certification organization as a certified nurse-midwife or certified registered nurse anesthetist, or as a certified nurse practitioner or clinical nurse specialist in at least one of the following population foci:

- (1) Women’s health/gender-related.
- (2) Family (individual across the lifespan).
- (3) Psychiatric mental health.
- (4) Adult/gerontology.
- (5) Pediatrics.
- (6) Neonatal.

**7.2(2) Exception.** An applicant who has completed a formal advanced practice educational program but has not graduated from an accredited graduate or postgraduate advanced practice educational program may be licensed as an ARNP provided that the applicant possesses a current certification from a national professional certification organization as described in paragraph 7.2(1)“c.” This exception is intended to allow for the grandfathering of ARNPs who completed educational programs before the board required graduation from an accredited graduate or postgraduate advanced practice educational program.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.3(17A,147,152) Application process.**

**7.3(1)** An applicant who wishes to be licensed as an ARNP shall submit the following to the board:

- a.* An ARNP application for each population focus.
- b.* A dated copy of the applicant's current advanced level certification issued by the appropriate national professional certification organization.
- c.* If the applicant is not licensed as a registered nurse in Iowa, verification of an active registered nurse license in another state recognized for licensure in this state pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.
- d.* A nonrefundable license fee of \$81.

**7.3(2)** The applicant shall request that official transcripts be sent directly to the board from the educational program verifying the coursework, date of completion of the program, and the degree conferred.

**7.3(3)** The executive director of the board or the executive director's designee shall have the authority to determine if all requirements have been met for licensure of the applicant as an ARNP. If all requirements have been met:

- a.* The applicant shall be issued a license and a certificate to practice as an ARNP which clearly denotes the applicant's name, title, and population focus, and the expiration date of the license.
- b.* The expiration date of the ARNP license shall be the same as the expiration date of the applicant's license to practice as a registered nurse.

**7.3(4)** Licensure completion. An applicant shall complete the ARNP licensure process within 12 months from the start of the application. The board reserves the right to destroy incomplete application materials after 12 months.

**7.3(5)** Renewal of licensure. An ARNP license may be renewed beginning 60 days prior to the license expiration date and ending 30 days after the expiration date. To renew, a licensee shall submit the information required by subrule 7.3(1). The expiration date assigned to a renewed ARNP license shall be the same as the expiration date of the licensee's license to practice as a registered nurse.

**7.3(6)** Inactive status. Failure to renew an ARNP license within 30 days after its expiration shall result in an inactive ARNP license.

- a.* Continuing to work as an ARNP with an inactive ARNP license may result in disciplinary action.
- b.* To reactivate the license, the licensee must reactivate the underlying license to practice as a registered nurse, if required, and shall complete the license renewal process for the ARNP license.

**7.3(7)** License denial. Rule 655—3.9(17A,272C) shall govern the denial of an application for an ARNP license.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.4(17A,147,152) Advanced nursing practice.**

**7.4(1)** An ARNP shall practice within the ARNP's respective population foci. An ARNP shall practice in accordance with the applicable standard of care as described in guidelines published by national professional associations or other reputable sources.

**7.4(2)** An ARNP must maintain current certification with a national professional certification organization at all times while the ARNP license is active.

**7.4(3)** An ARNP licensed by the board may prescribe, administer, or dispense prescription drugs or devices, including controlled substances, within the ARNP's role and population foci and consistent with applicable state and federal laws.

**7.4(4)** An ARNP shall have the authority to practice to the full extent of the ARNP's license, education, and experience in the ARNP's respective population foci. An ARNP may:

- a.* Assess health status;
- b.* Obtain a relevant health and medical history;
- c.* Perform physical examinations;
- d.* Order preventive and diagnostic procedures;
- e.* Formulate a differential diagnosis;

- f.* Develop a treatment plan;
- g.* Develop a patient education plan;
- h.* Receive third-party reimbursement;
- i.* Maintain hospital privileges; and
- j.* Promote health maintenance.

**7.4(5)** Supervision of fluoroscopy. An ARNP shall be permitted to provide direct supervision in the use of fluoroscopic X-ray equipment, as defined in rule 641—38.2(136C).

*a.* The ARNP shall provide direct supervision of fluoroscopy pursuant to the following provisions:

(1) Completion of an educational course including content in radiation physics, radiobiology, radiological safety and radiation management applicable to the use of fluoroscopy, and maintenance of documentation verifying successful completion.

(2) Collaboration, as needed, as defined in rule 655—7.1(17A,124,147,152).

(3) Compliance with facility policies and procedures.

*b.* The ARNP shall complete an annual radiological safety course whose content includes, but is not limited to, the time, dose, distance, shielding and effects of radiation.

*c.* The ARNP shall maintain documentation of the initial educational course and all annual radiological safety updates.

*d.* The initial and annual education requirements are subject to audit by the board pursuant to 655—subrule 5.2(10).

**7.4(6)** Only a person currently licensed as an advanced registered nurse practitioner may use that title and the letters “ARNP” after the person’s name. A person currently licensed as an ARNP shall utilize the title “advanced registered nurse practitioner” or the letters “ARNP” after the person’s name. Utilization of the title which denotes the ARNP’s certification or population foci is at the discretion of the ARNP.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.5(17A,147,152) Standards of practice for treating patients.** An ARNP shall follow the standards of practice for the ARNP’s respective population foci. Prior to treating a patient, an ARNP shall:

**7.5(1)** Establish a patient-provider relationship.

**7.5(2)** Perform and document the following, or have access to the patient’s health records where all of the following have been documented by other providers in the care team:

- a.* Chief complaint;
- b.* Pertinent health history;
- c.* A focused assessment;
- d.* Diagnosis; and
- e.* Plan of treatment.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.6(17A,124,147,152,272C) Standards of practice for controlled substances.** In addition to following the standards of practice for treating a patient described in rule 655—7.5(17A,147,152), an ARNP who prescribes or administers a controlled substance shall practice in accordance with the following:

**7.6(1)** The health history shall include a personal and family substance abuse risk assessment, or the documented rationale for not performing the assessment.

**7.6(2)** The health record must include documentation of the presence of one or more recognized indications for the use of a controlled substance.

**7.6(3)** An ARNP is encouraged to utilize a treatment agreement if continuously prescribing one or more controlled substances.

**7.6(4)** Throughout the course of the patient’s treatment, the ARNP shall provide ongoing education that includes, but is not limited to, the risks of using a controlled substance, and information regarding addiction, physical dependence, substance abuse, and tolerance, or document the rationale for not providing the education.

**7.6(5)** An ARNP shall maintain an active Drug Enforcement Administration (DEA) registration and an active controlled substances Act (CSA) registration to dispense, prescribe, or administer controlled substances, when required by the DEA and the board of pharmacy.

**7.6(6)** An ARNP shall not prescribe a controlled substance to the ARNP's self or to a family member unless the prescribing occurs in a clinical setting when an emergency situation arises and when there is no other qualified practitioner available to the patient.

**7.6(7)** The board may discipline an ARNP for prescribing opioids in dosage amounts that exceed what would be prescribed by a reasonably prudent ARNP in a similar practice.

**7.6(8)** An ARNP who has prescribed opioids to a patient during the renewal cycle is required to complete a minimum of two contact hours of continuing education regarding the U.S. Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, as a condition of license renewal every three years. These hours may count towards the 36 contact hours required for license renewal. The ARNP shall maintain documentation of these hours, which may be subject to audit.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.7(124) Use of the prescription monitoring program.**

**7.7(1)** Prior to the prescribing or dispensing of an opioid by an ARNP, the ARNP or the ARNP's authorized delegate shall query the PMP database and the ARNP shall review the patient's information contained in the PMP database.

**7.7(2)** This rule does not apply to an ARNP when treating a patient who is receiving inpatient hospice care or long-term residential facility care.

**7.7(3)** This rule does not apply to an ARNP who issues a medication order for an opioid to be administered to a patient at a hospital or clinic, because the ARNP is neither prescribing nor dispensing in this scenario.

**7.7(4)** An ARNP is responsible for understanding the board of pharmacy's rules governing use of the prescription monitoring program in 657—Chapter 37.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

**655—7.8(152) Prescribing epinephrine auto-injectors in the name of a facility.**

**7.8(1)** An ARNP may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in Iowa Code section 135.185(1), a school district, or an accredited nonpublic school.

**7.8(2)** An ARNP who prescribes epinephrine auto-injectors in the name of an authorized facility as defined in Iowa Code section 135.185(1), a school district, or an accredited nonpublic school, to be maintained for use pursuant to Iowa Code sections 135.185, 260.16 and 260.16A, provided the ARNP has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

[ARC 4308C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code sections 17A.3, 124.551A, 124.552, 147.2, 147.10, 147.11, 147.72, 147.74, 147.76, 147.80, 147.107, 152.1, 152.6, 152.7, and 272C.2C.

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**REVENUE DEPARTMENT[701]**

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CHAPTER 18  
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[Prior to 12/17/86, Revenue Department[730]]

**701—18.1(422,423) Tangible personal property purchased from the United States government.** Tangible personal property purchased from the United States government or any of the 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 422.44, 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 sections 422.44 and 423.3.

**701—18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc.** Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The gross receipts from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(11), 423.1 and 423.2.

**701—18.3(422,423) Chemical compounds used to treat water.** Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and does become a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1, and 423.2.

**701—18.4(422) Mortgages and trustees.** Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. In *Re Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrcty. 1983).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1 and 423.2.

**701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.**

**18.5(1)** The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

**18.5(2)** The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable. A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See *AVCO Manufacturing Corporation v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958) and *Akron Home Medical Services, Inc. v. Lindley*, 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. 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.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 701—34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

**18.5(3)** The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

*a.* A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

*b.* Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department on aging pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal 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. See 701—Chapter 19. See also *NLO, Inc. v. Limbach*, 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services*, 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).

### **701—18.6(422,423) Relief agencies.**

**18.6(1)** Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are Salvation Army, Royal Neighbors, and Masonic Lodge. The sales of tangible personal property or enumerated services to relief agencies are subject to tax. A relief agency may apply to the director for refund of the amount of tax imposed and paid by it, upon the purchase of goods, wares, merchandise, or services rendered, furnished, or performed that are used for free distribution to the poor and needy.

**18.6(2)** Persons are determined to be in the poor and needy category when their incomes and resources are at or below poverty level. The department will use federal poverty guidelines in making this determination.

**18.6(3)** Listed below are some examples where the tax may or may not be refunded to the relief agency:

EXAMPLE: A relief agency purchases clothing for free distribution to a poor and needy person. The tax is refundable.

EXAMPLE: A relief agency pays the gas, light, or telephone bill for a person who is poor and needy. The tax is refundable.

EXAMPLE: An agency purchases items of clothing for residents of their living facility, and is partially reimbursed by the person using the items based upon the recipient's ability to pay. Tax on the portion of cost not recovered by the agency can be claimed as a refund of tax paid by using formula stated in 18.6(6).

**18.6(4)** Demolition v. repair costs. A nonprofit noneducational relief agency is not entitled to a refund of sales tax paid by contractors on building materials used in the alteration, expansion, repair, remodeling or construction of the facility since the materials were sold tax paid to the contractor who is the consumer of the material by statute. See Iowa Code section 422.42(9). However, the relief agency would be entitled to a refund of sales tax paid on the cost of the demolition of the building since the demolition of the building indirectly benefited the poor and needy. 1968 O.A.G. #841.

EXAMPLE: A relief agency, which is not part of a governmental unit, operates a home or orphanage for persons who are poor and needy or for orphan children. Food, lodging, and necessary items are furnished free-of-charge to the residents. The relief agency would be entitled to a refund of any taxes paid to operate this facility; such as, but not limited to, lights, heat, water, telephone, and repair items or services needed to maintain the facility.

**18.6(5)** Claims for refund must be filed quarterly with the department within 45 days after the end of the quarter for which the refund is claimed. Claims are to be submitted on forms provided by the department.

The claim shall include the following information:

- a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.
- b. List the persons making the sales to the relief agency.
  1. Include the date of the sale.
  2. Include the total amount expended, itemizing sales tax.
  3. Include the date of payment.
  4. Include the check number, receipt number, or paid invoice verifying payment.
- c. List the total operating income received (residents, donations, etc.)
- d. List the operating income received from residents only.
- e. The claim shall be signed by an authorized agent of the relief agency.

**18.6(6)** When a relief agency receives part of its operating income from the poor and needy it is serving, this income will be considered in computing the tax refund paid upon sales to it of products or services used for free distribution to the poor and needy.

To reasonably approximate the correct amount of tax to be refunded, where only a portion of the tax qualifies for refund, a formula will be used by the department. The prescribed formula the department will allow is operating income received from the poor and needy served divided by total operating income received. This percentage will be multiplied by the applicable gross receipts which are considered refundable to arrive at the correct amount of tax to be refunded.

If a person requests an alternative formula, the person shall first list the reasons why an alternative formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw the approval or require adjustments in the formula upon notice to the person. Additional refunds or assessments may be made if an audit discloses the formula is incorrect.

This rule is intended to implement Iowa Code sections 422.42(7), 422.43, 422.47, 423.1 and 423.2.

**701—18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items.** The gross receipts from the sale of containers, labels, cartons, pallets, packing cases, wrapping paper, twine, bags, bottles, shipping cases, garment hangers, and other similar articles and receptacles sold to retailers or manufacturers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property which is sold either at retail or for resale shall be exempt from the tax.

For the purpose of this rule, producers, wholesalers and jobbers are considered retailers or manufacturers.

**18.7(1) Sales to other than retailers or manufacturers.**

a. Containers and all other specified items delivered with tangible personal property which are sold to a final buyer or ultimate consumer shall be exempt from the tax when no separate charge is made for the container. This group includes such items as boxes, cartons, pallets, paper bags, bottles, shipping cases, wrapping paper and twine. If a separate charge is made for the container, the sale of the container is subject to the tax. The sale of wrapping paper, paper bags and like items are subject to the tax when sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers to whom meat is sold. The wrapping paper and tape would be exempt from tax as being purchased as a packaging material of tangible personal property sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who own the meat. The meat locker only performs the service of processing the meat. The wrapping paper and tape are subject to tax as they were not purchased for packaging or for the facilitating of transportation of tangible personal property sold at retail, but were used in the rendering of a service.

*b.* Packing paper, lining paper, paper used to line boxes and crates, and similar items shall be exempt from the tax if delivered with tangible personal property ultimately sold at retail when no separate charge is made for the paper.

**18.7(2) Labels, tags and nameplates.** Sales of labels, tags, and nameplates attached to products for the benefit of the vendor such as shipping tags, price tags and instructions to cashiers are subject to the tax, unless such items are sold to manufacturers and retailers for packaging or facilitating the transportation of tangible personal property ultimately sold at retail. Labels, tags or nameplates attached to products for the benefit of the final consumer which describe contents, or which relate to the product and are affixed to the product, are exempt from tax.

**18.7(3) Pallets.** Pallets purchased by manufacturers or retailers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property ultimately sold at retail shall be exempt from the tax.

**18.7(4) Garment hangers.** Garment hangers purchased by manufacturers or retailers and used to facilitate the transportation of tangible personal property or garment hangers delivered with tangible personal property ultimately sold at retail when no separate charge is made are exempt from tax.

Garment hangers used merely to display tangible personal property are taxable.

This rule is intended to implement Iowa Code sections 422.42(3), 422.45(19) and 423.1(1).

#### **701—18.8(422) Auctioneers.**

**18.8(1)** An auctioneer in making a sale, whether of tangible personal property or realty, is by virtue of this employment making the sale as the agent of the principal.

**18.8(2)** Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 422.42(12), the gross receipts from the sale are exempt from the tax. See 1970 O.A.G. 774.

**18.8(3)** When an auctioneer is conducting a sale and the principal is in the business of making sales of tangible personal property or taxable services on a recurring basis, the gross receipts from the sale are taxable.

**18.8(4)** Where an auctioneer is selling tangible personal property that the auctioneer owns, the sale of the tangible property owned by the auctioneer is taxable.

This rule is intended to implement Iowa Code section 422.43.

**701—18.9(422) Sales by farmers.** The sale of grain, livestock or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing or human consumption and shall not be subject to tax.

Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the gross receipts from their sales.

#### **701—18.10(422,423) Florists.**

**18.10(1)** Florists are engaged in the business of selling tangible personal property at retail and shall be liable for payment of tax measured by the receipts from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property.

**18.10(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, measured at the current rate of tax on gross receipts from the total amount collected from the customer, except the cost of a telegram when a separate charge is made therefor.

*b.* In cases where a florist receives an order pursuant to which the florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, tax is not owing with respect to any receipts which the florist may realize from the transaction.

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 tax with respect to any receipts which the florist may realize from the transaction.

d. Rescinded IAB 2/28/96, effective 4/3/96.

**18.10(3)** Florists engaged in selling shrubbery, trees, and similar items. See rule 18.11(422,423). This rule is intended to implement Iowa Code section 422.43.

**701—18.11(422,423) Landscaping materials.** The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, “final consumer” ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire gross receipts shall be subject to tax. Any retailer’s charges for “landscaping” shall be taxable. See rule 701—26.62(422) for a description of this service. However, a retailer’s charges for nontaxable services are not taxable if contracted for separately; or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of \$20.00 per yard. The sodding contractor must charge the customer \$20.00 sales tax (5% x \$400.00).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at \$25.00 each, white rock for \$5.00 per bag and woodchips for \$4.00 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of \$25.00 per hour. XYZ Company’s hourly fee is taxable if paid for the service of “landscaping” or for some other taxable service, e.g., excavation. If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

The gross receipts from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

This rule does not apply to the gross receipts from the sale of plants and trees which are eligible for purchase with food coupons under rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42, 422.45(12) and 423.1.

**701—18.12(422,423) Hatcheries.** The gross receipts from the sale of egg-type cockerel chicks, broiler chicks and turkey poults shall be subject to tax. If sale of domestic poultry is for breeding, see rule 701—17.9(422,423).

When pullets and poults are sold for production purposes, the receipts from the sales shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

**701—18.13(422,423) 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 gross receipts from taxable retail sales of tangible personal property 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 422.45(20).

This rule is intended to implement Iowa Code chapters 422 and 423.

**701—18.14(422,423) Sales of livestock and poultry feeds.** Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets.

Antibiotics, when administered as an additive to feed or drinking water, and vitamins and minerals sold for livestock and poultry shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

**701—18.15(422,423) Student fraternities and sororities.** Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail within the meaning of the sales tax law 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—20.1(422,423).

Student fraternities or sororities engaged in the business of serving meals to persons other than members for which separate charges are made, or owning and operating canteens through which tangible personal property is sold are deemed to be making taxable sales.

When student fraternities or sororities do not provide their own meals but are provided by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of tax with respect to their receipts from meals furnished. A similar liability is attached to persons engaged in the business of operating boarding houses, whether for students or other persons.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

**701—18.16(422,423) Photographers and photostaters.** Tax shall apply to the sale of photographs and photostat copies, whether or not produced to the special order of the customer and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sale of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sale of materials to photographers or producers which is used in the processing of photographs or photostat copies.

**18.16(1)** *Sales of photographs to newspaper or magazine publishers for reproduction.* The sale of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

**18.16(2)** Reserved.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

**701—18.17(422,423) 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 not only provides for the sale and delivery of materials but also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and shall be liable for tax. Tax shall apply on the purchase price of the material.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(5), 423.1 and 423.2.

**701—18.18(422,423) Sale of ice.** The sale of ice for human consumption which may be purchased with food coupons is exempt from tax. The sale of ice used for cooling is subject to tax. See rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(12), 423.2 and 423.4.

**701—18.19(422,423) Antiques, curios, old coins or collector’s postage stamps.** Curios, antiques, art work, coins, collector’s postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail and shall be subject to tax.

**18.19(1)** Stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

**18.19(2)** The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, it shall not be subject to either sales or use tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

**701—18.20(422,423) Communication services.** This rule applies to sales of communication services billed prior to November 23, 2011. For communication service, telecommunication service, ancillary service and other related communication service billed on or after November 23, 2011, refer to 701—Chapter 224, Iowa Administrative Code. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

**18.20(1)** Definitions.

*a.* Communication service shall mean the act of providing, for a consideration, any medium or method for, or the act of transmission and receipt of, information between two or more points. Each point must be capable of both transmitting and receiving information if “communication” is to occur. The term “communication service” includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and materials printed by teletype), other images perceived visually and data encoded in computer languages. Any separate charge for the service of transmitting and receiving information between automatic data processing equipment and remote facilities shall be subject to tax, see paragraph 18.34(3)“c.”

*b.* Communication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Communication service between any other points is “interstate” in nature and not subject to tax.

*c.* “Gross receipts” from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as “access charges for interstate or foreign access services” to an “end user” shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

*d.* Paging services. A one-way paging service is not a taxable enumerated service in Iowa because one-way paging only receives information and is not capable of transmitting information. As a result, this type of pager service is not a two-way transmission.

**18.20(2)** This subrule is applicable to various specific circumstances involving the sale of communication services.

*a.* Companies which bill their subscribers for communication services on a quarterly, semiannual, annual or any other periodic basis shall include the amount of such billings in their gross receipts. The date of the billing shall determine the period for which sales tax shall be remitted. Thus, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the sales tax return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a sales tax deposit to the department.

*b.* The gross receipts from the service of transmitting messages, night letters, day letters and all other messages of similar nature between two or more points within this state are subject to sales tax.

*c.* Receipts from communication services performed for all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government, and private, nonprofit educational institutions in this state for educational purposes are exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax.

**18.20(3)** This subrule is specifically applicable to companies and other persons providing telephone service in this state. Any reasoning contained in this subrule may also be applied to companies or other persons providing other communication services.

*a.* All companies must have a permit for each business office which provides communication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of such offices.

*b.* If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax shall be computed on the minimum amount guaranteed or the actual taxable gross receipts collected whichever is the greater.

*c.* In computing tax due, the federal taxes identified as such, separately billed and payable by the customer shall be excluded from gross receipts. If the taxes are not separately billed, they shall be subject to Iowa sales tax.

*d.* Telegrams and like charges made to the accounts of subscribers and billed by companies providing telephone service which appear on the subscribers' toll bills are subject to tax.

*e.* Charges for directory assistance service rendered in this state shall be subject to tax. Charges for directory assistance service, separately stated and billed, shall not be subject to tax if the service is interstate in nature.

*f.* The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from "inside wire maintenance charges" for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of "electrical repair" or are incurred under an "optional service or warranty contract" for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

*g.* The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of "rental of tangible personal property." The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

*h.* The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does

or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

*i.* The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

*j.* If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

*k.* The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

*l.* The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

*m.* On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

**18.20(4)** When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

**18.20(5)** Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the “Internet” or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph “a” of subrule 18.20(1). If a user’s billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An “on-line computer service” is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax through May 14, 2000.

On and after May 15, 2000, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

**18.20(6)** The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a “fax” from one point to another within this state are subject to

sales tax. See 18.20(1)“a.” Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a “fax” machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1)“a” and “b.”

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via its machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communications on Klear Kopy’s dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, “bill to John Smith for August, 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30.” The \$30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via email. After the operation, the TUV Hospital sent patient W a bill for \$10,000 of nontaxable hospital services. Listed as an expense is “email—\$200.” The email services are performed incidentally to the nontaxable hospital services; therefore, the \$200 is not taxable gross receipts.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E’s problem through the on-line service, D performs complex surgery on patient E. D’s bill to patient E reads as follows: “dental reconstruction—\$2,750; on-line consultation portion—\$240.” The \$240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

**18.20(7)** *Communication service, telecommunications service, ancillary service, and other similar communication service.*

*a. Purpose.* This subrule covers various provisions related to communication service, telecommunications service, ancillary service, and other similar communication service.

*b. Definitions.*

(1) “*Air-to-ground radio telephone service*” means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) “*Ancillary services*” means services that are associated with or incidental to the provision of a telecommunications service. The term includes, but is not limited to, detailed communications billing service, directory assistance, vertical service, and voice mail services.

(3) “*Call-by-call basis*” means any method of charging for telecommunications services where the price is measured by individual calls.

(4) “*Communications channel*” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(5) “*Communication service*” means the act of communicating using any system or the act of transmission and receipt of information between two or more points. Each point must be capable of both transmitting and receiving information if communication is to occur. The term “communication service” includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and other materials), other images perceived visually and data encoded in computer languages. Communication service also includes telecommunications service, ancillary service and other similar communication service.

(6) “*Conference bridging service*” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include telecommunications services used to reach the conference bridge.

(7) “*Customer*” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. For purposes of sourcing sales of telecommunications services, the end user of the telecommunications service is the customer of the telecommunications service when the end user is not also the contracting party. “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

(8) “*Customer channel termination point*” means the location where the customer either inputs or receives the communications.

(9) “*Detailed telecommunications billing service*” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(10) “*Directory assistance*” means an ancillary service of providing telephone number information and address information.

(11) “*End user*” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

(12) “*Fixed wireless service*” means a telecommunications service that provides radio communication between fixed points.

(13) “*Home service provider*” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(14) “*Interstate*” means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

(15) “*Intrastate*” means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

(16) “*Mobile telecommunications service*” means commercial mobile radio service; that is, a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves.

(17) “*Mobile wireless service*” means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunications services that are provided by a commercial mobile radio service provider.

(18) “*Paging service*” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

(19) “*Pay telephone service*” means a telecommunications service provided through any pay telephone. Pay telephone service also includes coin operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(20) “*Place of primary use*” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

(21) “*Postpaid calling service*” means the telecommunications service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(22) *“Prepaid calling service”* means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) *“Prepaid wireless calling service”* means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(24) *“Private communication service”* means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(25) *“Residential telecommunications service”* means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

(26) *“Service address”* means:

1. The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph “1” of this subparagraph is not known, “service address” means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs “1” and “2” of this subparagraph are not known, the service address means the location of the customer’s place of primary use.

(27) *“Telecommunications service”* means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. “Telecommunications service” does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer’s premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service and audio and video programming services delivered by a commercial mobile radio service provider;

8. Ancillary service;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

(28) “*Value-added non-voice data service*” means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(29) “*Vertical service*” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

(30) “*Voice mail service*” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

*c. Taxable communication service, telecommunications service, ancillary service, and other similar communication service.* The sales price from the sale of communication service, telecommunications service, ancillary service, and other similar communication service is subject to the sales or use tax. The following is a nonexclusive list of services subject to the Iowa sales and use tax:

- (1) Air-to-ground radio telephone service;
- (2) Ancillary services except detailed communications billing service;
- (3) Conference bridging service;
- (4) Fixed wireless service;
- (5) Mobile wireless service;
- (6) Pay telephone service;
- (7) Postpaid calling service;
- (8) Prepaid calling service;
- (9) Prepaid wireless calling service;
- (10) Private communication service;
- (11) Residential telecommunications service.

*d. Nontaxable communication service, telecommunications service, ancillary service, and other similar communication service.* The following services are not subject to the Iowa sales and use tax:

- (1) Detailed communications billing service;
- (2) Internet access fees or charges;
- (3) One-way paging services that only receive information and are not capable of transmitting information;
- (4) Value-added non-voice data service;
- (5) Any charge necessary to secure only interstate communication service if the nature of the service is separately stated and the charge for the interstate service is separately billed.

*e. Sourcing of telecommunications services.*

(1) General sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in paragraph “e.”

(2) Exceptions. The following telecommunications services and products are sourced in accordance with the principles set out in subparagraph (2):

1. Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

2. Prepaid calling service is sourced as provided under Iowa Code section 423.15. However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.

3. A sale of a private telecommunications service is sourced as follows:

- Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.
- Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

- Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

- Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

4. The sale of Internet access service is sourced to the customer's place of primary use.

5. The sale of an ancillary service is sourced to the customer's place of primary use.

6. A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

7. The sale of telecommunications service sold on a call-by-call basis is sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

8. The sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

9. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

- A sale of mobile telecommunications services, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

- A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

*f. Bundled transaction.*

- (1) A "bundled transaction" is the retail sale of two or more products where (a) the products are otherwise distinct and identifiable, and (b) the products are sold for one non-itemized price. A bundled transaction does not include the sale of any products in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

- (2) In the case of a bundled transaction that includes any of the following: telecommunications service, ancillary service, Internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including but not limited to non-tax purposes.

3. The provisions of this subrule shall apply unless otherwise provided by federal law.

*g. Direct pay permit.* The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. The direct pay permit holder cannot use the direct pay permit for the purchase of communication service, telecommunications service, ancillary services, or other similar communication service. The seller should charge and collect the sales or use tax from the purchaser on the taxable sales of communication service, telecommunications service, ancillary services, and other similar communication service.

*h. Credit.* A taxpayer subject to sales or use tax on communication service, telecommunications service, ancillary service or other similar communication service who has paid any legally imposed sales

or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdictions.

*i. Sales of communication service, telecommunications service, ancillary service, or other similar communication service to the United States government or the state government of Iowa.* Sales of communication service, telecommunications services, ancillary services, or other similar communication service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. In order to be a sale to the United States government or to the state government of Iowa, the government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. Telecommunications service providers should obtain an exemption certificate from each agency for their records.

*j. Retailers liable for collecting and remitting tax.* Retailers that sell taxable communication service, telecommunications service, ancillary services, or other similar communication service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

This rule is intended to implement Iowa Code sections 34A.7(1)“c”(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 and 422.51(1) and Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1189, section 29.

[ARC 8021B, IAB 7/29/09, effective 9/2/09; ARC 9814B, IAB 10/19/11, effective 11/23/11; ARC 4309C, IAB 2/13/19, effective 3/20/19]

**701—18.21(422,423) Morticians or funeral directors.** A mortician or funeral director is engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers, and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, taxable services and nontaxable services, as required by the rules of the Federal Trade Commission, or Iowa Code section 523A.8(1)“b,” whichever is applicable, tax is due only upon the gross receipts from the sales of tangible personal property and taxable services. If contrary to the rules or the statute, or if the applicable rules are rescinded or the statute repealed, and the mortician or funeral director charges a lump sum to a customer covering the entire cost of the funeral without dividing the charges for sales of tangible personal property and taxable and nontaxable services, the mortician or funeral director shall report the full amount of the funeral bill less any cash advanced by the mortician or funeral director, with tax due on 50 percent of the difference. *Kistner v. Iowa State Board of Assessment and Review*, 224 Iowa 404, 280 N.W. 587 (1938). Cash advance items may include, but are not limited to, the following: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities, and death certificates.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner*; *supra*.

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 sections 422.42(3), 422.43, 423.1 and 423.2.

**701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians.** Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall

not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

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 for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property 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 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 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 to ophthalmologists, oculists, 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 an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

**701—18.23(422) Veterinarians.** Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422,423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

**701—18.24(422,423) Hospitals, infirmaries and sanitariums.** Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose. See rule 18.59(422,423) for an exemption applicable to sales of goods and furnishing of services on and after July 1, 1998, to a nonprofit hospital.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue*, 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth*, 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn*, 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines*, 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth*, 223 Iowa 341, 272 N.W. 90 (1937).

Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513, and chapter 423.

**701—18.25(422,423) Warranties and maintenance contracts.**

**18.25(1)** In general—definitions. “Mandatory warranty.” A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. “Optional warranty.” A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

**18.25(2)** Mandatory warranties. When the sale of tangible personal property 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.

**18.25(3)** Optional warranties. For periods after June 30, 1981.

*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 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

*b.* On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A “residential service contract” is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for \$3,000 on July 1, 1994. He pays \$150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$700 to fix the furnace. No sales tax is due on the \$700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for \$3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$900 to fix Mr. Jones’ furnace. Sales tax of \$45 is due based on the \$900.

*c.* On and after July 1, 1998, 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 and not for the furnishing of any materials, then no tax is imposed on the furnishing of those services under this subrule. 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 state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of the contract. If a charge for the performance of the nontaxable service is separately stated, see subrule 18.25(5) below.

**18.25(4)** A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

**18.25(5)** 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 sections 422.42 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

**701—18.26(422) Service charge and gratuity.** When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term “service charge” means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

*Cohen v. Playboy Club International, Inc.*, 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

**701—18.27(422) Advertising agencies, commercial artists, and designers.**

**18.27(1) Nontaxable services.** Tax does not apply to charges by advertising agencies, commercial artists, or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio, compiling statistical and other information; placing or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, and similar items. Charges for such items as supervision, consultation, research, postage, express, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

**18.27(2) Agency fee or commission.** When an amount billed as an agency “fee,” “service charge,” or “commission” represents a charge or part of the charge for any of the nontaxable services described under 18.27(1), the amount so billed is not taxable. Such charge by an advertising agency will be considered to be made for nontaxable services.

**18.27(3) Items taxable.** The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, designs, photographs, lettering, assemblies and printed matter. This includes the cost of typography and reproduction proofs when the latter is used as part of a paste-up, “mechanical” or assembly. Whether the items of property are used for reproduction or display purposes is immaterial.

**18.27(4) Preliminary art.** “Preliminary art” as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. (“Finished art” as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or

producing the preliminary art prior to date of contract or approval for finished art shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller.

The following situations are examples of when the sale of “finished art” is taxable:

*a.* Finished art which is sold to customers to be used for advertising purposes in newspapers, magazines or the like. After the advertiser contracts with the ad agency for the development of an advertising message or theme, the agency devises ideas (preliminary art) and produces the finished art. The finished art is then delivered to the advertiser or to an agent of the advertiser such as a printer or publisher who is under contract with the advertiser to publish the ad.

*b.* Finished art which is sold to customers, or their agents (e.g., printers), for use in producing printed material. The charge for finished art is taxable even though the art work may later be returned to the ad agency by the purchaser or the printer or used by the customer or the customer’s agent to produce a nontaxable item. Since the finished art is not a part of the printed materials, the ad agency’s customer is consuming the material and not buying it for resale, or using it in an exempt manner.

*c.* Finished art which is used to produce other tangible personal property sold by the ad agency such as letterhead stationery and business cards. The charge for such art is taxable as part of the selling price for such stationery or business cards. This is true whether or not the agency separately itemizes the charge for such stationery or business cards.

**18.27(5) *Items purchased by agency, artist or designer.*** An advertising agency, artist, or designer is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sale of such property to the agency, artist, or designer. Tax also applies where the agency, artist or designer is the consumer of taxable services.

The agency, artist, or designer is the seller of, and may purchase for resale, any item resold before use, or that becomes physically an ingredient or component part of tangible personal property sold, as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists. Tax also applies where the agency, artist, or designer is the seller at retail of taxable services.

In the event that an agency, artist, or designer is both a consumer and a retailer of such items of tangible personal property as noted in this subsection, such agency, artist or designer should:

*a.* Purchase such items without tax liability if the majority of the items are sold at retail and remit the tax at the time of resale or at the time such items are consumed in the operation of the business.

*b.* Pay tax to suppliers at the time of purchase if the majority of the items will be consumed in the operation of the business and deduct the original cost of any such items subsequently sold at retail when reporting tax on their returns.

**18.27(6) *Construction.*** Nothing contained in this rule shall be construed to provide for an exemption from tax for services expressly taxable in rules 701—26.17(422) and 26.39(422).

**18.27(7) *Advertising agencies, commercial artists and designers as agent of client or as a nonagent.***

*a.* In general. A true agent 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.

*b.* When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the gross receipts 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 amount received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe vs. Iowa State Tax Commission*, 249 Iowa 1207, 91 N.W.2d 548 (1958).

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

1. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

2. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

3. 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.

d. 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.

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

f. 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.

**18.27(8) 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 422.43 and 423.2.

#### **701—18.28(422,423) Casual sales.**

**18.28(1) Casual sales by persons not retailers or by retailers outside the regular course of business.** Casual sales are exempt from the Iowa sales and use taxes except for the casual sale of vehicles subject to registration, and vehicles subject only to the issuance of a certificate of title. On and after July 1, 1988, the casual sale of aircraft is also taxable. 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 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 422.43 or, if so engaged, the sale must be outside the regular course of the seller's business (Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976). See subrule 18.28(2) for an explanation of the casual sale exemption applicable to the liquidation of a trade or business.

If either of the conditions above are lacking, no casual sale occurs. Moreover, prior to July 1, 1985, the casual sale exemption was limited to sales of tangible personal property, and casual enumerated taxable services did not qualify for the exemption. *KTVO, Inc. v. Bair*, Equity No. 385 Linn County District Court, September 5, 1975.

For the purposes of this subrule, the word "aircraft" refers to any contrivance now known or hereafter invented, which is designed or used for navigation of or flight in the air, for the purpose of transporting persons, property, or both or for crop dusting, aerial surveillance, recreational flying, or for providing some other service. By way of nonexclusive example, balloons, gliders, helicopters, and "ultra lights" are aircraft. Also included within the meaning of the word "aircraft" is any craft registered under Iowa Code section 328.20 or any successor statute thereto.

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.

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. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

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 goods or services for a profit, since the sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission*, 1968, Iowa 162 N.W.2d 505.

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 18.8(422).

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. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

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 such 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. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000).

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 18.28(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.

**18.28(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. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000). 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 18.28(1), and the resale exemption is always potentially applicable to sales of inventory. See the examples below for 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 18.28(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 18.28(1) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business. See *Holland Bros. Construction Co., Inc.*, *supra*.

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 18.28(1) for the criteria of a casual sale exemption which could apply.

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.

**18.28(3) *Casual sales of services.*** Special rule for services rendered, furnished, or performed on or after July 1, 1985. The “casual sale” of an enumerated service has occurred if the following circumstances exist:

- a. The service was rendered, furnished, or performed on or after July 1, 1985; and
- b. 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 422.43, or, if so engaged, the sale was outside the regular course of the seller's business; or
- c. 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; see rule 701—26.60(422). 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,” gross receipts from the lawn care are 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 goods or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code sections 422.42(12), 422.45(6) and 423.4.

**701—18.29(422,423) Processing, a definition of the word, its beginning and completion characterized with specific examples of processing.**

**18.29(1) *Processing—a definition.*** For the purpose of these rules, “processing” means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970).

**18.29(2) *The beginning of processing.*** Processing begins when the “form, context, or condition” of tangible personal property is changed with the intent of eventually transforming the property into a saleable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N. W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate but prior to the time the initial change in the form, context, or condition of the raw material occurs is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue*, 383 N.W.2d 585 (Iowa 1986).

**18.29(3) *The completion of processing.*** Processing ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue*, 379 N.W.2d 37 (Iowa App. 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

**18.29(4) Examples of when processing begins and ends.** The following examples are intended to clarify but not to contradict the explanation of processing set out in subrules 18.29(2) and 18.29(3).

EXAMPLE A: A company blasts limestone from the ground, bulldozers pick the limestone up and put it in trucks; these trucks transport the limestone to a crusher some distance from the quarry site. The first change in the “form” or “condition” of the limestone, while it is tangible personal property, occurs when the stone is crushed in the crusher. The blasting of the stone from the ground and its transport to the crusher would be acts preparatory to and not a part of processing. Thus, fuel used in the bulldozers and transport trucks would not be fuel used in processing, *Linwood Stone Products*, supra.

EXAMPLE B: Pumps remove water from underground wells and pump that water through pipes to a water treatment plant. At the treatment plant, the water passes initially through an aeration system which adds oxygen to it. At other points in the plant, potassium and chlorine are added to the water and iron is removed. After these acts are performed, clean, drinkable water exists. The first change, however, in the condition of the water occurs when it passes through the aeration system and oxygen is added to it. The withdrawal of the water from the ground and its transport to the aeration system would not be a part of processing. Thus, electricity used by the pumps which pump the water to the aeration system would not be used in processing. However, by way of contrast, electricity used to transport the water between, for example, the aeration system and the point where potassium is added to the water would be used in processing. *Southern Sioux Rural Water System, Inc.*, supra.

EXAMPLE C: Water is processed in a treatment plant. The last act at the plant necessary to render the water drinkable or a “finished product” is the addition of chlorine. After the addition of chlorine, the water is pumped first into wells and later into water towers where it is held for distribution. The pumping of this drinkable water from the point where the chlorine is added to the wells and the tower is not a part of processing because processing of the water ended with the addition of the chlorine; thus, electricity used in these pumps is not electricity used in processing. *Southern Sioux County Rural Water System, Inc.*, supra.

**18.29(5) Integral part of the production of the product test.** Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.*, supra. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass’n v. Iowa Dept. of Revenue*, 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A’s factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a “nail head” on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

**18.29(6) Other specific examples of processing.** The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from “green” to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, “hard” freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance*, 387 N.W.2d 611 (Ia. App. 1986), also crushing of “flat rock” limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State*

*Dept. of Revenue*, 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

**18.29(7) Other department rules concerned with processing.** Various sections of the Iowa Code set out activities that are defined by statute to be “processing.” The rules interpreting these statutes for the purposes of sales and use tax law are the following:

- a. 701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.
- b. 701—17.2(422) Fuel used in processing—when exempt.
- c. 701—17.3(422,423) Processing exemptions.
- d. 701—17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.
- e. 701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.
- f. 701—18.3(422,423) Chemical compounds used to treat water.
- g. 701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.
- h. 701—18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997, but before July 1, 2016.
- i. 701—26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.
- j. 701—28.2(423) Processing of property defined.
- k. 701—33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.
- l. 701—33.7(423) Property used to manufacture certain vehicles to be leased.
- m. For property sold on or after July 1, 2016, computers, machinery, equipment, replacement parts, and supplies used for an exempt purpose under Iowa Code section 423.3(47). See rules 701—230.14(423) to 701—230.22(423).

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; ARC 2768C, IAB 10/12/16, effective 11/16/16]

## **701—18.30(422) Taxation of American Indians.**

### **18.30(1) Definitions.**

“*American Indians*” means all persons of Indian descent who are members of any recognized tribe.

“*Settlement*” means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

**18.30(2) Retail sales tax—tangible personal property.** Retail sales of tangible personal property made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation, where delivery occurs on the reservation, are exempt from tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

**18.30(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 Indians who are members of the tribe located on the recognized settlement or reservation where delivery of the service occurs are exempt from tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or

communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

**18.30(4) Off-reservation purchases.** Purchases made by Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a recognized settlement or reservation are not subject to tax if delivery is made on the reservation to Indians who are members of the tribe located on that reservation.

See rule 701—33.5(423) for the taxation of tangible personal property and services where the state use tax may be applicable.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

**701—18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service.**

**18.31(1) In general.** (Effective July 1, 1990)

*a.* On and after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

*b.* Prior to July 1, 1990, in those circumstances in which tangible personal property is purchased by one who is engaged in the performance of a service and the property is transferred to the customer in conjunction with a performance of the service in a form or quantity which is capable of any fixed or definite price value, but the actual sale of the property is not indicated by a separate charge for the identifiable item, the burden of proving that the property was purchased for resale by one engaged in the performance of a service and not subject to tax at the time of purchase is upon the person engaged in the performance of a service who asserts this.

*c.* Tangible personal property which is not sold in the manner set forth in “*a*” or “*b*” above is not purchased for resale and thus is subject to tax at the time of purchase by one engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor’s clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity which is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a “resale” of the item.

An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvent since the solvents are not sold to the customer and, in this case, the item is not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvent is deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE: A retailer purchases television tubes tax-free where the retailer makes a separate charge for the tube to the customer and since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A beauty or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty or barber shop purchases such items from its supplier, where the customers of the beauty or barber shop are not separately billed for the item, and because it is not transferred to the customer in a form or quantity capable of a fixed or definite price value, it is being consumed by the beauty or barber shop.

EXAMPLE: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas and tax is due at the time of purchase. The items

purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the item.

EXAMPLE: An accounting firm purchases plastic binders which are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, there being no sale to the customer in such a case.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A jeweler purchases materials such as main springs and crystals to be used in the performance of a service. These items are purchased by the jeweler for resale where they are transferred to the customer in a form or quantity capable of a fixed or definite price value and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal...\$60"; "Fertilizer...50 lbs....\$100"; and "Materials applied to lawn...4 bushel...\$40". The following are examples of information placed upon an invoice which would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...\$30" or "Fifty pounds of fertilizer was applied to this lawn."

**18.31(2)** *Purchases made by automobile body shops or garages with body shops (effective October 1, 1980).*

Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

1. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. See Iowa Code section 422.42(2) and *Cedar Valley Leasing Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

2. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two events is missing, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. See rule 701—15.3(422,423). Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

- Abrasives
- Accessories
- Battery water
- Body filler or putty
- Body lead
- Bolts, nuts and washers

Brake fluid  
Buffing pads  
Chamois  
Cleaning compounds  
Degreasing compounds  
Floor dry  
Hydraulic jack oil  
Lubricants  
Masking tape  
Paint  
Polishes  
Rags  
Rivets and cotter pins  
Sand paper  
Sanding discs  
Scuff pads  
Sealer and primer  
Sheet metal  
Solder  
Solvents  
Spark plug sand  
Striping tape  
Thinner  
Upholstery tacks  
Waxes  
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts.

Batteries  
Brackets  
Bulbs  
Bumpers  
Cab corners  
Chassis parts  
Doors  
Door guards  
Door handles  
Engine parts  
Fenders  
Floor mats  
Grills  
Headlamps  
Hoods  
Hub caps  
Radiators  
Rocker panels  
Shock absorbers  
Side molding  
Spark plugs  
Tires  
Trim

- Trunk lids
- Wheels
- Window glass
- Windshield ribbon
- Windshields

The following are nonexclusive examples of tools and supplies which are generally not transferred to the body shop's customer during the course of the repair and therefore could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer and therefore the body shop must pay tax to the vendor at the time of purchase.

- Air compressors and parts
- Body frame straightening equipment
- Brooms and mops
- Buffers
- Chisels
- Drill bit
- Drop cords
- Equipment parts
- Fire extinguisher fluids
- Floor jacks
- Hand soap
- Hand tools
- Office supplies
- Paint brushes
- Paint sprayers
- Sanders
- Spreaders for putty
- Signs
- Washing equipment and parts
- Welding equipment and parts

Because of the nature of their business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. *W.J. Sandberg Co. v. Iowa State Board of Assessments and Review*, 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by them. If materials are purchased from non-Iowa suppliers who do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the Department of Revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—26.5(422). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule and are taxable on their purchases of such items.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to

the customer, the labor is separately listed at \$300, the part (fender) is separately listed at \$300, and the category of “materials” is separately listed for a lump sum of \$100, for a total billing of \$700. The Iowa sales tax computed by the body shop should be on \$600 which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for “gross taxable services” as defined in Iowa Code subsection 422.42(16), which is taxable in Iowa Code section 422.43.

In this example, if the “materials” were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at time of purchase.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

**701—18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.**

**18.32(1)** *In general.* The sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, included but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an “account payable” qualifies as consideration as well as the actual exchange of money or its equivalent. Transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 422.42(1) and 423.1(8).

**18.32(2)** *Affiliated corporations acting as a unit.* If an affiliated corporation acts as an agent for the other affiliated corporation in a transaction listed in 18.32(1) such corporation shall be considered as acting as a unit as set forth herein and such transactions may not be subject to tax.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 422.42(1) and 423.1(8).

**701—18.33(422,423) Printers’ and publishers’ supplies exemption with retroactive effective date.**

**18.33(1)** For the purposes of this rule, a “printer” is any person, a portion of whose business involves the completion of a finished, printed product for sale at retail by that person or another person. A “printer” is also any person, a portion of whose business involves the completion of a finished printed packaging material used to package products for ultimate sale at retail. The term “printer” does not include any person printing or copyrighting printed material for its own use or consumption and not for resale. A “publisher” means and includes any person who owns the right to produce, market, and distribute printed literature and information for ultimate sale at retail.

**18.33(2)** Effective May 4, 1995, and retroactive to July 1, 1983, the gross receipts from the sale or rental of the following to a printer or publisher are exempt from tax: acetate; antihalation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models; modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting;

purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; Veloxes; wood mounts; and any other items used in a similar capacity to any of the above-enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies not enumerated in this subrule are subject to tax.

**18.33(3)** Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1983, to June 30, 1995, must be limited to \$25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1995. If the amount of claimed refunds for this period totals more than \$25,000, the department must prorate the \$25,000 among all claims.

#### **701—18.34(422,423) Automatic data processing.**

##### **18.34(1) In general.**

*a. Applicability of tax.* For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

- (1) Sales and rentals of data processing equipment (hardware).
- (2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.
- (3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

##### *b. Definitions.*

(1) “*Computer*” means a programmed or programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmed or programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment.

(2) “*Hardware*” means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) “*Canned software*” is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) “*Custom software*” is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer’s needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the

customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) “*Storage media*” includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) “*Rental*” includes any lease or license agreement between a vendor and a customer for the customer’s use of hardware or software.

(7) “*Program*” is interchangeable with the term “software” for purposes of this rule.

**18.34(2) Taxable sales, rentals 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 by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee’s premises, the rental or lease payments are subject to tax. See rule 701—26.18 on tangible personal property rental.

*c. Canned software.* The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer’s premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

*d. 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.

*e. Services a part of the sale or lease of equipment.* Where services, such as programming, training or maintenance services, are provided to those who purchase or lease automatic data processing and related equipment, 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.)

*f. Materials and supplies.* The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated is a sale subject to tax.

Generally service bureaus are consumers of all tangible personal property, including cards and forms, which they use in providing services unless a separate charge is made to customers for the materials, in which case, tax applies to the charge made for the materials.

*g. Additional copies.* When additional copies of records, reports, tabulation, etc., are sold, tax applies to the charges made for the additional copies. “Additional copies” are all copies in excess of those produced on multipart carbon paper simultaneously with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to

produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any) and the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting or line drawings, and put on microfilm or photorecording paper.

*h. Mailing lists.* Addressing (including labels) for mailing. Where the service bureau addresses, through the use of its automatic data processing equipment or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares, through the use of its automatic data processing equipment or otherwise, labels to be affixed to material to be mailed, with names and address furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service bureau 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 bureau. (See “f” above.) Mailing lists in the form of Cheshire tapes, gummed labels, and heat transfers which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

*i. Services of a machine operator.* The services of a machine operator, such as a key punch operator or the operator of any other data processing equipment, when hired to operate another person’s machinery or equipment, are subject to tax when contracted for and performed by someone other than an employee of the owner of the machinery and equipment.

*j. Maintenance contracts.* Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive certain services, including error corrections and telephone or on-site consultation services.

(1) Nonoptional maintenance contract. If the maintenance contract is required as a condition of the sale or rental of canned software, it will be considered as part of the sale or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software.

(2) Optional maintenance contracts prior to July 1, 1998. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing improvements delivered on storage media is subject to sales tax if the fee for other services, including consultation services and error corrections, is separately stated. If the fee for other services, including consultation services and error corrections, is not separately stated from the fee for improvements delivered on storage media, the entire charge for the maintenance contract is subject to sales tax.

(3) Optional maintenance contracts on and after July 1, 1998. If an optional software maintenance or support contract provides for technical support services only, then no tax is imposed on the gross receipts from the performance of those services. If an optional software maintenance or support contract separately states the charges which represent improvements delivered on storage media from charges which represent other services, including consultation services and error correction, then only that portion of the contract fee representing improvements delivered on the storage media is subject to sales tax. If an optional software maintenance or support contract provides for the taxable transfer of tangible personal property and the provision of nontaxable services, and there is no separately stated charge for the taxable transfer of property or for the nontaxable service, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of such contracts. See 701—paragraph 18.25(3)“c” for more information.

**18.34(3) Nontaxable items and activities.**

*a. Custom programs.* These are programs prepared to the special order of a customer. Tax does not apply to the transfer of custom programs in the form of written procedures, such as program instructions

listed on coding sheets. Tax applies to the sale of material transferred to the customer in the form of typed or printed sheets if separately invoiced.

*b. Processing a client's data.* Generally speaking, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plugboard, the processing of a client's data is nontaxable. Such contracts usually provide that the person will receive the client's source documents, record data in machine readable form, such as in punch cards or on magnetic tape, make necessary corrections, rearrange or create new information as the result of the processing and then provide tabulated listings or record output on other media. This service will be considered nontaxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is nontaxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client. However, tax will apply to tangible personal property separately invoiced to the client.

*c. Time sharing.* Charges made for the use of automatic data processing equipment, on a time-sharing basis, where access to the equipment is by means of remote facilities, are not subject to tax. Time sharing which is, in fact, a rental of equipment and the lessee exercises the right of possession or control over the equipment is subject to tax. See 18.34(2) "b" and rule 701—26.18(422).

*d. Designing of systems, converting of systems, consulting, training, and miscellaneous services.* These services consist of the developing of ideas, concepts and designs. Common examples of these nontaxable services are:

(1) Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).

(2) Designing storage and data retrieval systems (e.g., determining what data communications and high speed input-output terminals are required).

(3) Converting manual systems to automatic data processing systems, converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system).

(4) Consulting services (e.g., studies of all or part of a data processing system).

(5) Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).

(6) Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).

(7) Providing technical help such as analysts and programmers, usually on an hourly basis.

(8) Writing (coding) and testing of programs—contract programming. These services result in the production of customized programs. This type of service is not taxable because programming requires the development or ascertainment of information, and the evaluation of data, in addition to other development skills.

Persons engaged in providing nontaxable computer services are the consumers of all tangible personal property used in such activities, and the tax must be paid on their acquisition of such property.

This paragraph, 18.34(3) "d," shall become effective for periods beginning on or after April 1, 1992.

*e. Installation charges.* Where installation charges are separately contracted for or where no contract exists, are separately invoiced, or do not constitute enumerated taxable services, they are exempt from tax. See rule 701—15.14(422,423).

*f. Pickup and delivery charges.* The tax will not apply to pickup and delivery charges which are separately contracted for or where no contract exists, are separately invoiced.

*g. Rental of computer programs.* Prior to July 1, 1984, the rental of computer programs was not subject to tax since the program did not constitute equipment. *KTVO, Inc. vs. Bair*, 1977, Iowa 225 N.W.2d, 111. For the rule regarding prewritten (canned) programs subsequent to that date, see 18.3(2) "c."

This rule is intended to implement Iowa Code sections 422.42, 422.45 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

**701—18.35(422,423) Drainage tile.** The sale or installation of drainage tile which is to be used in disease control, weed control, or the health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Drainage tile, when purchased for these purposes, is therefore not subject to tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code subsection 422.42(9).

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(9), and 423.2.

**701—18.36(422,423) True leases and purchases of tangible personal property by lessors.**

**18.36(1) True leases and purchases by lessors prior to, on, and subsequent to July 1, 1978.** The definition of a sale specified in Iowa Code subsection 422.42(2) does not include leases. Hence, the exemption from tax on sales for resale is inapplicable to the purchase of tangible personal property for the purpose of leasing such property to others, but not for the purpose of reselling such property. *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979). However, even though the general rule is that the acquisition cost of tangible personal property purchased for the purpose of leasing it to others is subject to the Iowa sales or use tax, certain transactions are exempted from tax by statute. See subrule 18.36(4).

**18.36(2) General.** Prior to July 1, 1984, tax is due on the lease or rental payments derived from the service of equipment rental only and not from the lease or rental of other tangible personal property. See 701—subrule 26.18(1). Tax would also be due on the gross receipts received on the disposal of the tangible personal property provided no exemption exists. When property is purchased for the purpose of financing under a conditional sales contract, the property is purchased for resale, and the acquisition of the property is not subject to Iowa tax. See rule 701—16.47(422,423).

The gross receipts from the leasing of property for subletting purposes is exempt from tax as a resale of a service, but the lessee must collect tax on the gross receipts from subletting unless such subletting is otherwise exempt from tax.

*a.* Where a resident or nonresident lessor leases equipment to a resident or nonresident lessee and the lease contract is executed in Iowa and the equipment is delivered to the lessee in Iowa, the rental payments are subject to Iowa sales tax, even if the equipment is taken by the lessee to another state. *Williams Rentals, Inc. v. Tidwell*, 516 S.W.2d 614 (Tenn. 1974).

*b.* Where a nonresident lessor leases equipment to a resident or nonresident lessee and the lessee uses the equipment in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments, provided the lessor maintains a place of business in Iowa as provided in Iowa Code sections 423.1(6) and 423.9. Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission v. General Trading Co.*, 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed 1309, (1944).

*c.* Where a lessee is the recipient of equipment rental services as defined in “*a*” and “*b*” above and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee is the recipient of equipment rental services, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.10, such lessee shall remit tax on its rental payments to the department.

*d.* Where a resident lessor leases equipment to a nonresident lessee outside of Iowa, and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa and uses it in Iowa, Iowa use tax applies to rental payments, but see “*g*” below.

*e.* Where a resident or nonresident lessor purchases tangible personal property in Iowa for subsequent lease in or out of Iowa and takes delivery of the equipment in Iowa, the lessor’s purchase is subject to Iowa sales tax. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

*f.* When a resident or nonresident lessor purchases tangible personal property outside of Iowa for the purpose of leasing it in Iowa and the equipment is brought into Iowa and used by the resident or nonresident lessee in this state, the lessor is considered as having a “use” of the property in Iowa and Iowa use tax will apply to the lessor’s purchase price of the property, regardless whether or not the lessor

makes any physical use of the property in Iowa. *Union Oil Company of California v. State Board of Equalization*, 1963, 34 Cal. Rpts. 872, 386 P.2d 496.

g. If a sales or use tax has already been paid to another state on the purchase price of equipment prior to the use of that equipment in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given. *Henneford v. Silas Mason Co.*, 1937, U.S.577, 57 S.Ct. 524, 51 L.Ed. 814.

**18.36(3)** *Leases relating to vehicles subject to registration.*

a. Vehicles as defined in Iowa Code subsections 321.1(4), (6), (8), (9), and (10) (motor trucks, truck tractors, road tractors, trailers, and semitrailers), except when designed primarily for carrying persons, can be purchased free of use tax when purchased for lease and actually leased for use outside Iowa if the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

b. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles as defined in 18.36(3)“a” when manufactured for lease and actually leased to a lessee for use outside the state of Iowa, can be purchased free of use tax provided the sole subsequent use of the vehicle in Iowa is in interstate commerce or interstate transportation. (Iowa purchases which would be subject to Iowa sales tax do not qualify for this exemption.) See rule 701—33.7(423).

The provisions of “a” and “b” are effective for periods beginning on January 1, 1973. Also see 701—Chapter 34 of the rules relating to vehicles subject to registration.

**18.36(4)** *Special rules for lessors on or after July 1, 1978.* If tangible personal property is purchased for leasing, the purchase of the property is exempt from tax if the following conditions are met:

- a. The person (lessor) purchasing the property is regularly engaged in the business of leasing,
- b. The period of the lease is for more than one year for sales or property occurring from July 1, 1978, to May 18, 1997, inclusive; for sales of property occurring on and after May 19, 1997, the period of the lease must be for more than five months, and
- c. The lease or rental receipts must be subject to tax under the service of equipment rental.

All three conditions must be met before the exemption applies.

If the exemption is properly claimed, it is lost when the property is made use of for any purpose other than leasing and the person claiming the exemption is liable for the tax based on the original purchase price. Tax paid on the leasing or rental payments would be allowed as a credit against the tax due on the purchase price.

In the following examples, assume, unless stated to the contrary, that the lease or rental receipts are subject to tax. The examples are written on the assumption that the period for an exempt lease is five months or longer. Thus, these examples are basically applicable to the period beginning May 19, 1997; however, the examples illustrate principles which are applicable to the purchase for lease exemption for periods longer than one year which was the requirements for exemption prior to May 19, 1997.

EXAMPLE: A restaurant makes a one-time purchase of office furniture which it leases to an insurance company for a period of four years. The purchase of office furniture by the restaurant would be subject to tax because the restaurant is not regularly engaged in the business of leasing. However, if the restaurant established a pattern of regularly purchasing office furniture or other tangible personal property for lease, the exemption would apply.

EXAMPLE: A company purchases a computer which will be leased for a period of three years, at which time the computer is returned to the company. The sole business of the company is to purchase this one computer for lease. The purchase of the computer is exempt from tax because the company is regularly engaged in the business of leasing.

EXAMPLE: A leasing company purchases three lawn mowers which will be leased to individuals for periods of time less than five months. The purchase of the lawn mowers by the leasing company would be subject to tax because the periods of the leases are for less than five months.

EXAMPLE: A leasing company purchases a computer which will be leased for a period of three years. The purchase of the computer is exempt from tax because the period of the lease is for more than five months.

EXAMPLE: A leasing company buys a computer. The company claims the exemption from tax, but the company uses the computer in its own operations. Tax is due on the original purchase price and the leasing company is liable for the tax due.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned to the leasing company and then the machine is immediately re-leased without being used by the leasing company for any other purpose. The exemption would apply because it was properly claimed and nothing occurred to cause loss of the exemption.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned and the leasing company then uses the machine in its own business. The exemption would no longer apply and the leasing company would be liable for the tax based on the original purchase price. Credit would be allowed against the tax due on the purchase price for any tax paid on the lease or rental payments. Assume the leasing company paid \$2,000 for the copying machine and charged \$200 per month plus \$10 in tax per month. Since the machine is returned and the exemption is not applicable, the leasing company would owe \$100 on the \$2,000 acquisition cost. However, the leasing company collected \$40 (four months x \$10) tax on the monthly rental charges. Allowing the credit for tax collected of \$40 against the total tax liability of \$100 leaves a net tax liability of \$60 owed by the leasing company.

EXAMPLE: A manufacturer and seller of office furniture also leases office furniture. The leases always run for a period longer than five months and the company usually has only two leases per year. The leasing operation only accounts for 1 percent of the company's total business. The company still qualifies for the exemption because it is regularly engaged in the business of leasing and the period of the lease is for more than five months.

EXAMPLE: A leasing company purchases an airplane from an aircraft dealer and leases it for a period of three years. The lease or rental payments are not taxed because of the exemption for transportation services. The leasing company would owe tax based on the acquisition cost because the lease or rental payments are not subject to tax under the service of equipment rental.

EXAMPLE: A leasing company purchases equipment and leases it to a lessee for a period of 18 months. For the first 3 months, the equipment is used by the lessee in making repairs to existing structures and the lease receipts are taxable. For the remainder of the lease period, the equipment is used in new construction of buildings and structures and the lease receipts are exempt from tax. The acquisition cost of the equipment is exempt because the exemption was properly claimed and was not subsequently lost by a use other than leasing.

EXAMPLE: A leasing company purchases from an Iowa retailer equipment on May 18, 1997, for the purpose of leasing it for a period of six months. The lease receipts will be taxable. The sales tax exemption on the acquisition cost to the lessor cannot be claimed because the sale occurred before May 19, 1997, and, at the time of the sale, no sales tax exemption applied to such acquisition cost. The exemption for acquisition cost should not be given a retroactive effect. *Jones v. Gordy*, 1935, 169 Md. 173, 180 Atl. 272.

EXAMPLE: A leasing company purchases equipment outside of Iowa on May 1, 1997. The lessee brings the equipment into Iowa on June 1, 1997, and uses it in Iowa. The lease period is nine months, and the lessee's use in Iowa is subject to Iowa use tax on the lease payments. Under these circumstances, the Iowa use tax exemption on the lessor's acquisition cost applies because it is the law in effect at the time of use in Iowa, not at the time of sale, which determines whether a use tax exemption applies. *City of Ames v. Iowa State Tax Commission*, 1955, 246 Iowa 1016, 71 N.W.2d 15; *Allis-Chalmers Mfg. Co. v. Iowa State Tax Commission*, 1958, 250 Iowa 193, 92 N.W.2d 129.

EXAMPLE: A leasing company purchases equipment not for resale and leases it to the lessee for a period of more than five months. After three months, the equipment is returned to the leasing company which then sells the equipment. Such sale is not part of the regular course of the leasing company's business. The exemption, though properly claimed, is lost because, by reason of such sale, the leasing

company made use of the property for a purpose other than leasing or renting. Had the equipment been returned to the leasing company on or after five months and one day from the commencement of the lease period, and the leasing company then sold the equipment outside the regular course of its business or used the equipment in its business, the exemption for acquisition cost would not be lost. Had the equipment been purchased for resale and leased prior to such resale, the acquisition cost to the leasing company would be exempt from tax. *Herman M. Brown Co. v. Johnson*, 1957, 248 Iowa 1143, 82 N.W.2d 134. If the equipment is traded in toward the purchase price of other equipment by the leasing company, or if the leasing company disposes of the equipment after it is fully depreciated, the exemption for acquisition cost is not lost. Where sale of equipment outside the regular course of business is made by the leasing company, see also rule 18.28(422) to determine whether the casual sale exemption applies to the receipts from such sale.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee. Assume that the exemption for acquisition cost of the equipment was properly claimed. Thereafter, the lessee makes an assignment of the lease. The exemption is not lost since the assignee stands in the same position as the original lessee and such an assignment does not change the nature of the original lease period. *Berg v. Ridgway*, 1966, 258 Iowa 640, 140 N.W.2d 95.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. The leasing company sells the lease contracts, as commercial paper, to others. The exemption for acquisition cost can still be claimed and such sales of lease contracts do not cause loss of the exemption.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lease can no longer be performed because the property is destroyed by an act of God. The acquisition cost exemption is not lost.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lessee is adjudged bankrupt and the equipment is returned to the leasing company and is re-leased without being used by the leasing company for any other purpose. The acquisition cost exemption is not lost since the leasing company makes no use for any purpose other than leasing or renting.

EXAMPLE: A leasing company purchases equipment which is leased to a lessee. The criteria for the acquisition cost exemption are present. The lessee then sublets the equipment to another for a period less than five months. The acquisition cost exemption is not lost.

**18.36(5)** *Lease or rental of all tangible personal property now subject to tax.* On and after July 1, 1984, the lease or rental of all tangible personal property is subject to tax. See rule 701—26.18(422) for information concerning additional transactions subject to tax after that effective date.

This rule is intended to implement Iowa Code sections 422.42(2), 422.43, 422.45, 423.1, and 423.4.

### **701—18.37(422,423) Motor fuel, special fuel, aviation fuels and gasoline.**

**18.37(1)** *In general.* The gross receipts from the sale of motor fuel and special fuel are exempt from sales tax under Iowa Code section 422.45(11) if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. However, beginning July 1, 1985, the gross receipts from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa are exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat. Prior to July 1, 1988, retail sales of aviation gasoline were not exempt from sales tax under Iowa Code subsection 422.45(11). See subrule 18.37(4).

**18.37(2)** *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax paid and used for purposes other than to propel a motor vehicle or used in watercraft.

**18.37(3)** *Refunds of tax on fuel purchased in Iowa and consumed out of Iowa.* Even though fuel is purchased in Iowa, fuel tax paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of

the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to Iowa Code subsection 422.45(11). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission*, 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol*, 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

**18.37(4) Aviation gasoline.** Tax treatment prior to July 1, 1988. Prior to July 1, 1988, all Iowa fuel tax paid on aviation gasoline used in aircraft was refundable under Iowa Code section 452A.17. Generally, aviation gasoline is not purchased for highway use or for use in watercraft, therefore, the exemption from sales and use tax found in Iowa Code subsection 422.45(11) was generally not applicable to purchases of aviation gasoline. However, Iowa Code subsection 422.52(4) provides for the collection of sales tax by way of deduction from motor fuel tax refunds allowable under Iowa Code chapter 452A. Therefore, sales tax is not assessed at the retail level but only in instances where the fuel tax paid on aviation gasoline has been refunded. If no application for a fuel tax refund relating to aviation fuel has been made, no sales tax is assessed on the aviation gasoline purchase.

**18.37(5) Ethanol.** For tax periods after April 30, 1981. Retail sales of ethanol are exempt from Iowa sales or use tax.

**18.37(6) Tax base.** The basis for computing the Iowa sales tax will be the retail selling price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the selling price in determining the proper sales tax due. *W.M. Gurley v. Army Rhoden* supra. Also see rule 701—15.12(422,423).

This rule is intended to implement Iowa Code sections 422.31, 422.43, 422.45(11), 422.45(22), 422.52(4), 423.1, 452A.3, and 452A.17.

**701—18.38(422,423) 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 systems charter.

Tax shall not apply to 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.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether it is created by government.
2. Whether it is wholly owned by government.
3. Whether it is operated for profit.
4. Whether it is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or that payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

These above enumerated considerations are not all inclusive and the presence of some and absence of others does not necessarily establish the exemption. *Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company*, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code subsection 422.45(1).

**701—18.39(422,423) Sales or services rendered, furnished, or performed by a county or city.** The gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication

service rendered, furnished, or performed by a county or city are subject to the tax. On and after July 1, 1985, the gross receipts from fees paid to cities and counties for the privilege of participating in any athletic sports are also subject to tax. On or after July 1, 1991, the gross receipts from any municipally owned pay television service are taxable as well. On and after April 1, 1992, the gross receipts from a county or municipality furnishing sewage service or solid waste collection and disposal service to nonresidential commercial operations are taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information).

Any other sales or services rendered, furnished, or performed by a county or city are not subject to the tax.

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.

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.

1. 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.

2. 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.

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.

1. 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.

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

3. 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.

4. 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.

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45.

**701—18.40(422,423) Renting of rooms.** The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel,

inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, are subject to the tax. The rental of a mobile home or of manufactured housing which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a single period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the hotel, motel, inn, public lodging house, rooming or tourist court, or any place where sleeping accommodations are furnished to transient guests bills its customers does not influence the accumulation of days that is required to claim the exemption.

This rule is intended to implement Iowa Code section 422.43.

#### **701—18.41(422,423) Envelopes for advertising.**

**18.41(1)** 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. *Iowa Movers and Warehouseman's Assn. v. Briggs*, 237 N.W.2d 759 (Iowa 1976).

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 Company 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.

**18.41(2)** Because of the difficulty of administering this exemption, purchasers of envelopes may petition to the department for permission to use a formula to represent to the seller the portion of taxable and exempt gross receipts from envelope purchases.

This rule is intended to implement Iowa Code subsection 422.45(9).

#### **701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.**

**18.42(1)** *General observations.* The gross receipts from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance*, 461 N.W.2d 295 (Iowa 1990).

**18.42(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. Other frequent characteristics of newspapers are the following:

*a.* Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

*b.* Information printed on newspapers is usually contained in columns on the newspaper pages.

*c.* The larger the cross section of the population which reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

**18.42(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.

**18.42(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 422.45(9).

**701—18.43(422,423) Written contract.** On and after July 1, 1985, the gross receipts from certain additional services are subject to tax. However, these newly taxable services are exempt from tax if performed pursuant to a written services contract in effect on April 1, 1985. The exemption from taxation for these services expires June 30, 1986. The services to which this “written contract” exemption is applicable are the following: cable television; campgrounds; gun repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; water conditioning and softening; the rental of recreational vehicles, recreational boats or motor vehicles subject to registration which are registered for a gross weight of 13 tons or less; and fees paid to cities and counties for the privilege of participating in any athletic sports.

A “written contract” is one which is entirely in writing, so that all of its essential terms and provisions exist in writing, and oral statements are not necessary to set out any essential term or provision, such as who the parties to the contract are or what their rights and duties are under the contract. However, if it is necessary to resort to oral statements to explain the meaning of a written provision in a contract, a “written contract” can still exist. A written contract need not consist of one document or instrument only. It can consist of two or more writings, if all the necessary provisions of the contract are contained in those writings. For the purposes of this rule, the following must be stated in writing if a written contract is to exist: The nature and specification of the service to be provided, the name of the party providing the service, the name of the party receiving the service, the “consideration” (amount and method of payment) for providing the service, the signature of one or both of the parties to the contract, depending upon circumstances, and the date upon which the contract became effective.

The written contract must be in effect on April 1, 1985, if the service to which the contract pertains is to be exempt from tax. If a contract is signed by only one of the parties to it, that contract is still a “written contract” if the party which has not signed the contract acquiesces in the promises which the party who has signed the document makes within it. *McDermott v. Mahoney*, 139 Iowa 292, 115 N.W. 32, (Iowa 1908).

EXAMPLE: A security agency sends a proposed agreement to a potential customer promising to provide the services of a uniformed security guard for the customer’s business premises beginning March 15, 1985, and continuing until March 15, 1987. The agreement is signed by the security agency’s president and dated February 15, 1985. The agreement is received by the potential customer’s president, who does not sign it, but, on March 15, 1985, allows the security agency’s uniformed guard on the premises, and makes payment for those services as stipulated in the agreement. This agreement is a “written contract”; the services of the uniformed guard are not subject to tax for the period beginning July 1, 1985, and ending June 30, 1986. The services performed between July 1, 1986, and March 15, 1987, would be subject to tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

**701—18.44(422,423) Sale or rental of farm machinery and equipment.** On and after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case or other similar article or receptacle sold for use in agricultural, livestock or dairy production are not subject to sales tax.

**18.44(1) Characteristics of and limitations upon farm machinery and equipment.** To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

- a. Be directly and primarily used in production of agricultural products; and
- b. Be one of the following:
  - (1) A self-propelled implement; or
  - (2) An implement customarily drawn or attached to a self-propelled implement; or
  - (3) A grain dryer; or
  - (4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer if sale or first use in Iowa is on or after July 1, 1995; or
  - (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).
  - (6) Effective July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock or dairy production.
- c. No vehicle subject to registration, as defined in Iowa Code subsection 423.1(7), implement customarily drawn or attached to a vehicle, auxiliary attachment, or any replacement part for a vehicle, implement, or auxiliary attachment is eligible for the exemption or refund allowed under this rule.

**18.44(2) Definitions and characterizations.** For the purposes of this rule, the following definitions apply.

a. Production of agricultural products means the same as the term “agricultural production” which is defined in 701—subrule 17.9(3), paragraph “a,” to mean a farming operation undertaken for profit by raising crops or livestock. Production of agricultural products begins with the cultivation of land previously cleared for planting of crops or with the purchase or breeding of livestock or domesticated fowl. Not included within the meaning of the phrase are the clearing or preparation of previously uncultivated land, the creation of farm ponds or the erection of machine sheds, confinement facilities, storage bins or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to but not a part of the production of agricultural products. The production of agricultural products ceases when an agricultural product has been transported to the point where it will be sold by the farmer or processed.

EXAMPLE. Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later the same tractor and wagon are used to deliver the corn from the farm to the local elevator where it is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products and the refund or exemption would apply. The elevator has not used its tractor and wagon in such production; refund or exemption would not be lawful.

b. Farm machinery and equipment means machinery and equipment specifically designed for use in the production of agricultural products or equipment and machinery not specifically designed for this use but which are directly and primarily used in the production of agricultural products.

EXAMPLE. Farmer Jones raises livestock and the farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but would be directly and primarily used in the production of agricultural products. Therefore, the exemption or refund applies.

c. Self-propelled implement has the same meaning as in 701—subrule 17.9(5), paragraph “c,” where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

*d.* Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: Augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

*e.* Direct use in agricultural production. In determining whether farm machinery, equipment or any grain dryer is directly used in agricultural production, the fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment coming into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

*f.* Grain dryer. The term grain dryer includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

*g.* Replacement parts, differing meanings of the term for the period ending June 30, 1988, and for the period beginning July 1, 1988.

(1) For the period beginning July 1, 1985, and ending June 30, 1988, a replacement part is refundable or exempt only if its cost is depreciable for state and federal income tax purposes. Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of machinery or equipment or appreciably prolong its life. Replacement parts which only keep the machinery or equipment in its ordinarily efficient operating condition are not eligible for exemption or refund. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for refund or exemption from tax. However, the person claiming the refund or exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

(2) On and after July 1, 1988, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products. The term "replacement part" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories are: cigarette lighters, radios, and add-on air-conditioning units.

**18.44(3)** *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of farm machinery and equipment which are or are not subject to exemption and refund.

*a.* A lessor's purchase of farm machinery and equipment is not subject to tax, or is taxable subject to refund, if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt or subject to refund. To claim exemption from tax or a refund of tax paid, the lessor need not make exempt use of the machinery or equipment so long as the lessee does.

*b.* To claim refund or exemption, the owner or lessee of farm machinery or equipment need not be a farmer so long as the machinery and equipment is directly and primarily used in the production of agricultural products, and the owner or lessee and the equipment or machinery meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and so used after purchase is entitled to the benefits of this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for refund or exemption if those transactions are otherwise qualified under this rule.

**18.44(4) Auxiliary attachments.** The following is a list (not inclusive) of auxiliary attachments described in 18.44(1)“b”(4), the sale or first use in Iowa which is exempt from tax on and after July 1, 1995: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upperbeaters, silage bags, and weights.

**18.44(5) and 18.44(6)** Rescinded IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26), Iowa Code chapter 422, Division IV, and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

**701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.** The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and, under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule, items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. See rule 18.58(422,423) for the manner in which the sale or rental of machinery, equipment, and computers to manufacturers and the sale or rental of computers to commercial enterprises are treated on and after July 1, 1997.

**18.45(1) Definitions.** The following words are defined for the purposes of this rule in the manner set out below.

“*Commercial enterprise*” includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a “commercial enterprise.” The term “professions” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupations” means the principal business of an individual. Included within the meaning of “occupations” is the business of farming. A professional corporation which carries on any business which is a “profession” or “occupation” is not a commercial enterprise.

“*Computer*” means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are: terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment” see 701—subrule 71.1(7).

Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this subrule, “operating system or executive program” means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of

all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

*“Directly used.”* Property is “directly used” only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

*“Financial institution”* is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

*“Industrial machinery and equipment”* means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The word also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be “machinery.” See *Deere Manufacturing Co. v. Zeiner*, 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

*“Insurance company”* means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have 50 or more persons employed in Iowa, excluding licensed insurance agents. Effective April 8, 1996, an insurance company means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in this state as an insurer or licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of “insurance company” are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

*“Manufacturer”* means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982).

*“Pollution control equipment”* means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution. The term does not include any apparatus used to eliminate “noise pollution.” Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.”

*“Processing”* means an operation or series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. See rule 18.29(422,423).

*“Processing or storage of data or information.”* Not only a computer, but machinery or equipment may be used in the processing or storage of data or information. All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be subject to refund or exemption of tax.

*“Recycling”* means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. “Recycling” does not include any form of energy recovery.

*“Replacement parts.”* Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives. Replacement parts which only keep machinery, equipment, or computers in their ordinarily efficient operating condition are not eligible for exemption. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for exemption from tax. However, the person claiming the exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

*“Research and development”* means experimental or laboratory activity which has as its ultimate goal the development of new products, processes of manufacturing, refining, purifying, combining of different materials, or meat packing. The ultimate goal of research and development must be that of adding value to products. The term “research and development” does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects. Machinery, equipment, and computers are used “directly” in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

*“Specified property”* means property that is a computer or industrial machinery and equipment including pollution control equipment and depreciable replacement parts for that property.

**18.45(2) Requirements.** The sale or rental of specified property is exempt from tax if:

*a.* The property is real property within the scope of Iowa Code section 427A.1(1) “e” or “j.” For sales occurring after January 1, 1994, the property is not required to be subject to taxation as real property (however, see subrules 18.45(4) and 18.45(8)); and

*b.* The property is directly and primarily used in one of the following:

1. By a manufacturer in processing tangible personal property; or

2. In research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purposes of adding value to products; or

3. In processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

*c.* To qualify for refund or exemption, a computer may be taxable as either commercial or industrial real estate. Machinery and equipment must be taxable as industrial real estate only to be similarly qualified. Research and development machinery and equipment that is not taxable as industrial real estate does not qualify for refund or exemption. See 701—subrules 71.1(5) and 71.1(6) for characterizations of “commercial” and “industrial” real estate. However, see subrule 18.45(4) for an exception to the requirement that certain property be taxable as real property.

*d.* The following are examples of machinery which is not directly used in manufacturing:

1. Machinery used exclusively for the efficient use of other machinery. Examples are: air cooling, air conditioning, and exhaust systems.
2. Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained or repaired.
3. Machinery used by administrative, accounting, and personnel departments.
4. Machinery used by plant security, fire prevention, first aid, and hospital stations.
5. Machinery used in plant cleaning, disposal of scrap and waste, plant communications, lighting, safety, or heating.

*e.* The following is an example of property directly used in research and development: Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a “steam cleaner” for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director’s secretary. The computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

*f.* The following is an example of property used in processing or storage of information or data: A health insurance company has three computers. Computer A is used to monitor the temperature within the insurance company’s building. The computer transmits messages to the building’s heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefit paid out for various classes of insured. The “final output” of Computer A is neither stored nor processed information. The final output of Computer B is stored information. The final output of Computer C is processed information. The sale, lease, or use of Computers B and C would qualify for exemption or refund.

*g.* The following is an example of property not used in manufacturing: A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in manufacturing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

**18.45(3) Exceptions.** The following specified property is not exempt:

*a.* Property assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434 and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to as well as owned by the company is assessed by the department. See 701—Chapters 71 and 77.

*b.* Hand tools.

*c.* Point-of-sale equipment. See 701—subrule 71.1(7).

**18.45(4) Inclusions.** Property exempt from taxation for property tax purposes under the provisions of Iowa Code chapters 404 and 427B relating to urban revitalization property and industrial machinery receiving partial exemption by ordinance is also eligible for exemption from sales and use taxes even though the property is not subject to taxation as real property. Urban revitalization property and industrial machinery receiving partial exemption by ordinance are discussed in rules 701—80.8(404) and 80.6(427B), respectively. This property must meet the other requirements in subrule 18.45(2) in order to be exempt from sales and use taxes.

**18.45(5) Lessor purchases of specified property.** The analysis contained in rule 18.44(422,423) regarding lessor purchases of farm machinery and equipment is applicable to explain that same problem regarding specified property. See subrule 18.44(3) for analysis.

**18.45(6) Rights of refund and exemption.** Rescinded IAB 10/13/93, effective 11/17/93.

**18.45(7) *Designing or installing new industrial machinery or equipment.*** On and after July 1, 1985, the gross receipts from the services of designing or installing new industrial machinery or equipment shall be exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to refund or exemption under this rule. In addition, the machinery or equipment must be “new.” For purposes of this subrule, “new” means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A “computer” is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

**18.45(8) *Property used in recycling or reprocessing of waste products.*** On and after July 1, 1989, the gross receipts from the sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products shall be exempt from tax. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an endloader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. See 18.45(8) “c.” The sale of a bin for storage ordinarily would not be exempt from tax, storage without more not being a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing.

For example, machinery, equipment or a computer need not meet the requirements of 18.45(2) “a” concerning specified property being real property for the exemption to apply. Furthermore, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. For instance, a person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

*a.* By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

*b.* Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.45(1) for the definition of “directly used” which is applicable to this subrule. The examples of machinery not directly used in manufacturing set out in 18.45(2) “d” should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.45(2) “d” “4”) is not machinery directly used in recycling or reprocessing.

*c.* Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an “integral part” of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of “processing.” Some of that discussion is applicable to this subrule.

*d.* The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material in which it will be used in manufacturing or in the form of a product which will be sold for use other than as a raw material in manufacturing. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, and

crates and other waste wood into wood chips. After grinding, the wood chips are sold and transported to purchasers to various sites where the chips are dumped on and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in reprocessing because, at the time the chips are placed in the truck, they are in the form in which they will be sold for use other than as a raw material in manufacturing.

This rule is intended to implement Iowa Code section 422.45(26), Iowa Code section 422.45(27) as amended by 1996 Iowa Acts, chapter 1049, and Iowa Code section 422.45(29).

**701—18.46(422,423) Automotive fluids.** The gross receipts from the sales of certain automotive fluids are exempt from tax. To be considered exempt, the sale must possess the following characteristics: (1) the sale must be to a retailer who will install the automotive fluid in or apply the automotive fluid to a motor vehicle; and (2) the installation or application must be done while the retailer is providing a taxable enumerated service (e.g., automobile lubrication); or (3) the automotive fluid must be installed in or applied to a motor vehicle which the retailer intends to sell and the sale of which will be subject to Iowa use tax.

Specific but nonexclusive examples of “automotive fluids” are motor oil and other automobile lubricants, hydraulic, brake, and transmission fluids, sealants, undercoatings, antifreeze, and gasoline additives.

This rule is intended to implement Iowa Code section 422.45(33).

**701—18.47(422,423) Maintenance or repair of fabric or clothing.**

**18.47(1)** As of July 1, 1987, sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—subrule 17.14(1) 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.

**18.47(2)** Also, on and after July 1, 1987, 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 Division IV of Iowa Code chapter 422.

**701—18.48(422,423) Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production.** Sales or rental of farm machinery and equipment used in livestock or dairy production and replacement parts which occur on or after July 1, 1988, are exempt from sales and use tax. On and after July 1, 1995, machinery, equipment, and replacement parts used in the production of flowering, ornamental, or vegetable plants are exempt from tax. See rule 701—18.57(422,423).

**18.48(1) Definitions and characterizations.** For the purposes of this rule, the following definitions and characterizations of words apply.

a. “Machinery” means major mechanical machines or major components thereof which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work by the expenditure of energy, either mechanical (e.g., gasoline or kerosene) or electrical.

b. “Equipment” is tangible personal property (other than a machine) directly and primarily used in livestock or dairy production. It may be characterized as property which performs a specialized function which, of itself, has no moving parts or if it does possess moving parts, its source of power is external to it. The following examples attempt to differentiate between machinery and equipment:

EXAMPLE A. An electric pump is used to pump milk into a bulk milk tank. The electric pump is machinery; the bulk milk tank is equipment.

EXAMPLE B. An auger places feed into a cattle feeder. If not “real property” (see 18.48(1) “c”) the auger is a piece of machinery; the cattle feeder is a piece of equipment.

c. Property used in livestock or dairy production which is neither “equipment” nor “machinery.”

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment, *Mid-American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that it will become a part of the ground or the building is taxable. Generally, property incorporated into the ground or a building has become a part of the ground or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. The property referred to in 18.48(1) “c”(1) can be identified by applying the following test: Assume that the property is being sold to a contractor rather than a person engaged in livestock or dairy production. If sold to a contractor, would the retailer be required to consider the property “building material” and charge the contractor sales tax upon the purchase of this building material. If this is the case, sale of the property is not exempt from Iowa tax law. Iowa department of revenue rule 701—19.3(422,423) contains a characterization of “building material” and a list of specific examples of building material.

(2) “Supplies” are neither machinery nor equipment. Tangible personal property is part of farm supplies if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. The sale of some farm supplies is exempt from tax. See

701—subrule 17.9(3). See List B in subrule 18.48(7) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

*d.* “Hand tools” are tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as “equipment.” Mechanical devices that are held in the hand and driven by electricity or some source other than human muscle power are, if otherwise qualified, exempt from tax as “farm machinery.” See subrule 18.48(7), List C, for examples of “hand tools” exempt and not exempt from tax.

*e.* Directly used in livestock or dairy production. To determine if machinery or equipment is “directly” used in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Subrule 18.48(1), paragraph “g,” describes when livestock or dairy production begins and ends. If the machinery or equipment is used in livestock or dairy production, to be “directly” so used, that use must constitute an integral and essential part of production as distinguished from a use in production which is incidental, merely convenient to or remote from production. The fact that machinery or equipment is essential or necessary to livestock or dairy production does not mean that it is also “directly” used in production. Machinery or equipment may be necessary to livestock or dairy production but so remote from it that it is not directly used in that production.

(1) In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questioned is to the machinery or equipment whose direct use is not questioned, the more likely it is that the former is directly used in livestock or dairy production.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questioned. The closer in time the use, the more likely that the questioned machinery or equipment’s use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

(2) The following are examples of machinery and equipment directly used in livestock or dairy production:

1. Machinery and equipment used to transport or limit the movement of livestock and dairy animals (e.g., electric fence equipment, head gates, and loading chutes).

2. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment).

3. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property).

4. Machinery or equipment used to test or inspect livestock or dairy animals during production.

(3) The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

1. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

2. Machinery used in farm management, administration, advertising, or selling (e.g., a recordkeeping computer, calculating machine, office safe, telephone, books, and farm magazines).

3. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

4. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

5. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer are not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or of a migrant labor camp, or other facilities for farm employees.

6. Machinery and equipment used for heating, cooling, ventilation, and illumination of farm buildings generally rather than specifically in the immediate area where livestock are kept.

7. Vehicles subject to registration.

f. "Primarily" used in livestock or dairy production. Machinery or equipment is "primarily used in livestock or dairy production" if of the total time that unit of machinery or equipment is used, more than 50 percent of the time is in livestock or dairy production. If a unit of machinery or equipment is used more than 50 percent of the time for production and the balance of time for other business purposes, the exemption applies. If a unit of equipment is used 50 percent or more of the time for business purposes other than livestock or dairy production, the exemption does not apply. Any unit of machinery or equipment used more than 50 percent of the time directly in livestock or dairy production is subject to the exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock and dairy production ceases when an animal or the product of an animal's body (e.g., wool or milk) has been transported to the point where it will be sold by the farmer or processed.

h. Farm machinery and equipment means machinery and equipment specifically designed for use in livestock and dairy production or equipment and machinery not specifically designed for this use but which are directly and primarily used in livestock or dairy production except for common or ordinary hand tools. See 18.48(1) "d" for a definition of "hand tools."

EXAMPLE. Farmer Jones raises livestock and fans must be used to cool the animals. Farmer Jones buys fans designed for use in a residence which he uses directly and solely to cool the livestock. The exemption applies.

i. "Self-propelled implement" has the same meaning as in 701—subrule 17.9(5), paragraph "c" where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

j. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, posthole diggers, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

k. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

l. The term "replacement parts essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, and tools or utility boxes.

**18.48(2)** *Right of refund for farm machinery and equipment used in livestock or dairy production, basic requirements.* Rescinded IAB 10/13/93, effective 11/17/93.

**18.48(3)** *Treatment of replacement parts.* Rescinded IAB 10/13/93, effective 11/17/93.

**18.48(4)** *Packing material used in agricultural, livestock, or dairy production.* For sales occurring on or after July 1, 1996, the gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural.

**18.48(5)** Rescinded IAB 11/20/96, effective 12/25/96.

**18.48(6)** *Auxiliary attachments exemption.* On and after July 1, 1995, sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt on and after that date.

**18.48(7)** *Lists.* Lists (representative but not all-inclusive) of tangible personal property for which sales or use tax paid is or is not refundable.

LIST A. Property Used in Livestock and Dairy  
Production Which is Usually Real Property. See  
18.48(1)“c”(1). Its sale is usually taxable.

- |                   |                       |
|-------------------|-----------------------|
| barn ventilators* | livestock feeders*    |
| conveyers*        | silos                 |
| farrowing crates* | specialized flooring* |
| fence posts       | sprinklers            |
| fencing wire      | stanchions            |
| furnaces*         | watering tanks*       |
| gestation stalls* | ventilators*          |

\*These items also appear in List D. Tax paid on their sale can be refundable or their sale exempt if the items are not real property.

LIST B. Taxable Farm Supplies  
Which Are Not Machinery or Equipment

- |                                |                           |
|--------------------------------|---------------------------|
| burlap*                        | lubricants                |
| disposable hypodermic syringes | marking chalk             |
| ear tags                       | packages for one-time use |
| hog rings                      |                           |

\*Burlap is exempt when used in the form of a bag, container, wrap or other receptacle or packaging material.

## LIST C. Hand Tools—Taxable and Nontaxable

axes	lanterns
brooms	milk cans*
buckets	mops
cleaning brushes	paintbrushes
dehorner (nonelectric)*	pliers
garden hoses	scrapers
grease guns	screwdrivers
hammers	shovels
hay hooks*	wheelbarrows
hog ringers*	wrenches
lamps	

\*Hand tools specially designed for use in livestock or dairy production are equipment. Tax paid on the sale or use of these hand tools is refundable.

LIST D. Farm Machinery and Equipment Directly and  
Primarily Used in Livestock or Dairy Production.  
Tax Paid is Usually Refundable or the Sale Exempt.

artificial insemination equipment	gates*
augers*	grain augers
automatic feeding systems*	head gates
bulk feeding tanks*	heating pads and lamps
bulk milk coolers	hog feeders*
bulk milk tanks	hypodermic syringes and needles, nondisposable
cattle weaners and feeders	livestock feeding, watering and handling equipment*
cattle currying and oiling machines	loading chutes*
cattle feeders*	LP gas tanks
conveyers*	manure handling equipment*
dehorner, electric	milk coolers
electric fence equipment	milk strainers
fans*	milking machines
farrowing crates, houses and stalls*	refrigerators used to cool raw milk
feed bins*	silo unloaders
feed carts	specialized flooring*
feed elevators*	space heaters
feed grinders	sprayers
feed tanks*	squeeze chutes*
feeders	vacuum coolers
foggers	ventilators*
furnaces*	

\*If not real property. See 18.48(1) "c"(1).

**18.48(8) Seller's and purchaser's liability for sales tax.** The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

**701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999.**

**18.49(1)** Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

**18.49(2)** For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

*a. Exempt aircraft sales.* As of July 1, 1988, and up to and including June 30, 1999, gross receipts from the sale of aircraft are exempt from tax.

*b. Exempt rental of aircraft.* Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

*c. Exempt sale or rental of aircraft parts.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

*d. Exempt performance of services.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

**18.49(3)** For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of these aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part exempt under this subrule. Gross receipts from the sale or rental of aircraft are not exempt from tax under this subrule.

**18.49(4)** For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, and up to and including June 30, 1999, the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

- a.* The aircraft is kept in the inventory of the dealer for sale at all times.
- b.* The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.
- c.* The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs “a,” “b,” and “c” are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, 38A, 38B and 38C and Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

**701—18.50(422,423) Property used by a lending organization.** On and after July 1, 1988, the gross receipts from the sale of tangible personal property 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. 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 422.45(36).

**701—18.51(422,423) Sales to nonprofit legal aid organizations.** On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

**701—18.52(422,423) Irrigation equipment used in farming operations.** On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term “irrigation equipment” includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term “farming operations” has the same meaning as the term “agricultural production” set out in 701—subrule 17.9(3), paragraph “a,” and as further characterized in 18.44(2) “a.”

Effective May 18, 2001, and retroactive to April 1, 1995, the gross receipts from the sale or rental of irrigation equipment, as defined above, whether installed above or below ground are exempt from tax as long as the equipment is sold or rented by a contractor or farmer and the equipment is primarily used in agricultural operations.

Contractors or farmers entitled to the exemption set forth in the previous paragraph may apply for a refund of taxes, interest or penalties paid on the sale or rental of qualifying irrigation equipment for transactions that occurred between April 1, 1995, and May 18, 2001. To be eligible for refund, refund claims must be filed with the department prior to October 1, 2001. Refund claims are limited to \$25,000 in the aggregate and will not be allowed if not timely filed. If the amount of refund claims totals more than \$25,000 in the aggregate, the department will prorate the \$25,000 among all claimants in relation to the amounts of the claimants’ valid claims.

This rule is intended to implement Iowa Code section 422.45 and 2001 Iowa Acts, House File 723.

**701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business.** On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a “consumer rental purchase agreement” as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming

the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

**701—18.54(422,423) Sales of advertising material.** On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this rule “advertising material” is tangible personal property only, including paper. “Advertising material” is limited to the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

**701—18.55(422,423) Drop shipment sales.** A “drop shipment” generally involves two sales 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. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in 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 in turn ships the property directly to the consumer in Iowa. Under Iowa law the supplier in a drop shipment sale cannot be required to collect tax (either sales or use) from the consumer, even if the requisite “nexus” to require collection exists. See the next to last paragraph of this rule for a characterization of “nexus.” The supplier transfers possession of the goods to the consumer; however, transfer of possession alone has never been held to be a “sale” for the purposes of Iowa sales and use tax law. *Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985) and *Cedar Valley Leasing v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

With reference to drop shipment sales: If delivery of the goods under the contract for sale has occurred outside of Iowa, sale of the goods has occurred outside of Iowa. If delivery of the goods under the contract for sale has occurred within Iowa, the sale has occurred here. See *Sturtz* above for more information regarding sales and delivery. If the sale has occurred in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa sales tax upon the “gross receipts” from its sale of the goods to the consumer. If the sale has occurred outside this state, and the retailer possesses the nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa retailer’s use tax upon the purchase price of the goods. If the retailer does not have nexus sufficient to require it to collect either Iowa sales or Iowa use tax, or if the retailer fails to collect either tax, the consumer is obligated to pay a consumer use tax directly to the department upon the purchase price of the goods. These rules are illustrated in the following examples.

**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 consumer’s 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 Iowa, and delivery under the contract for sale occurs in Iowa. Under these circumstances, 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 D: 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 retailer's use tax. The supplier is not obligated to collect or pay any Iowa tax.

EXAMPLE E: 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 no nexus with this state. Delivery can occur in either Minnesota or Iowa. In this example, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE F: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale is in Iowa. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE G: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa with delivery in Madison, Wisconsin. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa retailer's use tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE H: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has no nexus with Iowa. Delivery under the contract for sale may be in Iowa or Wisconsin. Under these circumstances, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

As used in these examples, the requirement of "nexus" is discussed in *Good's Furniture House Inc. v. Iowa State Bd. of Tax Review*, 382 N.W.2d 145 (Iowa 1986); cert. den. 479 U.S. 817; *State Tax Commission v. General Trading Co.*, 10 N.W.2d 659, 233 Iowa 877 (1943) affd. 64 S.Ct. 1028, 322 U.S. 335, 88 L.Ed. 1309; and *Nelson v. Sears, Roebuck & Co.*, 292 N.W. 130, 228 Iowa 1273 (1940) reversed 61 S.Ct. 586, 312 U.S. 359, 85 L.Ed. 522, as well as other judicial decisions, and Iowa Code section 422.43(12).

This rule is intended to implement Iowa Code subsections 422.42(2) and 422.42(5).

**701—18.56(422,423) Wind energy conversion property.** On and after July 1, 1993, the gross receipts from the sale of property used to convert wind energy to electrical energy or the gross receipts from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy shall be exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 422.45 as amended by 1993 Iowa Acts, chapter 161.

**701—18.57(422,423) Exemptions applicable to the production of flowering, ornamental, and vegetable plants.** On and after July 1, 1995, the production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production. The word "plants" does not include trees, shrubs, other woody perennials,

or fungus. The exemption also applies to implements, machinery, equipment, and replacement parts directly and primarily used in the production of flowering, ornamental, or vegetable plants and fuel used for providing heating or cooling for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The following exemptions are applicable to the production of flowering, ornamental, or vegetable plants.

**18.57(1)** Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an “insecticide” or “pesticide.” See rules 701—226.6(423) and 701—17.9(422,423) for more information regarding these exemptions.

**18.57(2)** Sales of fuel to provide heating or cooling for a greenhouse or building or a part of a building dedicated to the production of flowering, ornamental, or vegetable plants held for sale in the ordinary course of business are exempt from tax. Electricity is a “fuel” for the purposes of this subrule. Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. For example, assume that there is a separate meter for electricity used only for heating or cooling. If a greenhouse is used, partially for growing plants and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the greenhouse heated or cooled and used for raising plants, and the denominator of which is the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. Plant production has ended when a plant has grown to the point that it is of the size or weight at which it will be prepared for shipment to the destination where it will be marketed. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment and portions used for packaging plants for shipment. See rule 701—15.3(422,423) regarding fuel exemption certificates and subrule 18.48(8) regarding seller’s and purchaser’s liability for sales tax.

**18.57(3)** Sales of gas, electricity, steam or other tangible personal property for use as a fuel in implements of husbandry used in the production of plants in a commercial greenhouse or elsewhere are exempt from tax. See 701—subrule 17.9(6), paragraph “a,” for a definition of “implements of husbandry.”

**18.57(4)** Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn by or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. See rule 701—18.44(422,423) for an extensive explanation of this exemption. Implements exempt under this subrule include, but are not limited to, forklifts used to transport pallets of plants; wagons containing sterilized soil and tractors used to pull the same.

**18.57(5)** Sale of water used in the production of plants is exempt from tax. If water is not separately metered, the grower of plants must determine by use of a percentage that portion which is used for a taxable purpose and that portion which is used for an exempt purpose.

Nonexclusive examples of taxable usage would be rest rooms, sanitation, lawns, and vehicle wash.

**18.57(6)** For sales occurring on or after July 1, 1996, the gross receipts for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural. A noninclusive list of containers and packaging materials would include boxes, trays, labels, sleeves, tape, and staples.

**18.57(7)** Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are also exempt from tax. See rule 701—18.48(422,423) for a thorough explanation of this exemption. Listed below are a number of examples of machinery and equipment which are directly and primarily used in plant production. Sales of this machinery and equipment to commercial growers are usually exempt from tax.

- Air-conditioning pads\*
- Airflow control tubes
- Atmospheric CO<sub>2</sub> control and monitoring equipment
- Backup generators
- Bins holding sterilized soil
- Control panels = heating and cooling
- Coolers used to chill plants\*
- Cooling walls\* or membranes
- Equipment used to control water levels for subirrigation
- Fans = cooling and ventilating\*
- Floor mesh for controlling weeds
- Germination chambers
- Greenhouse boilers\*
- Greenhouse netting or mesh = used for light and heat control
- Greenhouse monorail systems\*
- Greenhouse thermometers
- Handcarts used to move plants
- Lighting which provides artificial sunlight
- Overhead heating, lighting and watering systems
- Overhead tracks for holding potted plants\*
- Plant tables\*
- Plant watering systems\*
- Portable buildings used to grow plants\*
- Seeding and transplanting machines
- Soil pot and soil flat filling machines
- Steam generators for soil sterilization\*
- Warning devices = excess heat or cold
- Watering booms

\*If not real property. See 18.48(1) “c”(1).

**18.57(8)** Miscellaneous exempt and taxable sales. Sales of pots, soil, seeds, bulbs, and “starter plants” for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product. Sales of portable buildings which will be used to display plants for retail sales are taxable. Finally, sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those houses are taxable sales of a “supply” rather than exempt sales of equipment. See 18.48(1) “c”(2) relating to “supplies.” See rule 701—18.7(422,423) relating to containers, including packaging cases, shipping cases, wrapping materials, and similar items sold to retailers, and see subrule 18.57(6).

This rule is intended to implement Iowa Code sections 422.42(1), 422.42(4), 422.42(11), 422.45(39) and 422.47(4) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.  
[ARC 4117C, IAB 11/7/18, effective 12/12/18]

**701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997, but before July 1, 2016.** The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal

property are, under certain circumstances, exempt from tax as of July 1, 1997, but before July 1, 2016. For sales that occur on or after July 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

**18.58(1) Definitions.** The following terms are defined for the purposes of this rule in the manner set out below.

*“Commercial enterprise”* includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a “commercial enterprise.” The term “professions” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupations” means the principal business of an individual. Included within the meaning of “occupations” is the business of farming. A professional corporation which carries on any business which is a “profession” or “occupation” is not a commercial enterprise.

*“Computer”* means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment,” see 701—subrule 71.1(7). Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this subrule, “operating system or executive program” means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

*“Contract manufacturer”* is any manufacturer who falls within the definition of “manufacturer” set out subsequently in this subrule except that a contract manufacturer does not sell the tangible personal property which it processes on behalf of other manufacturers.

*“Directly used.”* Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

*“Financial institution”* is a bank incorporated under any state or federal law; a savings and loan association incorporated under any state or federal law; a credit union organized under any state or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

*“Insurance company”* means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in Iowa as an insurer or as a licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of “insurance company” are fraternal

and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

*“Machinery and equipment”* means machinery and equipment used by a manufacturer. Machinery is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The term also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be “machinery.” See *Deere Manufacturing Co. v. Zeiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956). Also see the definition of “replacement parts” *infra*. Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are tables on which property is assembled on an assembly line and chairs used by assembly line workers.

*“Manufacturer”* means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982). The term “manufacturer” includes a contract manufacturer. Ordinarily, the word does not include those commercial enterprises engaged in quarrying or mining. However, effective July 1, 1998, a commercial enterprise, the principal business of which is quarrying or mining, is a manufacturer with respect to activities in which it engages subsequent to quarrying or mining. These subsequent activities include, by way of nonexclusive example, crushing, washing, sizing, and blending of aggregate materials.

EXAMPLE: Company A owns and operates a gravel pit. It sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit. It then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities which occur after it severs the gravel from the ground.

*“Pollution control equipment”* means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. The term does not include any apparatus used to eliminate “noise pollution.” Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” “Pollution control equipment” specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or the United States Government. Wastewater treatment facilities and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety (e.g., a gas mask).

*“Processing”* means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components or products; quality control activities; construction of packaging and shipping

devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the manufacturer.

*“Processing or storage of data or information.”* All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption of tax.

*“Receipt or producing of raw materials”* means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

*“Recycling”* means any process by which waste or materials which would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. “Recycling” does not include any form of energy recovery.

*“Replacement parts.”* A “replacement part” is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. “Replacement parts” are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term “replacement parts” are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a “replacement part.” Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a “supply.”

*“Research and development”* means experimental or laboratory activity which has as its ultimate goal the development of new products or processes of processing. Machinery, equipment, and computers are used “directly” in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

**18.58(2) Exempt sales.** On and after July 1, 1997, sales or rentals of the following machinery, equipment, or computers (including replacement parts) are exempt from tax:

*a.* Machinery, equipment, and computers directly and primarily used in processing by a manufacturer.

*b.* Machinery, equipment, and computers directly and primarily used to maintain a manufactured product’s integrity or to maintain any unique environmental conditions required for the product.

*c.* Machinery, equipment and computers directly and primarily used to maintain unique environmental conditions required for other machinery, equipment, or computers used in processing by a manufacturer.

*d.* Test equipment directly and primarily used by a manufacturer in processing to control the quality and specifications of a product.

*e.* Machinery, equipment, or computers directly and primarily used in research and development of new products or processes of processing.

*f.* Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

*g.* Machinery, equipment, and computers directly and primarily used in recycling or reprocessing of waste products.

*h.* Pollution control equipment used by a manufacturer. It is not necessary that the equipment be “directly and primarily” used in any kind of processing.

*i.* Materials used to construct or self-construct any machinery, equipment, or computer, the sale of which is exempted by paragraphs “a” through “h” above.

*j.* Exempt sales of fuel and electricity. Sales of fuel or electricity consumed by machinery, equipment, or computers used in any exempt manner described in paragraphs “a,” “b,” “c,” “d,” “e,”

“g,” and “h” of this subrule are exempt from tax. Sales of electricity consumed by computers used in the manner described in paragraph “f” remain subject to tax.

**18.58(3) Examples of exempt items.** Sales of the following nonexclusive types of machinery and equipment, previously taxable, are exempt on and after July 1, 1997, if that machinery or equipment is sold for direct and primary use in processing by a manufacturer: coolers which do not change the nature of materials stored in them; equipment which eliminates bacteria; palletizers; storage bins; property used to transport raw, semifinished, or finished goods; vehicle-mounted cement mixers; self-constructed machinery and equipment; packaging and bagging equipment (including conveyer systems); equipment which maintains an environment necessary to preserve a product’s integrity; equipment which maintains a product’s integrity directly; quality control equipment and electricity or other fuel used to power the machinery and equipment mentioned above.

**18.58(4) Processing—beginning to end.**

*a. The beginning of processing.* Processing begins with a manufacturer’s receipt or production of raw material. Thus, when a manufacturer produces its own raw material it is engaged in processing. Processing also begins when raw materials are transferred to a manufacturer’s possession by a manufacturer’s supplier.

*b. The completion of processing.* Processing ends when the finished product is transferred from the manufacturer or delivered for shipment by the manufacturer. Therefore, a manufacturer’s packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

*c. Examples of the beginning, intervening steps, and the ending of processing.* Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A. Company A manufactures fine furniture. Company A owns a grove of walnut trees which it uses as raw material. A’s employees cut the trees, transport the logs to A’s factory, offload them there, and store the logs in a warehouse (to begin the curing of their wood) before taking them to A’s sawmill. The walnut trees are real property, *Kennedy v. Board of Assessment and Review*, 276 N.W. 205, 224 Iowa 405 (1937). Thus, no “production of raw materials” has occurred with regard to the trees until they have been severed from the soil and transformed into logs. In this example, “processing” of the logs begins when they are placed on vehicles for transport to A’s factory. However, note that even though the transport vehicles are used in processing, if they are “vehicles subject to registration,” their use is not exempt from tax. See 18.58(6)“d” infra.

EXAMPLE B. Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its own equipment to offload the logs from railroad cars at its manufacturing facility and then transports, stores, and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C. Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer which it brews. It also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing whether those stages involve the transformation of the raw materials from one state to another, e.g., fermentation or aging, or simply involve holding the materials in an existing state, e.g., storage of hops in a bin or storage of the beer immediately prior to bottling. Also, any movement of the beer between containers is an activity which is a part of processing, whether this movement is an “integral part” of the production of the beer or not.

EXAMPLE D. After the brewing process is complete, Company C places its beer in various containers, stores it, and moves the beer to its customers by a common carrier that picks up the beer at C’s brewery. C’s activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier’s pickup site are activities which are part of processing.

**18.58(5) Various unrelated inclusions in and exclusions from this exemption.**

*a.* The following are nonexclusive examples of machinery which is not directly used in processing:

(1) Machinery used exclusively for the comfort of workers. Examples are air cooling, air conditioning, and ventilation systems.

(2) Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained, or repaired.

(3) Machinery used by administrative, accounting, and personnel departments.

(4) Machinery used by plant security, fire prevention, first aid, and hospital stations.

(5) Machinery used in plant communications and safety.

*b.* The following is an example of property directly used in research and development. Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a “steam cleaner” for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director’s secretary. The computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

*c.* The following is an example of computers used and not used in processing or storage of information or data. A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company’s building. The computer transmits messages to the building’s heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company’s employees to perform various additional tasks or to better perform work they can already do. Computer D uses various canned programs to accomplish this. The “final output” of Computer A is neither stored nor processed information. Therefore, Computer A does not fit the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sale, lease, or use of Computers B, C, and D would qualify for exemption.

*d.* The following is an example of property not used in processing. A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns, and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in processing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

**18.58(6) Exceptions.** Sales of the following machinery, equipment, or computers are not exempt:

*a.* Machinery, equipment, or computers assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434, and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to, as well as owned by, the company is assessed by the department. See 701—Chapters 71 and 77.

*b.* Hand tools. These are tools which can be held in the hand or hands and which are powered by human effort.

*c.* Point-of-sale equipment. See 701—subrule 71.1(7).

*d.* Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

*e.* Machinery and equipment purchased by a person engaged in processing who is not a manufacturer. Restaurants, retail bakeries, food stores, and blacksmith shops are nonexclusive examples of businesses which process tangible personal property but are not manufacturers as that word is defined for the purposes of this rule.

*f.* The fact that the acquisition cost of rented or purchased machinery, equipment, or computers can be capitalized for the purposes of Iowa or federal income tax law is not an indication that their sale or rental would be exempt from tax under this rule.

**18.58(7)** *Lessor purchases of machinery, equipment, or computers.* The analysis regarding lessor purchases of farm machinery and equipment contained in subrule 18.44(3) explains that same problem regarding machinery, equipment, and computers.

**18.58(8)** *Designing or installing new industrial machinery or equipment.* The gross receipts from the services of designing or installing new industrial machinery or equipment are exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to exemption under this rule. In addition, the machinery or equipment must be “new.” For purposes of this subrule, “new” means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt, or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A “computer” is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

**18.58(9)** *Property used in recycling or reprocessing of waste products.* Gross receipts from the sale or rental of machinery (including vehicles subject to registration), equipment, or computers directly and primarily used in the recycling or reprocessing of waste products are exempt from tax. “Reprocessing” is not a subcategory of “processing.” Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an end loader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. The sale of a bin for storage ordinarily would not be exempt from tax; storage without more activity would not be a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing. For example, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. A person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

*a.* By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

*b.* Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.58(1) for the definition of “directly used” which is applicable to this subrule. The examples of machinery not directly used in processing set out in 18.58(5) “a” should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.58(5) “a”(4)) is not machinery directly used in recycling or reprocessing.

*c.* Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an “integral part” of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling

or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of “processing.” Some of that discussion is applicable to this subrule.

*d.* The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material or in the form of a product. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, crates, and other waste wood into wood chips. After grinding, the wood chips are sold and transported to various sites where the chips are dumped and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in recycling because at the time the chips are placed in the truck they are in the form in which they will be used in erosion control.

This rule is intended to implement Iowa Code Supplement section 422.45(27) as amended by 1998 Iowa Acts, Senate File 2288; Iowa Code section 422.45(29); and Iowa Code chapter 423.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—18.59(422,423) Exempt sales to nonprofit hospitals.** On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital. A hospital is not entitled to claim a refund for tax paid by a contractor on the sale or use of tangible personal property or the performance of services in the fulfillment of a written construction contract with the hospital. However, see the circumstances set out below in which sales of goods, wares or merchandise, or taxable services to a hospital for use in the fulfillment of a construction contract, are exempt from Iowa tax.

For the purposes of this rule, the word “hospital” means a place which is devoted primarily to the maintenance and operation of facilities for diagnosis, treatment, or care, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, or a medical condition (such as pregnancy). The word “hospital” includes general hospitals, specialized hospitals (e.g., pediatric, mental, and orthopedic hospitals, and cancer treatment centers), sanatoriums, and other hospitals licensed under Iowa Code chapter 135B. Also included are institutions, places, buildings, or agencies in which any accommodation is primarily maintained, furnished, or offered for the care, over a period exceeding 24 hours, of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care. Excluded from the meaning of the term “hospital” are institutions for well children; day nursery and child care centers; foster boarding homes and houses; homes for handicapped children; homes, houses, or institutions for aged persons which limit their function to providing food, lodging, and provide no medical or nursing care, and house no bedridden person; dispensaries or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plan, educational institution, or convent; freestanding hospice facilities which operate a hospice program in accordance with 42 CFR § 418 and freestanding clinics which do not provide diagnosis, treatment, or care for periods exceeding 24 hours. This list of inclusions and exclusions is not exclusive. For additional information see 481—Chapter 51.

Ordinarily, goods, wares, or merchandise (such as building materials, supplies, and equipment; see rule 701—19.3(422,423) for definitions) which is purchased by a hospital and used by a contractor in the fulfillment of a written contract with the hospital cannot be purchased exempt from Iowa tax. The goods, wares, and merchandise used in the fulfillment of these construction contracts are not used in the “operation” of a hospital but in activities at least one step removed from that operation. See *Polich v. Anderson-Robinson Coal Co.*, 227 Iowa 553, 288 N.W. 650 (1939).

However, for a limited period, the gross receipts from all sales of goods, wares, or merchandise or from services rendered, furnished, or performed are exempt from tax (or a claim for refund may be filed for tax paid) if the tangible personal property or the taxable service is used in the fulfillment of a written construction contract with a hospital and all of the following circumstances exist:

1. Deliveries under contracts of sale of the goods, wares, or merchandise occurred or the taxable services were rendered, furnished, or performed between July 1, 1998, and December 31, 2001, inclusive. A claim for refund may be filed for any tax paid for this period, so long as the claim is filed prior to April

1, 2002, and the requirements of “2” and “3” below are also met. Claims for refunds of tax, interest, or penalty paid for the period of July 1, 1998, to December 31, 2001, are limited to \$25,000 in the aggregate. If the amount of the claimed refunds for this period totals more than \$25,000, the department must prorate the \$25,000 among all claimants in relation to the amounts of the claimants’ valid claims.

2. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

3. The property or services were purchased directly by the hospital or by a contractor as an agent of the hospital. For the purposes of this exemption, no hospital can retroactively designate a contractor to be its agent and by this means transform a contractor’s purchases of goods, wares, merchandise, or services into its own. Upon the department’s request, a hospital claiming that a contractor is or has been its purchasing agent must present suitable evidence of a principal-agent relationship between itself and the contractor during any period for which exempt sales or a refund is claimed. The best evidence of a principal and purchasing agent relationship is a written document setting out the terms of the relationship and the period for which the agency is in effect; however, other evidence, which is the equivalent of a written document in reliability, will be considered by the department when necessary.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1207.

**701—18.60(422,423) Exempt sales of gases used in the manufacturing process.** Effective May 24, 1999, but retroactive to January 1, 1991, sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases which are similar to argon. An “inert gas” is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for used in “processing,” as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 170.

**701—18.61(422,423) Exclusion from tax for property delivered by certain media.** For the period beginning March 15, 1995, a taxable “sale” of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is not applicable to any leasing of tangible personal property, a lease not being a “sale” of tangible personal property for the purposes of Iowa sales and use tax law, *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979). The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, “canned” software (see subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. See rule 701—26.56(422). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2002 Iowa Acts, Senate File 2321.

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<sup>2</sup> Amendments to 18.29(7) and 18.58, introductory paragraph, (ARC 2349C, Items 2 and 3) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

CHAPTER 40  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—40.1(422) Net income defined.** Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.2(422) Interest and dividends from federal securities.** For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

“Obligations of the United States” are those obligations issued “to secure credit to carry on the necessary functions of government.” *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the “borrowing” and “supremacy” clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor’s primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department’s interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

**40.2(1)** Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation
- b. Territorial obligations:*
  1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
  2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
  3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
  4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).
- c. Federal agency obligations:*
  1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
  2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
  3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
  4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
  5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
  6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
  7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
  8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
  9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
  10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
  11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
  12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
  13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
  14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
  15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).
  - Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
  - Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
  - Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
  - Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
  - Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).
17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).
18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).
19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).
20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).
21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).
22. Treasury Investment Growth Receipts.
23. Certificates on Government Receipts.

**40.2(2)** Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

- a. Federal agency obligations:*
  1. Federal or State Savings and Loan Associations
  2. Export-Import Bank of the United States
  3. Building and Loan Associations
  4. Interest on federal income tax refunds
  5. Postal Savings Account
  6. Farmers Home Administration
  7. Small Business Administration
  8. Federal or State Credit Unions
  9. Mortgage Participation Certificates
  10. Federal National Mortgage Association
  11. Federal Home Loan Mortgage Corporation (Freddie Mac)
  12. Federal Housing Administration
  13. Federal National Mortgage Association (Fannie Mae)
  14. Government National Mortgage Association (Ginnie Mae)
  15. Merchant Marine (Maritime Administration)
  16. Federal Agricultural Mortgage Corporation (Farmer Mac)
- b. Obligations of international institutions:*
  1. Asian Development Bank
  2. Inter-American Development Bank

3. International Bank for Reconstruction and Development (World Bank)

c. *Other obligations:*

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association (“Ginnie Maes”) is subject to Iowa income tax. See *Rockford Life Insurance Company v. Illinois Department of Revenue*, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.3(422) Interest and dividends from foreign securities and securities of state and other political subdivisions.** Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.
2. Urban renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal housing law - low-income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 161A.22.
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.
7. County health center: Bonds issued under Iowa Code section 331.441(2) “c”(7).
8. Iowa finance authority, water pollution control works and drinking water facilities financing: Bonds issued under Iowa Code section 16.131(5).
9. Iowa finance authority, beginning farmer loan program: Bonds issued under Iowa Code section 16.64.
10. Iowa finance authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
11. Iowa finance authority, 911 program notes and bonds: Bonds issued under Iowa Code section 34A.20(6).
12. Quad Cities interstate metropolitan authority bonds: Bonds issued under Iowa Code section 28A.24.
13. Prison infrastructure revenue bonds: Bonds issued under Iowa Code sections 12.80(3) and 16.177(8).
14. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.
15. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).
16. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.
17. Iowa higher education loan authority: Obligations issued by the authority pursuant to Iowa Code section 261A.27.
18. Vision Iowa program: Bonds issued pursuant to Iowa Code section 12.71(8).
19. School infrastructure program bonds: Bonds issued under Iowa Code section 12.81(8).

20. Honey Creek premier destination park bonds: Bonds issued under Iowa Code section 463C.12(8).

21. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under Iowa Code section 12.91(9).

22. Iowa jobs program revenue bonds: Bonds issued under Iowa Code section 12.87(8).

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 4309C, IAB 2/13/19, effective 3/20/19]

**701—40.4(422) Certain pensions, annuities and retirement allowances.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.5(422) Military pay.**

**40.5(1)** Rescinded IAB 6/3/98, effective 7/8/98.

**40.5(2)** For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

*a.* When universal compulsory military service is reinstated by the United States Congress. “Compulsory military service” is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

*b.* When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.6(422) Interest and dividend income.** This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income

tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.7(422) Current year capital gains and losses.** In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

**701—40.8(422) Gains and losses on property acquired before January 1, 1934.** When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.9(422) Work opportunity tax credit and alcohol and cellulosic biofuel fuels credit.** Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol and cellulosic biofuel fuels credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The work opportunity tax credit applies to eligible individuals who begin work before January 1, 2012. The adjustment for the alcohol and cellulosic biofuel fuels credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2328.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.10(422) Exclusion of interest or dividends.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.11(422) Two-earner married couple deduction.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.12(422) Income from partnerships or limited liability companies.** Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

**701—40.13(422) Subchapter “S” income.** Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation’s income to the shareholders, the corporation’s income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident and nonresident shareholders shall report their share of the corporation’s net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission*, 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

**701—40.14(422) Contract sales.** Interest derived as income from a land contract is intangible personal property and is assignable to the recipient's domicile. Gains received from the sale or assignment of land contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 701—40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the \$1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same \$3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to \$1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than \$1,500 and the other spouse has a capital loss greater than \$1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the \$3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of \$3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a \$3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of \$3,000, which was the maximum loss they could claim, although they had aggregate capital losses of \$8,000. The husband had a net capital loss of \$6,000 and the wife had a net capital loss of \$2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of \$1,500, since each spouse had a capital loss of up to \$1,500. The husband had a net capital loss carryover of \$4,500 and the wife had a net capital loss carryover of \$500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of \$2,500. The husband had a net capital gain of \$7,500 and the wife had a net capital loss of \$10,000. The wife claimed a net capital loss of \$10,000 on her separate Iowa return, while the husband reported a net capital gain of \$7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of \$3,000. The wife had a net capital loss of \$800 and the husband had a net capital loss of \$2,500. The wife claimed a \$800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of \$2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of \$300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the

unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

**40.15(1)** *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

**40.15(2)** *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

*a.* Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

*b.* Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

**40.15(3)** *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

*a.* Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

*b.* Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

**40.15(4)** *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs "a" or "b" of this subrule and consideration of paragraphs "c," "d," and "e" of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

*a.* Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have

currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

*b.* Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

*c.* Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

*d.* Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

*e.* Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 8356B, IAB 12/2/09, effective 1/6/10]

**701—40.16(422) Income of nonresidents.** Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 701—40.14(422).

**40.16(1)** *Nonresidents exempt from paying tax.* See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph “c,” and 701—subrule 39.5(11), paragraph “b,” do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

**40.16(2)** *Compensation for personal services of nonresidents.* The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 701—40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation

is subject to review and change by the director. However, pursuant to federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a merchant marine company, or a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

**40.16(3)** *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

**40.16(4)** *Apportionment of business income from business carried on both within and without the state.*

*a.* If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

*b.* The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

*c.* Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

*d.* If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

*e.* On or after January 1, 2016, see 701—Chapter 242 for allocation and apportionment of net income to Iowa by an out-of-state business or out-of-state employee who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

**40.16(5)** *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.5(422):

EXAMPLE A - An Illinois resident is a laborer at a factory in Davenport. A \$50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn \$600 in interest income from the Iowa credit union account in 1983. The interest income would not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

EXAMPLE B - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn \$200 in interest income

from the checking account in 1982. The plumber will have a net income of \$25,000 from the plumbing business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

EXAMPLE C - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn \$1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

EXAMPLE D - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

EXAMPLE E - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

EXAMPLE F - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn \$550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

EXAMPLE G - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state.

**40.16(6)** *Distributive shares of nonresident partners.* When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

**40.16(7)** *Interest and dividends from government securities.* Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

**40.16(8)** *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

**40.16(9)** *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

*a. Capital gains from sales or exchanges of stock in C corporations and S corporations.* When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

*b. Capital gains from sales or exchanges of interests in partnerships.* When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or "sourced" at the situs of the partnership's activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com'n.*, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain

would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph "a" of this subrule.

*c. Capital gains from sales or exchanges of sole proprietorships.* When a nonresident sells or exchanges the individual's interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

*d. Capital gains from sales or exchanges of interests in limited liability companies.* Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph "b" of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph "a" of this subrule.

*e. Taxation of corporate liquidations.* As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder's pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review*, 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder's basis in the stock. *Id.* Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder's liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

*f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity.* In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs "a" through "e" of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of the portion of net capital losses that exceed \$3,000.

**40.16(10) Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities.** Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital

gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 3085C, IAB 5/24/17, effective 6/28/17]

**701—40.17(422) Income of part-year residents.** A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.

2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

**701—40.18(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

**40.18(1) Treatment of federal income taxes.**

a. Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

(3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

b. Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

**40.18(2) Nonresidents doing business within and without Iowa.** If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 701—40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

**40.18(3) Loss carryback and carryforward.** The net operating loss attributable to Iowa as determined in rule 701—40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred

by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

**40.18(4) *Loss not applicable.*** No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

**40.18(5) *Special adjustments applicable to net operating losses.*** Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

**40.18(6) *Distinguishing business or nonbusiness items.*** In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

**40.18(7) *Examples.*** The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

Gross income from retail sales business		\$125,000
Interest income from federal securities		2,000
Salary from part-time job		12,500
Individual A's federal return showed the following deductions:		
Business deductions (retail sales)		\$150,000
Itemized (nonbusiness) deductions:		
Interest	\$400	
Real estate tax	600	
Iowa income tax	800	\$ 1,800

Individual A paid \$3,000 federal income tax during the year which consisted of \$2,500 federal withholding (business) and a \$500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail Sales	\$125,000	\$125,000
Interest income-federal securities	2,000	2,000
Salary	<u>12,500</u>	<u>12,500</u>
Subtotal	\$139,500	\$139,500
Deductions:		
Business	\$150,000	\$150,000
Itemized deductions	<u>1,800</u>	<u>1,800</u>
(Loss) per federal	<u>(\$ 12,300)</u>	
Computed net operating loss		<u>(\$ 12,300)</u>

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$125,000	\$125,000
Salary	<u>12,500</u>	<u>12,500</u>
Subtotal	\$137,500	\$137,500
Deductions:		
Business	\$150,000	\$150,000
Federal tax deductions	3,000	2,500
Itemized deductions	<u>1,000</u>	<u>-</u>
(Loss) per return	<u>(\$ 16,500)</u>	
Computed Iowa NOL		<u>(\$ 15,000)</u>

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

*b.* Individual B had the following items of income for the taxable year:

Gross income from restaurant business	\$300,000
Wages	12,000
Business long-term capital gain @100%	1,000
Municipal bond interest (nonbusiness)	1,000
Federal tax refund of prior year taxes	500
Iowa tax refund of prior year taxes	100

Individual B's federal return showed the following deductions:

Business deductions from restaurant	\$333,000
Itemized deductions:	

Interest (nonbusiness)	\$590	
Real estate tax (nonbusiness)	780	
Iowa income tax*	520	
Alimony (nonbusiness)	600	
Union dues (business)	100	2,590

\*Iowa estimated payments totaled \$220 of which \$70 related to nonbusiness income and \$150 related to business capital gains and business profits. \$300 in Iowa tax was withheld from his wages.

Individual B paid \$2,000 in federal income taxes during the tax year. \$1,500 of this amount was withholding on wages and \$500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500(a)	1,000(a)
Iowa refund	100	100
Subtotal	\$312,600	\$313,100
Deductions:		
Business	\$333,000	\$333,000
Itemized deductions	2,590	575(b)
(Loss) per federal	(\$ 22,990)	
Computed net operating loss		(\$ 20,475)

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of \$100 for union dues, \$450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to \$25. The only nonbusiness income is 25 percent of the \$100 Iowa refund.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500	1,000
Municipal bond interest	1,000	1,000
Federal refund	500	500
Subtotal	\$314,000	\$314,500

Deductions:		
Business	\$333,000	\$333,000
Federal tax	2,000	2,000
Itemized deductions	<u>2,070(c)</u>	<u>1,225(d)</u>
(Loss) per return	<u>(\$ 23,070)</u>	
Computed Iowa NOL		<u>(\$ 21,725)</u>

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of \$100 for union dues and nonbusiness deductions to the extent of nonbusiness income of \$1,125. Nonbusiness income includes \$1,000 of municipal bond interest and 25 percent (\$125) of the federal tax refund.

**40.18(8)** *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

Category	All Source Income	Iowa Source Income
Wages	\$20,000	\$20,000
Interest	5,000	0
Rental income	5,000	5,000
Business loss	(50,000)	(10,000)
Iowa net income (loss)	<u>(\$20,000)</u>	<u>\$15,000</u>

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer’s Iowa source income was not negative. The taxpayer’s all source loss of (\$20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer’s all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of \$1,000 in 1983. The refund was from the taxpayer’s 1981 federal return where the taxpayer’s Iowa income was 20% of the total income. \$2,000 of federal income tax was withheld from the taxpayer’s Iowa wages in 1982. The taxpayer had \$10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in 1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

Category	All Source Income	Iowa Source Income
Wages	\$60,000	\$10,000
Interest	3,000	0
Rental income	5,000	5,000
Farm income loss	(30,000)	(30,000)
Capital gain	2,000	2,000
Total incomes	<u>\$40,000</u>	<u>(\$13,000)</u>

The taxpayer’s Iowa source loss of (\$13,000) was decreased by \$200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by \$3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of \$2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer’s itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

Iowa source net loss . . . . .	(\$13,000)
Iowa portion of federal refund . . . . .	200
Federal tax withheld on Iowa wages . . . . .	(2,000)
Capital gain deduction . . . . .	<u>3,000</u>
Total	<u>(\$11,800)</u>

The taxpayer’s net operating loss deduction available for carryback/carryforward to another tax year is (\$11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph “a” and paragraph “b” below:

a. *Application of net operating losses to tax years beginning prior to January 1, 1982.* In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on

or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of (\$15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was \$14,000. The taxpayer had a net capital loss of \$3,000 in 1979. Because the taxpayer's 1979 taxable income of \$14,000 was \$1,000 less than the NOL deduction, the taxable income was increased by \$1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

*b. Application of net operating losses to tax years beginning on or after January 1, 1982.* In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of \$11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

Category	All Source Income	Iowa Source Income
Wages	\$ 60,000	\$ 20,000
Interest	3,000	0
Rental income	10,000	3,000
Farm income	25,000	25,000
Capital gain	2,000	2,000
Net operating loss carryforward	—	(11,800)
Iowa net income	\$100,000	\$ 38,200

The Iowa source income of \$38,200 after reduction by the NOL carryforward is divided by the all source income of \$100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of \$7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of \$4,551. This credit is \$869 greater than the nonresident/part-year credit of \$3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

**40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming.** Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

**701—40.19(422) Casualty losses.** Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

**701—40.20(422) Adjustments to prior years.** When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

**701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed \$20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs “f” and “g,” apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

**40.21(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**40.21(2)** The term “small business” means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

*a.* The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. The small business shall not have more than \$1 million in annual gross revenues, or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

#### **40.21(3) Definitions.**

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

*f.* The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

*g.* The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**40.21(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**40.21(5)** The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

**40.21(6)** If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2247.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0337C, IAB 9/19/12, effective 10/24/12]

#### **701—40.22(422) Disability income exclusion.**

**40.22(1)** Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of \$100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

**40.22(2)** In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude \$5,200 of income received on account of disability.

**40.22(3)** There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer’s federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds \$15,000. In the case of a married couple, both spouses’ incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds \$15,000. The taxpayers’ disability income exclusion is eliminated when the taxpayers’ federal adjusted gross income is equal to or exceeds \$20,200. The deduction of the taxpayers’ disability income exclusion because the taxpayers’ federal adjusted gross income is greater than \$15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received \$8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was \$2,500 and the wife's income was \$7,500.

Of the \$8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only \$4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is \$100.

However, the \$4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds \$15,000. In this example, the taxpayer's federal adjusted gross income is \$18,000, which exceeds \$15,000 by \$3,000. Therefore, the amount eligible for exclusion of \$4,000 must be reduced by \$3,000. This gives the taxpayers an exclusion of \$1,000.

**40.22(4)** For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

**40.22(5)** Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

**40.22(6)** The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

**701—40.23(422) Social security benefits.** For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

**40.23(1)** *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received \$6,000 in social security benefits and the wife received \$3,000 in social security benefits. \$2,000 of the social security benefits was taxable on the federal return.

The \$2,000 in taxable social security benefits is allocated to the spouses on the following basis:

$$\begin{array}{r} \text{Husband} \\ \hline \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \hline \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

In situations where taxpayers have received both social security benefits and Tier 1 railroad retirement benefits and are taxable on a portion of those benefits, the formula which follows should be used to determine the social security benefits to be included in net income:

$$\begin{array}{r} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{r} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{r} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

**40.23(2)** *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: (a) \$32,000 if married and a joint federal return was filed, (b) \$0 if married and separate federal returns were filed by the spouses and (c) \$25,000 for individuals who filed federal returns and used a filing status other than noted in (a) and (b).

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse any time in 1994). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040. 11. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

**40.23(3)** *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

Calendar years 2007 and 2008	32%
Calendar year 2009	43%
Calendar year 2010	55%
Calendar year 2011	67%
Calendar year 2012	77%
Calendar year 2013	89%

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse anytime during the year). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10. 11. \_\_\_\_\_
12. Multiply line 11 by applicable exclusion percentage. 12. \_\_\_\_\_
13. Taxable social security benefits. Subtract line 12 from line 11. 13. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

**40.23(4)** *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and

701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

**701—40.24(99E) Lottery prizes.** Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

**701—40.25(422) Certain unemployment benefits received in 1979.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.26(422) Contributions to the judicial retirement system.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.27(422) Incomes from distressed sales of qualifying taxpayers.** For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

**40.27(1) Qualifications that must be met for transactions to be considered distressed sales.** There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

*a.* The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

*b.* Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

*c.* The taxpayer's net worth at the end of the tax year was less than \$75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

**40.27(2) Losses from distressed sale transactions of qualifying taxpayers.** Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that

the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

**701—40.28(422) Losses from passive farming activities.** Rescinded IAB 2/18/04, effective 3/24/04.

**701—40.29(422) Intangible drilling costs.** For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

**701—40.30(422) Percentage depletion.** For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.31(422) Away-from-home expenses of state legislators.** For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax.** For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry.** For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of \$20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

**701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans.** For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

**701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program.** Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

**701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board.** Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

**701—40.38(422) Capital gain deduction or exclusion for certain types of net capital gains.** For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(2) to 40.38(8) are excluded in the computation of net income for qualified individual taxpayers. This includes net capital gains from the sales of real property, sales of assets of a

business entity, sales of certain livestock of a business, sales of timber, liquidation of assets of certain corporations, and certain stock sales which are treated as acquisition of assets of a corporation. “Net capital gains” means capital gains net of capital losses because Iowa’s starting point for computing net income is federal adjusted gross income. A business includes any activity engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. Subrule 40.38(1) describes the criteria for material participation which are required for the exclusion of certain capital gains related to the sale of real property and the sale of assets of business entities. Subrule 40.38(9) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

**40.38(1)** *Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged.* If the taxpayer has regular, continuous and substantial involvement in the operations of a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the federal tax regulations for material participation in 26 CFR §1.469-5 and §1.469-5T, for the ten years prior to the date of the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether a particular taxpayer has material participation in a business, participation of the taxpayer’s spouse in a business must also be taken into account. The spouse’s participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer or if the spouse has no ownership interest in the business. The activities of other family members, employees, or consultants are not attributed to the taxpayer to determine material participation.

*a.* Work done in connection with an activity shall not be treated as participation in the activity if such work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

*b.* Work done in an activity by an individual in the individual’s capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual’s own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.

*c.* A taxpayer is most likely to have material participation in a business if that business is the taxpayer’s principal business. However, for purposes of this subrule, it is possible for a taxpayer to have had material participation in more than one business in a tax year.

*d.* A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are conducted. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business. The fact that the taxpayer utilizes employees or contracts for services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business, but the services will not be attributed to the taxpayer.

*e.* Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

(1) The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in 2001 in Altoona, Iowa. In 2011, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in 2011.

(2) The individual’s participation in the business constitutes substantially all of the participation of all individuals in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives

the truck. In the winter of 2011, there was little snow so Mr. McKee spent only 20 hours in 2011 clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in 2011.

(3) The individual participates in the business for more than 100 hours in the tax year, and no other individual spends more time in the business activity than the taxpayer.

(4) The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses, and the participation is not material participation within the meaning of one of the tests in subparagraphs 40.38(1)“e”(1) to (3) and (5) to (7). Thus, the taxpayer is regarded as materially participating in each of the businesses.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In 2011, Mr. Evans spent 400 hours working at the restaurant and 150 hours at the record store and other individuals spent more time in the business activity than he did. Mr. Evans is treated as a material participant in each of the businesses in 2011.

(5) An individual who has materially participated (determined with regard to subparagraphs 40.38(1)“e”(1) to (4)) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in 2008 after 35 years in the business. Since Joe’s retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through 2013 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of 2013, the sale will qualify for the Iowa capital gain deduction on Joe’s 2013 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

(6) An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but he retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal service activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

(7) An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following applies: any person other than the taxpayer is compensated for management services, or any person provides more hours of management services than the taxpayer.

*f.* The following paragraphs provide clarification regarding material participation:

(1) A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer’s retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of the last eight years prior to retirement or disability. The farmer must be receiving old-age benefits under Title II of the Social Security Act to be considered a retired farmer.

EXAMPLE. Fred Smith was 80 years old in 2011 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in 2001 when he began receiving old-age benefits under Title II of the Social Security Act. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to

have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

(2) A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting). However, if the surviving spouse was retired at the time of the farmer's death and the deceased spouse materially participated in the farming activity for five of the last eight years prior to the deceased spouse's retirement, then the surviving spouse is deemed to be materially participating, even if the surviving spouse did not actively participate in the farming activity. See IRS Technical Service Memorandum 200911009, March 13, 2009.

(3) Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in subparagraphs 40.38(1) "e"(1), (5) and (6) above as if the taxpayer were not a limited partner for the tax year.

(4) Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.

(5) Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:

TEST 1. The landlord does any three of the following: (1) Pays or is obligated to pay for at least half the direct costs of producing the crop; (2) Furnishes at least half the tools, equipment, and livestock used in producing the crop; (3) Consults with the tenant; and (4) Inspects the production activities periodically.

TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

(6) Conservation reserve payments (CRP). Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an "annualized rental payment." Although the CRP payments are referred to as "rental payments," the payments are considered to be receipts from farm operations and not rental payments from real estate.

If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities and the individual is paying self-employment tax, the owner will be considered to have had material participation in the farming activity.

(7) Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(2), the general rule is that a taxpayer may have material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in subparagraphs 40.38(1) "f"(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code. Rental activity or rental business does not typically involve day-to-day involvement since gross income from this activity represents amounts paid mainly for the use of the property. Examples of qualifying involvement in operations of the property that are considered material participation activities if performed on a regular, continuous and substantial basis include advertising, interviewing potential tenants, preparing leases, collecting rent, handling security deposits, receiving questions and complaints from tenants, and performing routine maintenance.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1998 and has received rental income from these duplexes since 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in operating, managing and maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in operating, managing and maintaining the duplexes. The duplexes are sold in 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2011 Iowa return since he met the material participation requirements for this rental activity.

(8) Like-kind exchanges and involuntary conversions. Material participation can be tacked on in cases of replacement property acquired under a like-kind exchange under Section 1031 of the Internal Revenue Code or an involuntary conversion under Section 1033 of the Internal Revenue Code.

EXAMPLE. Dustin James owned Farm A, and he materially participated in the operation of Farm A for 10 years. Mr. James executed a like-kind exchange for Farm B, and he materially participated in the operation of this farm for 4 years until he retired. Mr. James sold Farm B 2 years after he retired. Although he only materially participated in the operation of Farm B for 4 of the last 8 years before he retired, the operation of Farm A can be tacked on for purposes of the material participation test. Mr. James meets the material participation test since he participated in farming activity for the last 14 years before he retired.

(9) Record-keeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met. However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

**40.38(2) Net capital gains from the sale of real property used in a business.** Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent that the owner had held the real property in the business for ten or more years and had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1). It is not required that the property be located in Iowa for the owner to qualify for the deduction.

*a.* Meaning of the term “held” for purposes of this rule. For capital gains reported for tax years ending prior to January 1, 2006, the term “held” is defined as “owned.” *James and Linda Bell*, Decision of the Administrative Law Judge, Docket No. 01DORF013, January 15, 2002, and *David V. and Julie K. Gorsche v. Iowa State Board of Tax Review*, Case No. CVCV 8379, Polk County District Court, May 5, 2011. Therefore, the property held by the taxpayer must have been owned by the taxpayer for ten or more years to meet the time held requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term “held” is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant to Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the time held requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

*b.* Sale to a lineal descendant. For purposes of taxation of capital gains from the sale of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(3).

*c.* In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is,

if the owner of the business had held and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

*d.* Installments received in the tax year from installment sales of businesses are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years at the time of the sale in 2007.

*e.* Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction except under the specific circumstances of a liquidation described in subrule 40.38(7).

*f.* Capital gains from the sale of real property held for ten or more years for speculation but not used in a business do not qualify for the capital gain deduction.

*g.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and held ABC Company for more than ten years at the time that 500 acres of the land were sold for a capital gain of \$100,000 in 2011. The capital gain recognized in 2011 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and time held requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company, which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1990. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 2011, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the capital gain passed through to John Smith and \$25,000 of the capital gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time held and material participation requirements. John Smith could not exclude the \$25,000 capital gain since, although he had met the time held requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for a taxpayer's sale of real estate from a business to a lineal descendant of the taxpayer as is described for the sale of business assets in subrule 40.38(3).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been held for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 2004 and farmed that land until the land was sold in 2011 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 2005, formed an S corporation, and included the land

in the assets of the S corporation. The land was sold in 2011 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized from the land sale a capital gain of \$15,000, which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had held the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because, although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and in which he had materially participated for 20 years. There were two tracts of farmland in the farming business. In 2011, he sold one tract of farmland in the farming business that he had held for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 2011 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey held the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain deduction. The deduction is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain deduction since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son Joseph after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 1994, when Ralph died. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain deduction under Iowa law since he materially participated for ten or more years and the capital gain was reported for a tax year ending on or after January 1, 2006.

**40.38(3)** *Net capital gains from the sale of assets of a business by an individual who had held the business for ten or more years and had materially participated in the business for ten or more years.* Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent that the individual had held the business for ten or more years and had materially participated in the business for ten or more years. In addition to the time held and material participation qualifications for the capital gain deduction, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

a. For purposes of this subrule, the phrase "substantially all of the tangible personal property or the service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the

sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

b. If the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. If the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten or more years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten or more years prior to the sale of the assets of the business.

c. In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

d. For the purposes of this subrule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, a retail business, or a service business, such as a law firm or an accounting firm.

e. When the business held by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer is not required to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income. The term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

f. In situations in which substantially all of the tangible personal property or the service of the business was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had held the business for ten or more years and had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale. The criteria for material participation in a business may be found in subrule 40.38(1).

g. Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if, at the time of the sale in 2007, the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years.

h. Sale of capital stock of a corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain deduction, whether the corporation is a C corporation or an S corporation.

i. Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain deduction. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

j. The sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the business or unless the activity or distinct part of a business represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, nonunitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exclusion of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

*k.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 2011, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 2011 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 2011, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had held the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 2011 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 2011 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. At the time of sale, the trucks were valued at \$30,000, which was about 10 percent of the fair market value of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 2011 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop that were in the same building and were part of a sole proprietorship owned only by Mr. Bennet, who had held and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 2011 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 2011 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 2011 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which owned a chain of six gas stations in an Iowa city. In 2011, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain of \$30,000 from the sale. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 2011 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year time held and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had held both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records.

In 2011, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 2011 because the cafe and fast-food restaurant were considered to be separate and distinct nonunitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2008, Mr. Jackson transferred 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust was reported on Mr. Jackson's individual income tax return. In 2011, the assets of Jackson Products Corporation were sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

**40.38(4)** *Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sales of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes qualify for the capital gain deduction if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

*a.* Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR §1.1231-2.

*b.* In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

*c.* Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes, are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

*d.* Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

*e.* A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. Gross income from farming or ranching includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. Gross income from farming or ranching also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 2011 tax year, gross income from farming or ranching includes the total of the amounts from line 9 or line 50 of Schedule F and line 7 of Form 4835, Farm Rental Income and Expenses, plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, dairy, or sporting purposes, as shown on Form 4797, Sale of Business Property. In the case of an individual's returns for tax years beginning after 2011, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the

previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses will be considered for the capital gain deduction.

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether the taxpayers received more than half of their gross income from farming or ranching. However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether that spouse has more than 50 percent of gross income from farming or ranching operations.

EXAMPLE. Bob Deen had a cattle operation that owned black angus cattle in the operation for breeding purposes. In 2011, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 2011 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

**40.38(5)** *Net capital gains from sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months from the date of acquisition qualify for the capital gain deduction, if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, or reptiles. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR §1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(4).

*a.* The procedure in subrule 40.38(4) for determining whether more than one-half of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

*b.* In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held for 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer is not required to have more than one-half of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain deduction.

*c.* Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains meet the qualifications for the deduction on the basis of having more than one-half of the gross income in the tax year from farming or ranching operations.

*d.* Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

**40.38(6)** *Net capital gains from sales of timber held by the taxpayer for more than one year.* Capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gain deduction. In all of the following examples of circumstances where gains from sales of timber qualify for capital gain treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, cross ties, and other wood products. Timber eligible for the capital gain deduction does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer

owned or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 2011	\$400,000
Adjusted basis for depletion	– \$100,000
Capital gain on cutting of timber	\$300,000

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

*a.* Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term “evergreen trees” is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer’s farm, there is no sale until the tree is cut. However, evergreen trees sold in a live state do not qualify for capital gain treatment.

*b.* Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber. Additional information about gains and losses from the sale of timber is included under 26 CFR §1.631-1 and §1.631-2.

*c.* Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain deduction.

*d.* Capital gains from the sale of timber by a C corporation do not qualify for the capital gain deduction.

**40.38(7)** *Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes.* Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain deduction. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

**40.38(8)** *Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes.* Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had held an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. The burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

**40.38(9)** *Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried.* The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

a. The capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 2011 return showing a net loss of \$12,000. On this return, Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding livestock, other than cattle or horses, held for 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 2011 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 2011 is \$9,000.

b. In the case of net operating losses which are carried back to a tax year where the taxpayer has claimed the capital gain deduction, the capital gain deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 2011. Mr. Brown elected to carry back the net operating loss to his 2009 Iowa return. The 2009 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 2011 was applied to an income of \$30,000 for the carryback year.

**40.38(10) Sale of employer securities to an Iowa employee stock ownership plan.** For tax years beginning on or after January 1, 2012, 50 percent of the net capital gain from the sale or exchange of employer securities of an Iowa corporation to a qualified Iowa employee stock ownership plan (ESOP) may be eligible for the Iowa capital gain deduction. To be eligible for the capital gain deduction, the qualified Iowa ESOP must own at least 30 percent of all outstanding employer securities issued by the Iowa corporation after completion of the transaction.

a. Definitions. The following definitions apply to this subrule:

“*Employer securities*” means the same as defined in Section 409(l) of the Internal Revenue Code. “*Employer securities*” includes common stock issued by the employer and preferred stock if the provisions of Section 409(l)(3) of the Internal Revenue Code are met.

“*Iowa corporation*” means a corporation whose commercial domicile, as defined in Iowa Code section 422.32, is in Iowa. A limited liability company is not considered an Iowa corporation.

“*Qualified Iowa ESOP*” means an employee stock ownership plan, as defined in Section 4975(e)(7) of the Internal Revenue Code, and trust that are established by an Iowa corporation for the benefit of the employees of the corporation.

b. The material participation requirements set forth in subrule 40.38(1) do not apply for the sale of employer securities to an Iowa ESOP. In addition, the holding period requirements set forth in paragraph 40.38(2)“a” do not apply for the sale of employer securities to an Iowa ESOP.

This rule is intended to implement Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2465, division XII.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0073C, IAB 4/4/12, effective 5/9/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1303C, IAB 2/5/14, effective 3/12/14]

**701—40.39(422) Exemption of interest from bonds or notes issued to fund the 911 emergency telephone system.** Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the 911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

[ARC 4309C, IAB 2/13/19, effective 3/20/19]

**701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield.** For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after

August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

**701—40.41(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.42(422) Depreciation of speculative shell buildings.**

**40.42(1)** For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

**40.42(2)** On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**40.42(3)** For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27) "c."

This rule is intended to implement Iowa Code section 422.7.

**701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative.** Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2) "a"(2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver's family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives who are related by marriage or adoption. Those licensed health care professionals who are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, audiologists, and other similar licensed health care professionals.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—40.44(422,541A) Individual development accounts.** Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

**40.44(1) Exemption of additions to individual development accounts.** The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

*a.* The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

**40.44(2)** *Additions to net income for withdrawals from individual development accounts.* Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

**701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa.** For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

**40.45(1) Definitions.**

a. The word “beneficiary” means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

b. The term “individual’s documented retirement” means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual’s beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual’s retirement may include: copies of birth certificates or driver’s licenses to establish an individual’s age; copies of excerpts from an employer’s personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual’s disability which could have contributed to a person’s retirement.

c. The term “nonresident” applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

**40.45(2) Examples:**

a. John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

b. Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John’s pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father’s pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

c. Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn’t have a documented retirement.

d. William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

e. Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown’s retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

**701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams.** Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual’s total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has \$50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, \$5,556 of the compensation would be taxable to Iowa ( $\$50,000 \times 20/180 = \$5,556$ ).

The following subrules include definitions, examples, and other information which clarify Iowa’s taxation of nonresident members of professional athletic teams:

**40.46(1) Definitions.**

a. The term “professional athletic team” includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

b. The term “member of a professional athletic team” includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and

perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

c. The term “total compensation for services rendered as a member of a professional athletic team” means the total compensation received during the taxable year for services rendered. “Total compensation” includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, “bonuses” included in “total compensation for services rendered as a member of a professional athletic team” subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or “bowl” games played by a team, or for the member’s selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

d. Except as provided in subparagraphs (4) and (5) of this paragraph, the term “duty days” means all days during the taxable year from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional “caravans”). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach’s total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

**40.46(2)** *Filing composite Iowa returns for nonresident members of professional athletic teams.* Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than \$1,000. See rule 701—48.1(422) about filing Iowa composite returns.

**40.46(3)** *Examples of taxation of nonresident members of professional athletic teams.*

a. Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

b. Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

c. Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

d. Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

e. Assume the same facts as given in paragraph "d," except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the

game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

**40.46(4)** *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to 6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.8(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.** For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses. See rule 701—40.80(422) for the exclusion of military retirement pay for tax years beginning on or after January 1, 2014.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received \$95,000 in retirement benefits and the husband received \$5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the \$10,000 retirement income exclusion or a retirement income exclusion

of \$9,500. The husband would be entitled to 5 percent of the \$10,000 retirement income exclusion or an exclusion of \$500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had \$15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire \$10,000 retirement income exclusion to exclude \$10,000 of his pension benefits since the spouse did not use any of the \$10,000 retirement income exclusion for the tax year.

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to \$3,000 for single individuals, up to \$3,000 for each married person filing a separate Iowa return, up to \$3,000 for each married person filing separately on the combined return form, and up to \$6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had \$2,000 in pension income that could be excluded, since the pension income was \$3,000 or less. The other spouse had \$6,000 in pension income and could exclude \$3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional \$1,000 of the up to \$3,000 retirement income exclusion that was not used by the other spouse.

“*Insurable interest*” is a term used in life insurance which also applies to this rule and is defined to be “such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life.” *Warnock v. Davis*, 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams’ Adm’r v. Reed*, Ky., 36 S.W. 568, 570; *Trinity College v. Travelers’ Co.*, 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel*, 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis*, 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term “insurable interest” will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term “survivor” is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle's pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle's death.

If a grandson was receiving college tuition regularly from his grandfather and received the grandfather's pension as a beneficiary of the grandfather after the grandfather's death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.

A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.

There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person's life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.

Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.

For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered

as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.

Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below \$9,000, or below \$18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below \$24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7.  
[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.48(422) Health insurance premiums deduction.** For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

**701—40.49(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying

minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

**701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans.** For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of \$41,000 or more in 1995, that person would have made posttax contributions to IPERS of \$1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The \$1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the \$1,517 IPERS contribution made in 1995. However, this employee will not be subject to state income tax on the portion of the IPERS benefits received which is attributable to the \$1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

**40.50(1) Definitions related to state taxation of benefits from state pension plan.** The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

a. For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

b. For purposes of this rule, “member” is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

c. For purposes of this rule, “beneficiary” is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

d. For purposes of this rule, the term “IPERS” means the Iowa public employees retirement system.

e. For purposes of this rule, the term “pretax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means a contribution to a state pension plan that is not taxed on the employee’s income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee’s employer and not by the employee so this contribution is not part of the employee’s basis in the pension that is not taxed when the pension is received.

f. For purposes of this rule, the term “posttax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means the contribution is included in the employee’s taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee’s basis in the pension which is not taxed at the time the pension is received.

**40.50(2)** *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal income tax on the benefits to the extent of the pensioner’s or member’s recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

**40.50(3)** *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee’s contribution to the pension for federal income tax purposes, and the employee’s contribution to the pension for state income tax purposes. In situations where the employee’s contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual’s employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee’s state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member’s posttax contribution or basis in the pension for federal tax purposes is divided by the member’s posttax contribution or basis

in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

**40.50(4) Examples.**

*a.* A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received \$1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was \$1,690.36. The employee's federal posttax contribution or basis in the pension was \$4,907 and the state posttax contribution or basis was \$7,194. The nontaxable amount of the IPERS benefits for federal income tax was \$104.09 which was calculated by subtracting the federal taxable amount of \$1,690.36 from the gross amount of the benefits of \$1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing \$4,907 by \$7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of \$104.09 was then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of \$152.60. This was the nontaxable amount of the pension for state income tax purposes. When \$152.60 is subtracted from the gross benefits of \$1,794.45 paid in the year, the remaining amount is \$1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

*b.* A state employee retired in July 1995. The retired employee received \$1,881.88 in IPERS benefits in 1996 and \$1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was \$3,130 and the posttax contribution for state income tax purposes was \$3,821. The amount of benefits not taxable for federal income tax purposes was \$91.28 which was computed by subtracting the amount of pension benefits of \$1,790.60 that was taxable on the federal income tax return from the gross benefits of \$1,881.88 received in 1996. The retiree's federal posttax contribution of \$3,130 to IPERS was divided by the retiree's posttax contribution of \$3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount of IPERS benefits of \$91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of \$111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. \$111.44 is subtracted from the gross benefits of \$1,881.88 received in 1996 which leaves the state taxable amount for 1996 of \$1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

**701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area.** For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

**701—40.52(422) Mutual funds.** Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.

2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.

3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

**701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted.** The Iowa educational savings plan trust was created so that individuals and certain other qualified participants can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover future higher education costs of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted. Definitions and other information about establishing college savings Iowa accounts may be found in rules promulgated by the treasurer of state. See 781—Chapter 16.

**40.53(1)** *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.*

- a. An individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary.

- b. For tax years beginning on or after January 1, 2015, if a participant makes a contribution to the Iowa educational savings plan trust on or after January 1, but on or before the deadline for filing an Iowa individual income tax return, excluding extensions, the participant may elect to have the deduction for the contribution apply to that participant's Iowa individual income taxes for the calendar year immediately preceding the year in which the contribution was made. Once a participant has elected to apply a contribution to the calendar year immediately preceding the year in which the contribution was made, the contribution is deemed to have been made on December 31 of that previous calendar year. Once the election has been made, the deduction for that contribution may only be applied in computing the taxpayer's Iowa net income for the calendar year immediately preceding the year in which the contribution was made. Contributions made on or after January 1, but before the deadline

for filing Iowa individual income taxes, that the participant elects to have applied to the immediately preceding calendar year shall count toward the maximum contribution that may be deducted for that previous year. See paragraph 40.53(1) “c” below.

EXAMPLE: An individual makes a contribution to her Iowa educational savings plan account on April 5, 2018. The deadline for filing a 2017 Iowa income tax return is April 30, 2018. The individual elects to have the contribution apply to her 2017 individual income taxes instead of her 2018 Iowa individual income taxes. The department of revenue will consider the individual’s contribution to have been made on December 31, 2017. The individual may now claim a deduction for the contribution, up to the annual maximum deduction, on her 2017 Iowa income taxes. However, because the individual elected to have her contribution apply to her 2017 Iowa income taxes, she cannot claim the deduction for the April 5, 2018, contribution on her 2018 Iowa income tax return.

c. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states’ educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

EXAMPLE: An individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant files the 1998 Iowa individual income tax return, the participant can claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual’s ten grandchildren.

**40.53(2)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary’s account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

**40.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* If a participant cancels a beneficiary’s account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary, or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses, the refund of the funds is to be included in net income on the participant’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

EXAMPLE: Because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of \$4,200 of funds in the beneficiary’s account. Because \$4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, \$4,000 in contributions that had been deducted on the participant’s Iowa returns for 1998 and 1999.

This rule is intended to implement Iowa Code section 422.7 as amended by 2015 Iowa Acts, chapter 138, sections 72 and 73, and 2016 Iowa Acts, chapter 1107.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 3664C, IAB 2/28/18, effective 4/4/18]

**701—40.54(422) Roth individual retirement accounts.** Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the

Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

**40.54(1)** *Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs.* At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized \$20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion income was taxed in 1998, \$5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 701—40.47(422).

**40.54(2)** *Roth IRA conversion income for part-year residents.* To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had \$20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the \$20,000 in conversion income is allocated to Iowa. Thus, \$12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

**701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims.** For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim

of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

**701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions.** For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

**701—40.57(422) Installment sales by taxpayers using the accrual method of accounting.** For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for \$200,000 which resulted in a capital gain of \$50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported \$12,500 of the gain on his 2001 federal return and will report capital gains of \$12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of \$50,000 from the land sale. Although Taxpayer Jones must report a capital gain of \$12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of \$12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of \$50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for \$500,000 which resulted in a capital gain of \$100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported \$20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report \$20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

**701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States.** For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to national guard duty or federal active duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve member

who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2097.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee’s retirement plan when the installment has been included as part of a decedent employee’s estate.** Rescinded ARC 1137C, IAB 10/30/13, effective 12/4/13.

**701—40.60(422) Additional first-year depreciation allowance.**

**40.60(1)** *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance (“bonus depreciation”) of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

**40.60(2)** *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

**EXAMPLE 1:** Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer’s 2004 Iowa return that is filed after February 23, 2005.

**EXAMPLE 2:** Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer’s 2005 Iowa return.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**40.60(3)** *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

**40.60(4)** *Qualified disaster assistance property.* For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**40.60(5)** *Assets acquired after December 31, 2009, but before January 1, 2014.* For tax periods beginning after December 31, 2009, but beginning before January 1, 2014, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, Public Law No. 111-312, Section 401, and Public Law No. 112-240, Section 331, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2014, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2014, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2013 Iowa Acts, Senate File 106.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.** For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered by military orders for one of the operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve.** A taxpayer may subtract, in computing net income, the costs not reimbursed that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

**701—40.63(422) Exclusion of income from military student loan repayments.** Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States

may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty.** An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.65(422) Section 179 expensing.**

**40.65(1) In general.** Iowa taxpayers who elect to expense certain depreciable business assets in the year the assets were placed in service under Section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

**40.65(2) Claiming the deduction.**

*a. Timing and requirement to follow federal election.* A taxpayer who takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer who takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer who does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

*b. Qualifying for the deduction.* Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

*c. Amount of the Iowa deduction.* Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. For tax years beginning on or after January 1, 2018, and before January 1, 2019, the Iowa limitations applicable to individuals and corporations (both C and S corporations) are not the same; see rule 701—53.23(422) for the section 179 limitations imposed on corporations and other entities subject to the corporate income tax, and see rule 701—59.24(422) for the section 179 limitations imposed on financial institutions subject to the franchise tax.

Section 179 Deduction Allowances Under Federal and Iowa Law				
Tax Year	Federal		Iowa	
	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000

2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	70,000*	280,000
2019	Indexed amount unknown as of 8/2/18	Indexed amount unknown as of 8/2/18	100,000	400,000
2020 and later	Iowa limitations are the same as federal			
*The Iowa limitations for 2018 are applicable to individuals and pass-through entities other than corporations or financial institutions. For Iowa limitations applicable to corporations (both C and S corporations) and entities subject to the corporate income tax, or to financial institutions subject to the franchise tax, see rules 701—53.23(422) and 701—59.24(422), respectively.				

*d. Reduction.* Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 40.65(2) “c” for applicable limitations.

EXAMPLE: Taxpayer purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. The Iowa section 179 deduction for 2018 is phased out dollar for dollar by the amount of section 179 assets placed in service in excess of \$280,000. This means that, for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$350,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

*e. Amounts in excess of the Iowa limits.*

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department’s website.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$70,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit). The taxpayer can depreciate the remaining \$30,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by the owner of that pass-through. See subrule 40.65(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Application of limitation to pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 40.65(2) “e”(1)“1” to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 40.65(2) “e”(1)“2.”

EXAMPLE: Partner A (an individual and an Iowa resident) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 40.65(2) “e”(1)“1.” C passes 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) through to A. A also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. A is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A is eligible for the special election referenced in 40.65(2) “e”(1)“2.”

*f. Income limitation.* The Iowa section 179 deduction for any given year is limited to the taxpayer’s income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer’s business income for a given year, any excess may be carried forward as described in paragraph 40.65(2) “g.”

*g. Carryforward.* This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer’s business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer’s business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 40.65(2) “e,” or in subrule 40.65(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2019. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2019 federal return. Taxpayer is also required to claim a section 179 deduction of \$100,000 on the 2019 Iowa return (because the federal deduction is equal to the Iowa limit for the year, the Iowa and federal deductions are the same). However, the taxpayer has only \$50,000 in business income for 2019, so the allowable deduction for that year is limited to \$50,000. The remaining \$50,000 may be carried forward and applied as a section 179 deduction (subject to all limitations) in 2020, and in any future years until the amount is fully deducted.

*h. Differences in basis.* Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department’s website to calculate and track these differences.

**40.65(3) Section 179 deduction received from a pass-through entity.** In some cases, an individual or entity that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 40.65(2) “c” for a given year. The individual or entity may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

*a. Tax years beginning before January 1, 2018.* For tax years beginning before January 1, 2018, the amount of any section 179 deduction received in excess of the Iowa deduction limitation for that year is not eligible for the special election.

*b. Special election available for tax years 2018 and 2019.* For tax years beginning on or after January 1, 2018, but before January 1, 2020, an individual or entity, other than a corporation (both C and S corporations) or an entity subject to the corporate income tax or franchise tax, that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—53.23(422) for special rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for special rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the individual or entity by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the individual or entity exceeds the federal section 179 deduction limitation for that year, the individual or entity may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

*c. Section 179 assets of an individual or entity.* An individual or entity that makes the special election may not claim an Iowa section 179 deduction for any assets the individual or entity placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the individual or entity claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: A is a sole proprietor who places in service \$20,000 worth of section 179 assets in tax year 2018 and claims the deduction for the full amount for federal purposes. A is also a partner in Partnership B, an out-of-state partnership with no Iowa filing obligation. Partnership B also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$100,000 of that deduction through to A. For federal purposes, A has a total of \$120,000 in section 179 deductions. Because A has section 179 deductions from a pass-through that exceed the Iowa limitation for the year, A is eligible for the special election. A makes the special election and claims the maximum Iowa section 179 deduction of \$70,000 on the amount passed through from Partnership B. Under the special election, A will be allowed to deduct the remaining \$30,000 passed through from Partnership B over the next five years, as described in paragraph 40.65(3) "e." However, because A made the special election, A will be required to depreciate the entire \$20,000 cost of the assets A placed in service as a sole proprietor.

*d. Calculating the special election.* An eligible individual or entity electing to take advantage of the special election must first add together all section 179 deductions which the individual or entity received from all relevant pass-through entities. The individual or entity must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the individual or entity will be permitted to deduct (special election deduction) in future years.

*e. Special election deduction.*

(1) Calculation. The remaining amount from paragraph 40.65(3) "d" must be divided into five equal shares.

(2) Claiming the special election deduction. The individual or entity may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer's business income for that year. Any excess may be carried forward to future years. Any

amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 40.65(2) “g.”

EXAMPLE: A is an Iowa resident who is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes, because the partnership has no obligation to file an Iowa return. A claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning A will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, A is eligible for the \$100,000 deduction carried forward under the election, but A only has \$50,000 in business income. The deduction is limited to business income, so A can only use \$50,000 of the deduction in this year. However, A will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

*f. Basis.* The individual’s or entity’s basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

*g. Later tax years.* For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2018 Iowa Acts, Senate File 2417.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 4142C, IAB 11/21/18, effective 12/26/18]

**701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant.** For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to \$10,000 in unreimbursed expenses that were incurred relating to the taxpayer’s donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

**701—40.67(422) Deduction for alternative motor vehicles.** For tax years beginning on or after January 1, 2006, but beginning before January 1, 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. The advanced lean burn technology, qualified hybrid and qualified alternative fuel vehicles must be placed in service before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer’s federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.68(422) Injured veterans grant program.**

**40.68(1)** For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to \$10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

**40.68(2)** For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

**701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain.** For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms “threat” and “imminence,” and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

**40.69(1) Reporting requirements.** In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes.** For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

**701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects.**

**40.70(1)** *Projects registered on or after January 1, 2007, but before July 1, 2009.* For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.37(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.37(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

**40.70(2)** *Projects registered on or after July 1, 2009.* For tax years beginning on or after July 1, 2009, a taxpayer who is a resident of Iowa may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa individual income tax return for each of the tax years 2010-2013.

**40.70(3)** *Repeal of exclusion.* The exclusion of income from the sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects is repealed for tax years beginning on or after January 1, 2012. However, the exclusion is still available if the contract or agreement related to a film project was entered into on or before May 25, 2012. Assuming the same facts as those in the example in subrule 40.70(2), the taxpayer can continue to exclude \$2,500 of income on the Iowa individual income tax return for the 2012 and 2013 tax years since the contract or agreement was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2337, section 33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12]

**701—40.71(422) Exclusion for certain victim compensation payments.** Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.
2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.
3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

**701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.**

**40.72(1)** For tax years beginning on or after January 1, 2007, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

**40.72(2)** For tax years beginning on or after January 1, 2008, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs. Bonuses of up to \$500 are awarded to veterans who were inducted into active duty service from the state of Iowa, who served on active duty in the United States armed forces between July 1, 1958, and May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2038.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents.** Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

**40.73(1)** *Term of coverage.* Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

**40.73(2)** *Federal treatment.* Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax

return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.74(422) Exclusion for AmeriCorps Segal Education Award.** Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund.** For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

[ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard.** For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

**40.76(1)** Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

- a. Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.
- b. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.
- c. Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

**40.76(2)** Military personnel who do not qualify for the exclusion include the following:

- a. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.
- b. Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.
- c. Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.
- d. Other members of the national guard who do not receive pay from the federal government.

**40.76(3)** Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

**40.76(4)** Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.77(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—40.78(422) Allowance of certain deductions for 2008 tax year.**

**40.78(1)** For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

**40.78(2)** Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations, the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.79(422) Special filing provisions related to 2010 tax changes.**

**40.79(1)** For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

**40.79(2)** Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the 2010 tax year to reflect these adjustments or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

*a.* The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

b. The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

**40.79(3) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1:** Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010. Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

**EXAMPLE 2:** Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of \$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

**EXAMPLE 3:** Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.80(422) Exemption for military retirement pay.** For tax years beginning on or after January 1, 2014, retirement pay received by taxpayers from the federal government for military service performed in the armed forces, armed forces reserves, or national guard is exempt from state income tax. In addition, amounts received by a surviving spouse, former spouse, or other beneficiary of a taxpayer who served in the armed forces, armed forces reserves, or national guard under the Survivor Benefit Plan are also exempt from state income tax for tax years beginning on or after January 1, 2014. The retirement pay is only deductible to the extent it is included in the taxpayer's federal adjusted gross income.

**40.80(1) Coordination with pension exclusion.** The exclusion of retirement pay is in addition to the partial exclusion, provided in rule 701—40.47(422), of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses and survivors. In addition, taxpayers who receive retirement pay under federal law that combines retirement pay for both uniformed service and the federal civil service retirement system or federal employees' retirement system must prorate the retirement pay based on years of service.

**EXAMPLE 1:** A married individual who is 60 years of age receives \$20,000 of federal retirement pay from military service and \$30,000 in retirement pay from the Iowa public employees' retirement system during the 2014 tax year. The taxpayer can exclude \$20,000 of military retirement pay and \$12,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$32,000 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

**EXAMPLE 2:** A single taxpayer who is 65 years of age receives \$60,000 as a federal pension during the 2014 tax year. The taxpayer has 20 years of military service and 27 years of civilian employment with the federal government. The military retirement pay portion is \$25,532 (20 years divided by 47 years multiplied by \$60,000). The taxpayer can exclude \$25,532 of military retirement pay and \$6,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$31,532 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

**40.80(2)** *Coordination with filing threshold and alternate tax.* The military retirement pay is excluded from the calculation of income used to determine whether an Iowa income tax return is required to be filed pursuant to 701—subrules 39.1(1) and 39.5(10) through 39.5(13). In addition, the military retirement pay is excluded from the calculation of the special tax computation for all low-income taxpayers except single taxpayers pursuant to rule 701—39.9(422) and is excluded from the calculation of the special tax computation for taxpayers who are 65 years of age or older under rule 701—39.15(422).

**40.80(3)** *Iowa withholding.* The amount of military retirement pay is excluded from the calculation of payments used to determine whether Iowa tax should be withheld from pension and annuity payments as determined pursuant to 701—subrule 46.3(4).

This rule is intended to implement Iowa Code sections 422.5 and 422.7 as amended by 2014 Iowa Acts, Senate File 303.

[ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.81(422) Iowa ABLE savings plan trust.** The Iowa ABLE savings plan trust was created so that individuals can contribute funds on behalf of designated beneficiaries into accounts administered by the treasurer of state. The funds contributed to the trust may be used to cover future disability-related expenses of the designated beneficiary. The funds contributed to the trust are intended to supplement, but not supplant, other benefits provided to the designated beneficiary by various federal, state, and private sources. The Iowa ABLE savings plan program is administered by the treasurer of state under the terms of Iowa Code chapter 12I. The following subrules provide details about how an individual's net income is affected by contributions to a beneficiary's account, by interest and any other earnings on a beneficiary's account, and by distributions of contributions which were previously deducted.

**40.81(1)** *Definitions.*

“*Account owner*” means an individual who enters into a participation agreement under Iowa Code chapter 12I for the payment of qualified disability expenses on behalf of a designated beneficiary.

“*Designated beneficiary*” means an individual who is a resident of this state or a resident of a contracting state and who meets the definition of “eligible individual” found in Section 529A of the Internal Revenue Code.

“*Iowa ABLE savings plan trust*” means a qualified ABLE program administered by the Iowa treasurer of state under the terms of Iowa Code chapter 12I.

“*Other qualified ABLE program*” refers to any qualified ABLE program administered by another state with which the Iowa treasurer of state has entered into an agreement under the terms of Iowa Code section 12I.10 (see subrule 40.81(2) below).

“*Qualified ABLE program*” means the same as defined in Section 529A of the Internal Revenue Code.

“*Qualified disability expenses*” means the same as defined in Section 529A of the Internal Revenue Code.

**40.81(2)** *Contracting with other states.* Iowa Code section 12I.10 allows the treasurer of state to choose to defer implementation of Iowa's own qualified ABLE program and instead enter into an agreement with another state that already has a qualified ABLE program, to provide Iowa residents access to that state's qualified ABLE program, provided that the other state's program meets the qualifications set out in Iowa Code section 12I.10(1).

**40.81(3)** *Subtraction from net income for contributions made to the Iowa ABLE savings plan trust or other qualified ABLE program.* For tax years beginning on or after January 1, 2016, individuals can subtract from their Iowa net income the amount contributed to the Iowa ABLE savings plan trust or other qualified ABLE program on behalf of a designated beneficiary during the tax year, subject to the maximum contribution level for that year.

**40.81(4)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa ABLE savings plan trust or other qualified ABLE program.* For tax years beginning on or after January 1, 2016, to the extent that interest or other earnings accrue on an account in the Iowa ABLE savings plan trust or other qualified

ABLE program (if the account owner is an Iowa resident), the interest or other earnings are excluded for purposes of computing net income on the designated beneficiary's Iowa individual income tax return.

**40.81(5)** *Addition to net income of amounts distributed to the participant from the Iowa ABLE savings plan trust or other qualified ABLE program that had previously been deducted.*

a. For tax years beginning on or after January 1, 2016, if a taxpayer, as an account owner, cancels the account owner's account in the Iowa ABLE savings plan trust or other qualified ABLE program and receives a distribution of the funds in the account, the amount of the distribution shall be included in net income on the account owner's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the account owner or any other person as a contribution to the Iowa ABLE savings plan trust or other qualified ABLE program.

b. For tax years beginning on or after January 1, 2016, if a taxpayer makes a withdrawal of funds previously deducted by the taxpayer or any other person from the Iowa ABLE savings plan trust or other qualified ABLE program for purposes other than the payment of qualified disability expenses, the amount of the withdrawal shall be included in net income on the taxpayer's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the taxpayer or any other person.

**40.81(6)** *Maximum contribution level.* The amount of the deduction available for an individual taxpayer each year for contributions on behalf of any one designated beneficiary to the Iowa ABLE savings plan trust or other qualified ABLE program may not exceed the maximum contribution level for that year. The maximum contribution level is set by the treasurer of state. The maximum contribution level is indexed yearly for inflation pursuant to Iowa Code section 12D.3(1)"a."

This rule is intended to implement Iowa Code section 422.7 as amended by 2015 Iowa Acts, chapter 137.

[ARC 2691C, IAB 8/31/16, effective 10/5/16]

#### **701—40.82(422,541B) First-time homebuyer savings accounts.**

**40.82(1)** *Definitions.* Definitions that apply to the first-time homebuyer savings account program may be found in Iowa Code section 541B.2.

**40.82(2)** *Establishing an account.*

a. *Account holders.*

(1) A first-time homebuyer savings account holder must be an individual or married couple.

(2) Any individual may establish a first-time homebuyer savings account by opening an account that meets the requirements provided in this rule.

(3) A married couple who files a joint Iowa income tax return may establish a joint first-time homebuyer savings account by opening a joint savings account that meets the requirements provided in this rule. Married couples who file separately or separately on a combined return for Iowa income tax purposes may not establish a joint first-time homebuyer savings account.

(4) There is no limit on the number of first-time homebuyer savings accounts that any account holder may open. However, account holders are subject to other restrictions under the Iowa Code and these rules, including but not limited to the annual contribution limits and aggregate lifetime limits in paragraph 40.82(4)"c."

(5) No account holder may open or hold more than one account for the same designated beneficiary.

(6) The account holder may change the designated beneficiary of the account at any time.

b. *Beneficiaries.*

(1) In order to be a designated beneficiary of a first-time homebuyer savings account, an individual must:

1. Be a resident of Iowa, as defined in Iowa Code section 422.4,

2. Not own, either individually or jointly, any single-family or multifamily residence, and

3. Not have owned or purchased, individually or jointly, any single-family or multifamily residence at any time in the three years immediately prior to both:

- The date on which the individual is designated the beneficiary of a first-time homebuyer savings account, and

- The date of the qualified home purchase for which the eligible home costs are paid or reimbursed from the first-time homebuyer savings account.

- (2) The designated beneficiary may also be the account holder.

- (3) Each account shall have only one designated beneficiary.

- (4) The account holder must designate a beneficiary, on forms provided by the department, by April 30 of the year immediately following the tax year in which the account holder opened the account.

*c. Account requirements.* To qualify as a first-time homebuyer savings account, the account must be:

- (1) An interest-bearing savings account meeting the qualifications for a “savings deposit” under 12 CFR 204.2(d),

- (2) At a state or federally chartered bank, savings and loan association, credit union, or trust company in Iowa, and

- (3) Used exclusively as a first-time homebuyer savings account, in compliance with the requirements of this rule.

**40.82(3) Maintaining the account.**

*a. Contributing to the account.*

- (1) Any person may make cash contributions to a first-time homebuyer savings account. Cash contributions may be made by people other than the account holder or the beneficiary. However, only the account holder may claim a deduction for contributing to a first-time homebuyer savings account, as described in subrule 40.82(4).

- (2) There is no limit on the amount of contributions that may be made to or retained in a first-time homebuyer savings account. However, there are restrictions on the amounts that can be deducted for Iowa income tax purposes, as described in subrule 40.82(4).

*b. Documenting transactions.*

- (1) Annual reports. For each tax year beginning with the tax year in which the first-time homebuyer savings account is established, the account holder must submit a report to the department showing all account activity during the tax year. The report shall be included with the taxpayer’s Iowa individual income tax return and must show the account number of, all deposits into, and withdrawals from, the first-time homebuyer savings account, along with any other information required by the forms provided by the department.

- (2) Withdrawal reports. All withdrawals must be reported, on forms provided by the department, within 90 days of the date of the withdrawal or, for withdrawals made less than 90 days before an account holder files an income tax return with the department, no later than the date the return is filed. Account holders must report both withdrawals for eligible home costs and any nonqualifying withdrawals. Any withdrawal that appears on the annual report but that is not properly reported at the time it is made shall be deemed to be a nonqualifying withdrawal that must be added back on the account holder’s Iowa income tax return for the tax year in which the withdrawal was made.

- (3) Account fees. Fees and charges for the maintenance of the account that are deducted from the account by the financial institution in which the first-time homebuyer savings account is held shall not be considered withdrawals for the purposes of the reporting requirements described in paragraph 40.82(3) “b.”

*c. Nonqualifying withdrawals.* Funds may be withdrawn from a first-time homebuyer savings account at any time. However, once any nonqualifying withdrawal, as defined in subparagraph 40.82(5) “a”(2), is made, the account holder may no longer claim the Iowa income tax benefits related to the first-time homebuyer savings account described in subrule 40.82(4). Furthermore, any nonqualifying withdrawal shall also result in an addition to income and penalty as described in subrule 40.82(5).

*d. Ten-year limitation.* An account shall not remain designated a first-time homebuyer savings account for more than ten years, beginning with the year in which the account was first opened. Any funds remaining in the account on January 1 of the tenth calendar year following the year in which the account holder first opened the account shall be deemed immediately withdrawn and may be subject to Iowa income taxes and penalties as described in subrule 40.82(5). The account holder has no obligation

to close the account, but as of January 1 of the tenth calendar year after the year in which the account was opened, the account will no longer be a first-time homebuyer savings account entitled to the Iowa income tax benefits described in this rule. A change in the designated beneficiary of the account does not extend the ten-year period in which the account holder may maintain a first-time homebuyer savings account; the period still runs from the year the account was first opened.

*e. Exclusively first-time homebuyer account.* For an account to qualify as a first-time homebuyer savings account, the account holder shall use the account exclusively as a first-time homebuyer savings account consistent with these rules.

**40.82(4) Deductions.**

*a. Deduction for contributions.* Any funds contributed to the first-time homebuyer savings account by the account holder during the tax year may be deducted from the account holder's net income on the account holder's Iowa individual income tax return for that year, subject to the limitations described in paragraph 40.82(4) "c." Although anyone may contribute funds to the first-time homebuyer savings account, only the account holder may claim the deduction, and the deduction may be claimed only for amounts the account holder personally contributed.

*b. Deduction for interest.* To the extent that any interest earned on the funds in a first-time homebuyer savings account is included in the account holder's Iowa income for a tax year, the amount of that interest may be deducted from the account holder's net income on the account holder's Iowa individual income tax return for that tax year, subject to the lifetime limitation described in subparagraph 40.82(4) "c"(2).

*c. Limitations.*

(1) Annual limitation. The deduction described in paragraph 40.82(4) "a" is subject to the limitations described in paragraphs "1" and "2" below. These limitations apply to the total contributions that the account holder makes to all first-time homebuyer savings accounts owned by the account holder:

1. Joint first-time homebuyer savings account holders. For married couples who are joint first-time homebuyer savings account holders, the deduction is limited to \$4,000 per year, adjusted annually for inflation.

2. For all other taxpayers who are first-time homebuyer savings account holders, the deduction is limited to \$2,000 per year, adjusted annually for inflation.

(2) Lifetime limitation. Account holders are subject to an aggregate lifetime limit on the deductions described in paragraphs 40.82(4) "a" and "b." No account holder may take total deductions under this program in excess of the lifetime limitation in place for the tax year in which the account holder first opens a first-time homebuyer savings account. The applicable lifetime limit imposed upon taxpayers opening an account in a given year is calculated annually by multiplying the annual limit in effect for that year by 10.

(3) Annual publication of limitations. Each year, the department shall publish the annual contribution limit as indexed for inflation and the lifetime limit applicable to account holders who open accounts during that year.

**40.82(5) Additions to income.**

*a. Nonqualifying withdrawals.*

(1) Addition to income. If there is any nonqualifying withdrawal, as defined in subparagraph 40.82(5) "a"(2), during the tax year, the account holder must add to the account holder's Iowa net income for that year the full amount of the nonqualifying withdrawal, to the extent such income was previously deducted under paragraph 40.82(4) "a." Any nonqualifying withdrawal also makes the account holder ineligible to claim any further deductions described in subrule 40.82(4) in any future tax year.

(2) Nonqualifying withdrawal defined.

1. Any withdrawal from a first-time homebuyer savings account for any purpose other than the payment or reimbursement of the designated beneficiary's eligible home costs in connection with a qualified home purchase is a nonqualifying withdrawal. A nonqualifying withdrawal includes but is not limited to a withdrawal caused by the death of the account holder and withdrawal made pursuant to garnishment, levy, bankruptcy order, or any other order. If a nonqualifying withdrawal occurs, the account holder cannot cure the nonqualifying withdrawal by returning funds to the account.

2. A withdrawal shall be presumed to be a nonqualifying withdrawal unless:
  - Ownership of the qualifying home which the funds from the account are used to purchase passes to the designated beneficiary within 60 days of the date the funds are withdrawn, and
  - The designated beneficiary actually occupies the home as the designated beneficiary's primary residence within 90 days of the date the funds are withdrawn.

3. Notwithstanding subparagraph 40.82(5) "a"(2), any amount transferred between different first-time homebuyer savings accounts of the same account holder by a person other than the account holder shall not be considered a nonqualifying withdrawal.

- b. Unused funds.* Any amount remaining in a first-time homebuyer savings account on January 1 of the tenth calendar year after the calendar year in which the account holder first opened any first-time homebuyer savings account shall be considered immediately withdrawn. This remaining amount shall be subject to the add-back described in paragraph 40.82(5) "a."

- c. Penalties.* For any amount considered a withdrawal required to be added to net income pursuant to this subrule, the account holder shall be assessed a penalty equal to 10 percent of the amount of the withdrawal. The penalty shall not apply to withdrawals made by reason of the death of the account holder or to withdrawals made pursuant to a garnishment, levy, or other order, including but not limited to an order in bankruptcy following a filing for protection under the federal Bankruptcy Code, 11 U.S.C. §101 et seq.

- d. Examples.*

EXAMPLE 1: Taxpayer eligible for the deduction; no addition to income or penalty from nonqualifying withdrawal. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A contributes \$1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2021, after A contributed \$1,000 to the first-time homebuyer savings account, Z made a qualified home purchase. A withdrew the entire balance of the first-time homebuyer savings account and applied the amount to eligible home costs. Within 90 days of withdrawing the funds, A submitted the required withdrawal report and the necessary supporting documentation to the department.

Result: A is allowed to deduct from net income the amount of the contributions generated from the first-time homebuyer account, since the yearly contributions are below the annual limits. A is allowed to deduct \$1,000 each year from A's 2018, 2019, 2020, and 2021 net income. Additionally, A is allowed to deduct income from interest generated from the account each year. A does not have any addition to net income or any penalties associated with the withdrawal or usage of the funds.

EXAMPLE 2: Nonqualifying withdrawal of entire account due to voluntary withdrawal by A. Assume the same facts as Example 1. However, rather than making a qualified withdrawal, in 2021, A withdraws the entire balance of the first-time homebuyer savings account and pays for Z's college tuition.

Result: The withdrawal is a nonqualified withdrawal. Any withdrawal that is not for eligible home costs is a nonqualified withdrawal. A's nonqualified withdrawal has three results. First, the amount of the nonqualified withdrawal is added back to the account holder's net income for the tax year in which the nonqualified withdrawal occurred. In this example, A's 2021 net income would increase by the amount of the contributions that A previously deducted. (See Iowa Code section 422.7(41) "c"(1).) Second, A will be assessed a penalty equal to 10 percent of the total contributions that A previously deducted. (See Iowa Code section 422.7(41) "d.") Third, A will no longer be able to claim the first-time homebuyer deduction in any future tax years. (See Iowa Code section 422.7(41) "b"(2)(b).) A is barred from claiming the first-time homebuyer deduction in the future, even if A attempts to open a first-time homebuyer account for a different beneficiary in a different tax year.

EXAMPLE 3: Nonqualifying withdrawal of entire account by legal process. Assume the same facts as Example 1. However, rather than a qualifying withdrawal occurring, in 2021, a creditor levies the entire balance of the first-time homebuyer account in order to satisfy A's debt to the creditor.

Result: The levy is a nonqualified withdrawal. Any withdrawal, including a withdrawal that is caused by a legal process not initiated by A, that is not for a qualified home purchase is a nonqualified withdrawal. Example 3 has the same result as Example 2, except in Example 3, A does not incur a 10 percent penalty because the withdrawal was due to a levy. (See Iowa Code section 422.7(41)“d.”)

EXAMPLE 4: Nonqualifying withdrawal of a partial balance of a first-time homebuyer savings account. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form with the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A contributes \$1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. After making the \$1,000 deposit for 2021, A has a total of \$4,100 in the first-time homebuyer savings account. In 2022, A withdraws \$1,000 from the account in order to pay for personal expenses.

Result: The \$1,000 withdrawal is a nonqualifying withdrawal. A must file a withdrawal report with the department within 90 days of the withdrawal. A withdrawal report is required for both qualifying and nonqualifying withdrawals. The \$1,000 withdrawal will result in the addition of \$1,000 to A's 2022 net income. A will also be assessed a \$100 penalty. The balance of the first-time homebuyer account is \$3,100. Subject to the ten-year limitation and the other requirements of the deduction, A may use the remaining \$3,100 for Z's eligible home costs prior to January 1, 2028. If A does so, A will not have the \$3,000 added back to A's net income or face any penalties associated with the \$3,000 eligible home costs. Regardless of what occurs with the remaining \$3,100, A will be prohibited from claiming the first-time homebuyer deduction for any period after the date of the nonqualified withdrawal. This is true even if A attempts to repay the \$1,000 withdrawal or if A attempts to open any other first-time homebuyer accounts.

EXAMPLE 5: No withdrawals made within ten years of opening the account. A is an individual. In March of 2018, A creates a new interest-bearing savings account with a financial institution. A completes all of the necessary paperwork and designates Z as the beneficiary of the account. In 2018, and in each subsequent year, A contributes \$1,000 to the first-time homebuyer savings account. On December 31, 2027, A has made a total of \$10,000 dollars in contributions to the account, has taken a deduction for each contribution, and has made no withdrawals from the account. On January 1, 2028, Z still has not purchased a qualifying home.

Result: As of January 1, 2028, the account is no longer a first-time homebuyer savings account, and the entire account balance is deemed to have been withdrawn in a nonqualifying withdrawal. A is required to report the entire \$10,000 previously deducted for contributions to the account as income in tax year 2028 and pay a \$1,000 penalty for the nonqualifying withdrawal. A can no longer open a new first-time homebuyer savings account or take any deductions for contributions made to another account under the program.

EXAMPLE 6: Divorce between taxpayers with a joint account. A and B are a married couple who file a joint Iowa income tax return. In 2018, A and B open a joint savings account and take the necessary steps to designate it as a joint first-time homebuyer savings account. In 2018, A and B contribute \$2,000 to the account and deduct the full amount on their joint Iowa income tax return for 2018. They contribute the same amount, file joint returns, and deduct the full amount in tax years 2019, 2020, and 2021. In 2022, A and B divorce. The divorce decree divides the funds in the account evenly between A and B.

Result: In this situation, when the funds from the account are distributed between A and B, the entire withdrawal is deemed to be a nonqualifying withdrawal, and A and B are jointly and severally liable for the payment of the tax and penalty due on the entire amount that they previously deducted for contributions to the first-time homebuyer savings account.

Alternative result: A and B can avoid this result by taking some steps before the divorce decree is entered. Prior to the divorce decree, A and B can each open a new first-time homebuyer savings account individually. As long as the divorce decree orders that funds from the original joint first-time homebuyer savings account be transferred to A's and B's new individual accounts, the funds may be transferred

without triggering a nonqualifying withdrawal, A and B will not be subject to taxes or penalties on their previous contributions to the account, and each will still be eligible to take deductions for contributions to their new accounts, subject to the applicable limitations. In this scenario, the transfer must occur as a direct result of a court order; if A or B transfers funds themselves, the transfer is deemed to be a nonqualifying withdrawal.

Even if the funds in A and B's original joint account are successfully transferred without triggering a nonqualifying withdrawal as described above, both A and B will still be jointly and severally liable for any tax or penalty due on any nonqualifying withdrawal that either makes later, up to the amount they deducted on their joint returns prior to the divorce.

**EXAMPLE 7: Death of the account holder.** A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A makes \$1,000 contributions per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2022, A dies without having withdrawn any funds from the account either for a qualifying home purchase for Z or for any other reason.

**Result:** All of the funds in the account are deemed immediately withdrawn at the time of A's death. Because this is a nonqualifying withdrawal, the \$4,000 in contributions which A previously deducted must be included as income on A's final return. However, because the reason for the deemed withdrawal was A's death, the 10 percent penalty is not included on A's final return.

This rule is intended to implement Iowa Code section 422.7 and chapter 541B.  
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TITLE XI  
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX  
CHAPTER 86  
INHERITANCE TAX  
[Prior to 12/17/86, Revenue Department[730]]

**701—86.1(450) Administration.**

**86.1(1) Definitions.** The following definitions cover Chapter 86.

“*Administrator*” means the administrator of the compliance division of the department of revenue.

“*Child*” means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

“*Compliance division*” is the administrative unit of the department created by the director to administer the inheritance and fiduciary income tax laws of the state.

“*Department*” means the department of revenue.

“*Devise*,” when used as a verb, means to dispose of property, both real and personal, by a will.

“*Director*” means the director of revenue.

“*Estate*” means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of “gross estate” and “net estate” under this chapter, see those terms as referenced in this subrule.

“*Executor*” means any person appointed by the court to administer the estate of a testate decedent.

“*Fiduciary*” includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent’s probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

“*Gross estate*” as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and within three years of death, transfers to take effect in possession or enjoyment at death, trust property, “pay on death” accounts, annuities, and certain retirement plans, are not part of the decedent’s probate estate, but are includable in the decedent’s gross estate for inheritance tax purposes. *In re Louden’s Estate*, 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres’ Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy’s Estate*, 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann’s Estate*, 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven’s Estate*, 236 N.W.2d 366 (Iowa 1975); *In re English’s Estate*, 206 N.W.2d 305 (Iowa 1973).

Effective for estates of a decedent dying on or after July 1, 2003, property and any interest in or income from any of the estates and property, which pass from the decedent owner in any manner, are subject to tax if the passing interest is in one of the following: (1) real estate and tangible personal property located in Iowa regardless of whether the decedent was a resident of Iowa at death; and (2) intangible personal property owned by a decedent domiciled in Iowa.

“*Gross share*” means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

“*Heir*” includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

“*Internal Revenue Code*” means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(5) and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

“*Intestate estate*” means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

“*Issue*,” for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

“*Net estate*” means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

“*Net share*” means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe*, 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme*, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

“*Personal representative*” shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

“*Probate*” means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

“*Responsible party*” is the person liable for the payment of tax under this chapter. See 701—86.2(450).

“*Simultaneous deaths*” occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

“*Stepchild*” means the child of a person who was married to the decedent at the time of the decedent’s death, or the child of a person to whom the decedent was married, which person died during the marriage of the decedent.

“*Surviving spouse*” means the legally recognized surviving wife or husband of the decedent.

“*Tax*” means the inheritance tax imposed by Iowa Code chapter 450.

“*Taxpayer*” means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

“*Trustee*” means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

“*Trusts*” means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

“*Unknown heirs*” means heirs to an estate in which the identities of the heirs or the place of residency of the heirs cannot be ascertained with reasonable certainty.

“*Will*” includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

**86.1(2) *Delegation of authority.*** The director delegates to the administrator, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and any other employees or representatives of the department.

**86.1(3) *Information deemed confidential.*** Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

**86.1(4) *Information not confidential.*** Copies of wills, the filing of an inheritance tax lien, release of a real estate lien, probate inventories, trust instruments, deeds and other documents which have been filed for public record are not deemed confidential by the department.

**86.1(5) *Forms.*** The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed or approved by the director—see 701—8.3(17A).

**86.1(6) *Safe deposit boxes and joint accounts.*** Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. Additionally, effective July 1, 2005, there is no longer a requirement that all persons, banks, credit unions, and savings and loan associations notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

This rule is intended to implement Iowa Code chapter 22 and Iowa Code sections 450.1 and 450.2 as amended by 2003 Iowa Acts, chapter 95, sections 1 and 2, and sections 421.2, 450.67, 450.68, 450.94, 450.97 and 450B.7.

[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 1545C, IAB 7/23/14, effective 8/27/14]

## **701—86.2(450) Inheritance tax returns and payment of tax.**

**86.2(1) *Filing of an inheritance tax return.*** Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:

*a. Mandatory filing.* The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

Effective July 1, 2001, an estate is required to file an Iowa inheritance tax return if the entire estate of the decedent exceeds the sum of \$25,000 after deducting the liabilities of the estate.

*b. Who must file.* If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

*c. Who is not required to file a return for estates of decedents dying on or after July 1, 2004.*

(1) Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if at least one of the following situations is applicable:

1. All estate assets are held solely in joint tenancy with right of survivorship between husband and wife alone; or

2. All estate assets are held solely in joint tenancy with right of survivorship, and not as tenants in common, solely between the decedent and individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on the individuals' relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 86.2(1) "c"(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

3. All assets are passing by beneficiary designation pursuant to a trust and are intended to pass the decedent's property at death or through a nonprobate transfer solely to individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on their relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 86.2(1) "c"(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

4. All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth below in subparagraph 86.2(1) "c"(2); or

5. For estates of decedents dying on or after July 1, 2007, if the total aggregate value of all the tangible personal property in the estate is \$5,000 or less and in-kind distributions are made. Any in-kind distribution of personal property is exempt from inheritance tax when the total aggregate value of the tangible personal property in the estate is \$5,000 or less. If the total aggregate amount of tangible personal property is greater than \$5,000, then the exemption for in-kind distributions of tangible personal property does not apply. See Iowa Code section 450.4(7); see also Iowa Code section 633.276 for a description of tangible personal property that qualifies.

EXAMPLE 1: The total aggregate value of the tangible personal property in the estate is \$3,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is not subject to inheritance tax.

EXAMPLE 2: The total aggregate value of the tangible personal property in the estate is \$15,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is subject to inheritance tax because the total aggregate value of tangible personal property is greater than \$5,000.

(2) Individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax. "Lineal descendants" includes descendants by adoption.

*d. General rules.* An Iowa inheritance tax return must be filed if estate assets pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

(1) If an inheritance tax return is not required because the estate meets the criteria in paragraph 86.2(1) "c," the final report (beginning with Iowa Code section 633.469) need not contain an inheritance tax receipt (clearance) issued by the department, but must properly certify that one of the criteria set forth in paragraph 86.2(1) "c" has been met as set forth in Iowa Code section 450.58(2).

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. A copy of this affidavit must be retained by the beneficiary that holds the real estate.

(3) If a return is filed with the department and the return is not required to be filed, the department will retain the return as required by statutes governing retention of returns. However, the department will not process the filed return if the statute does not require that the return be filed. The department will not issue a clearance in an estate in which a return is not required to be filed.

**86.2(2) Form and content—inheritance tax return.**

*a. Estates of decedents dying prior to July 1, 1983.* Rescinded IAB 10/13/93, effective 11/17/93.

*b. Estates of decedents dying on or after July 1, 1983.* For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return shall be filed. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of \$25,000 (\$10,000 for estates of decedents dying before July 1, 2001) is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

*c. Special rule when the surviving spouse succeeds to property in the estate.* Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) If all of the property includable in the gross estate for inheritance tax purposes is held in joint tenancy with right of survivorship by husband and wife alone, an inheritance tax return is not required to be filed and a certificate from the department stating no inheritance tax is due is not required to release the inheritance tax lien under Iowa Code section 450.7(2).

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

*d. Estates of decedents dying on or after July 1, 1999.*

(1) In addition to the special rule for surviving spouses set forth in paragraph 86.2(2) "c," effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and any person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. For property of the estate passing by means other than by joint tenancy with right of survivorship or any property passing by

joint tenancy with right of survivorship when the title to the property is held by persons other than those persons declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9. "Lineal descendants" includes descendants by adoption.

(2) The exemption granted to stepchildren and their lineal descendants is limited to the stepchildren of the decedent and the lineal descendants of the stepchildren of the decedent exclusively. The exemption is not extended to include any lineal ascendants of the step relationship, such as stepparent or stepgrandparent, nor does it include step relations of the decedent's lineal ascendants or descendants, such as the stepchildren of the decedent's children. For a definition of "stepchild" for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

(3) The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. For estates of decedents dying before July 1, 2001, a net estate that is less than \$10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than \$25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over \$25,000:

SCHEDULE B			
Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.			
If the share is:			
Not over \$12,500, the tax is 5% of the share.			
If over	But not over	Tax is	Of excess over
\$ 12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000
100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000
SCHEDULE C			
Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, child's stepchild, and all other individual persons. There is no exemption.			
If the share is:			
Not over \$50,000, tax is 10% of the share.			
If over	But not over	Tax is	Of excess over
\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000

100,000	and up	11,000 + 15%	100,000
<b>SCHEDULE D</b>			
A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:			
Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) or 2055:			
15% of the amount.			
<b>SCHEDULE E</b>			
Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state:			
10% of the amount.			
<b>SCHEDULE F</b>			
An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:			
5% of the amount.			
<b>SCHEDULE G</b>			
A charitable, religious, educational, or veterans organization as defined in IRC Section 170(c) or 2055.			
All other shares to income tax exempt organizations that are not defined in IRC Section 170(c) must provide their IRS letter of determination. Organizations may also be required to provide evidence that the bequest has restricted the funds to a conforming activity.			
Public libraries, public art galleries, hospitals, humane societies, municipal corporations, bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed \$500.			
Entirely exempt: No tax.			

**86.2(3) *Liability for the tax.*** The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable.

*Eddy v. Short*, 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923).

**86.2(4) Supplemental return—deferred interest.** When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation. At the top of the front page of the return, the word “SUPPLEMENTAL” shall be printed.

**86.2(5) Amended return.** If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word “AMENDED” shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 86.9(450), and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).

**86.2(6) Due date for filing—return on present property interests.** Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

*a.* On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997 (May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997 (August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997 (November 30 is a Sunday)
March 1997	December 31, 1997
April 1997	February 2, 1998 (January 31 is a Saturday and February 1 is a Sunday)
May 1997	March 2, 1998 (February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

*b.* Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

**86.2(7) Election to file—before termination of prior estate.** The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

*a. On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981).* Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

*b. After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate.* Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard*, 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp*, Clay County District Court, Probate No. 7251 (1980).

**86.2(8) Mandatory due date—return on a future property interest.**

*a. For estates of decedents dying prior to July 1, 1984.* Rescinded IAB 10/13/93, effective 11/17/93.

*b. Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981.* Unless the tax due on a future property interest has been paid under the provisions of subrule 86.2(7), paragraphs "a" and "b," the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

**86.2(9) Extension of time—return and payment.** For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

**86.2(10) Discount.** There is no discount allowed for early payment of the tax due.

**86.2(11) Penalties.** See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

**86.2(12) Interest on tax due.** All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the inheritance tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

This rule is intended to implement Iowa Code sections 421.14, 450.4, 450.5, 450.6, 450.9, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94 and 2004 Iowa Acts, chapter 1073, and 2005 Iowa Acts, chapter 14.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 2633C, IAB 7/20/16, effective 8/24/16]

### **701—86.3(450) Audits, assessments and refunds.**

**86.3(1) Audits.** Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds,

appraisals, and such other information as may reasonably be necessary to establish the correct tax due. See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review*, 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

**86.3(2) Assessments for additional tax.** The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

**86.3(3) Refunds.** If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

**86.3(4) Supplemental assessments and refund adjustments.** The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

**86.3(5) Assessments—period of limitations.** Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

*a.* Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding

day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

b. The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

c. If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906).

**86.3(6) Period of limitations—federal audits.**

a. *Statute of limitations and federal audits in general.* In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5) “a” and “b,” shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, and the department receives such a notification, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, federal gift, and federal generation skipping transfer taxes (for deaths occurring after December 31, 2004) have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris*, 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

b. *Statute of limitations regarding federal audits involving real estate.*

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment begins on the date the taxpayer performs two affirmative acts: (a) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, federal gift, and federal generation skipping transfer taxes (for deaths occurring after December 31, 2004) have been concluded and (b) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

*c. Effect of additional time periods.* The additional six-month audit period set forth in “a” and “b” under this subrule does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)“b” for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax laws that incorporate Internal Revenue Code provisions. See Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25, 422.30, 450.37, 450.53, 450.65, 450.71, and 450.94.

[ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1545C, IAB 7/23/14, effective 8/27/14]

**701—86.4(450) Appeals.** A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department’s determination. For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department’s rules of practice and procedure before the department of revenue and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

**701—86.5(450) Gross estate.**

**86.5(1) Iowa real and tangible personal property.**

*a.* Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common.

*b.* Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman’s Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *In re English’s Estate*, 206 N.W.2d 305 (Iowa 1973); and *Lincoln’s Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

*c.* A nonresident decedent’s interest in a corporation, limited liability company, or partnership that owns real or tangible personal property with an Iowa situs that is titled in the name of that business entity is not subject to inheritance tax. An interest in a business entity is intangible personal property which follows the residence of the decedent for the purposes of inheritance tax.

d. Tangible personal property as defined in Iowa Code section 633.276 with an Iowa situs which is distributed in kind from the estate is not subject to inheritance tax if the aggregate value of all tangible personal property in the estate does not exceed \$5,000. See 86.2(1)“c”(1)“5.”

**86.5(2) Foreign real estate and tangible personal property.** Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent’s gross estate for tax purposes. *Frick v. Pennsylvania*, 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate*, 226 Iowa 1260, 286 N.W.2d 422 (1939).

**86.5(3) Intangible personal property—decedent domiciled in Iowa.** Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanless*, 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed 1339 (1939); *Lincoln’s Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

**86.5(4) Intangible personal property—decedent domiciled outside Iowa.** Rescinded IAB 10/30/13, effective 12/4/13.

**86.5(5) Classification of property.** The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman’s Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs*, 200 Iowa 672, 203 N.W. 28 (1925).

**86.5(6) Insurance—in general.** Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown*, 205 N.W.2d 925 (Iowa 1973).

a. *Insurance proceeds subject to tax.* The proceeds of insurance on the decedent’s life owned by the decedent and payable to the decedent’s estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977).

b. *Insurance proceeds not taxable.* Insurance on the decedent’s life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured’s personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown*, 205 N.W.2d 925 (Iowa 1973).

c. *Insurance proceeds includable—depending on circumstances.* Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent’s life and owned by the decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen*, Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent’s life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent’s interest. *In re Reed’s Estate*, 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

**86.5(7) Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.** A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor’s death, made in contemplation of death, is includable in the decedent’s gross estate. Any such transfer made within the three-year period prior to the grantor’s death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

a. *Factors to be considered include, but are not limited to:*

- (1) The age and health of the grantor at the time of the transfer,
- (2) Whether the grantor was motivated by living or death motives,
- (3) Whether or not the gift was a material part of the decedent's property,
- (4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

b. *Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:*

- (1) Made with the purpose of avoiding death taxes,
- (2) Made as a substitute for a testamentary disposition of the property,
- (3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,
- (4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

c. *Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:*

- (1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,
- (2) Made because of the financial need of the donee and in an amount that is appropriate to the need,
- (3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,
- (4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells*, 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate*, 219 Iowa 597, 258 N.W. 904 (1935).

d. *Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984.* All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 2012. The three-year period during which gifts may be subject to inheritance tax begins July 1, 2009. During the calendar year 2009, A made a cash gift to nephew B of \$14,000 on May 1, 2009, and a second gift to B of \$4,000 on August 1, 2009. In this example, none of the \$14,000 gift made on May 1, 2009, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the \$4,000 gift made on August 1, 2009, is includable for inheritance tax purposes because it is in excess of the calendar year 2009 federal gift tax exclusion of \$13,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual federal gift tax exclusion which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of \$2,000 per acre, or \$320,000. On August 1, 1994, A released the retained life estate without any consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen*, 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 701—86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, 2009, loaned brother B \$450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, 2011, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner*, 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9

percent for each year and no other gifts were made to B, A has made a gift to B of \$40,500 through August 2010 (one year after the note was executed) and an additional gift of \$40,500 through August 1, 2011, and two months' interest of \$6,750 from August 1, 2011, to the date of death on October 1, 2011. Therefore, in calendar year 2009 A has made a gift of 5/12 of \$40,500, or \$16,875. After deducting the annual calendar year exclusion of \$13,000, \$3,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year 2010, \$40,500, less the \$13,000 exclusion, or \$27,500, is subject to inheritance tax. For calendar year 2011 the loan was outstanding for nine months. Three-fourths of \$40,500, less \$13,000, or \$17,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, 2010, A sold a 160-acre Iowa farm to niece B for \$1,500 per acre, or \$240,000. On the date of sale, the fair market value of the farm was \$2,500 per acre, or \$400,000. A died on August 1, 2012. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth, and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 37 percent, not 40 percent, because the \$13,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, 2010, A sold a 160-acre Iowa farm to niece B for \$2,500 per acre, or \$400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are \$34,873.82 per year. A died on August 1, 2012. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of \$34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of \$34,873.82 for 20 years to reflect a 12 percent return on an investment is \$260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay \$260,488.05 for this 6 percent \$400,000 contract of sale.

Bona Fide Sale Percentage

Present value:	$\frac{260,488.05}{400,000.00} = 65\%$
Sale price:	400,000.00

This is the percentage of the sale price of \$400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of \$400,000 - \$260,488.05 or \$139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the \$13,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\$139,511.95 - \$13,000 = \frac{\$126,511.95}{400,000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the \$13,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale, not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

**86.5(8) Joint tenancy property—in general.** Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. Generally, the words and phrases “to A and B as joint tenants with full rights of survivorship and not as tenants in common” create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. “To A or B, payable to the order of self” creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. *In re Estate of Martin*, 261 Iowa 630, 155 N.W.2d 401 (1968); *Petersen v. Carstensen*, 249 N.W.2d 622 (Iowa 1977); *In re Estate of Loudon*, 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. *In re Estate of Horner*, 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words “as joint tenants” alone without the use of the phrase “with right of survivorship” may only create a tenancy in common. *Albright v. Winey*, 226 Iowa 222, 284 N.W. 86 (1939).

*a. Joint tenancy property—husband and wife alone.* Generally there are no shares in joint tenancy property because each joint tenant owns the whole property. As a result, joint tenancy property is not taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that separate money or property was used and contributed to a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. *Ida M. Jepsen v. Bair*, No. 85, State Board of Tax Review, June 18, 1975.

*b. Joint tenancy property—not held by husband and wife alone.* Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.

*c. Joint tenancy—convenience or constructive trust.* If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. *First National Bank v. Curran*, 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the

property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. *Petersen v. Carstensen*, 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

**86.5(9) *Transfers reserving a life income or interest.*** If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English*, 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate*, 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the annual gift exclusion.

**86.5(10) *Powers of appointment—in general.*** Iowa Code section 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

*a. General power of appointment.* Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. For example, a devise to A for life with "power to dispose of and pass clear title ... if A so elects," creates a life estate with a general power of appointment. *In re Estate of Cooksey*, 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, "Especially giving unto A the right to use and dispose of the same as A may see fit," creates a general power of appointment, *Volz v. Kaemmerle*, 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. *In re Estate of Harris*, 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. *In re Estate of Spencer*, 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

*b. Special power of appointment.* If there is a limitation on the donee's right to use the corpus only for care, maintenance and support, the power is special, not general. *Brown v. Brown*, 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A's interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. *Lourien v. Fitzgerald*, 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. *McCarthy v. McCarthy*, 178 N.W.2d 308 (Iowa 1970).

If the donee's power to appoint is limited to a class or group of persons, a special, not a general, power is created. *In re Estate of Spencer*, 232 N.W.2d 491, at 496 (Iowa 1975).

*c. Powers of appointment—taxation in donor's estate.* If the instrument in the donor's estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event the power is not exercised are treated in the donor's estate as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. *In re Estate of Higgins*, 194 Iowa 369 at 373, 189 N.W. 752 (1922); *Bussing v. Hough*, 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor's estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor's estate as if they had received the remainder interest in the property subject to the special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

*d. Powers of appointment in the estate of a donee dying on or after January 1, 1988.* Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee's death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 86.5(10) "a" and "b" for the distinction between a general and special power and subrule 86.5(11) for the rule governing QTIP elections.

For inheritance tax purposes, if there is an exercise or release of the general power within three years of the donee's death, the property subject to the exercise or release is includable in the donee's estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this rule when the nature of the disposition is such that if it were a transfer or disposition of the donee's property, the transfer would be subject to inheritance tax under Iowa Code section 450.3. The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. *In re Trust of Stork*, 233 Iowa 413, 421, 9 N.W.2d 273 (1943). For the purposes of section 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

**86.5(11) Qualified terminable interest property (QTIP).**

*a. In general.* Effective for estates of decedents dying on or after July 1, 1985, property passing from the decedent grantor-donor, which qualifies as qualified terminable interest property (QTIP) within the meaning of 26 U.S.C. Section 2056(b)(7)(B) is eligible to be treated for Iowa inheritance tax purposes, if an election is made, as passing in fee to the donee-grantee surviving spouse, in the estate of the grantor-donor decedent, subject to the provisions of law and this subrule. If the election is made, the qualified property, unless it is disposed of prior to death, shall be included in the gross estate of the

surviving spouse and treated as passing in fee to those succeeding to the remainder interest in the qualified property.

*b. Property transfers eligible.* Five factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years prior to the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a valid federal election must have been made on a required federal return with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years prior to the transferor's death; and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years prior to the transferor's death; and (5) Iowa must have constitutional nexus with the surviving spouse or QTIP property.

If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A died testate, a resident of Iowa, July 2, 1995, leaving a surviving spouse, B, and two children, C and D. On February 1, 1992, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

EXAMPLE 2. On October 1, 1992, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the corpus was to be paid to A's children, C and D. A died July 2, 1995, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

*c. The qualified terminable interest election—in general.* The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be treated as a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code section 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes on a required federal return, or in case of a gift made within three years

of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, 1992, which was funded by \$200,000 in cash and a 160-acre Iowa farm worth \$200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, 1995, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the \$200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at \$200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

*d. The election—manner and form.* The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. The filing for the purpose of protective election is not allowed. Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

*e. Disposition of qualified property prior to death.* A disposition of all or part of the qualified property, which was the subject of the qualified terminable interest election, prior to the death of the surviving spouse, voids the election as to that portion of the property disposed of that is not retained by the surviving spouse. In this event, the portion of the qualified property not retained by the surviving spouse shall be taxed to those succeeding to the remainder interests in the disposed property as if the tax on the remainder interest had been deferred under Iowa Code sections 450.44 to 450.49. Except in the case of special use valuation property, the tax shall be based on the fair market value of the amount of the qualified property not retained by the surviving spouse at the time the property was disposed of. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950), see subrule 86.11(5) for taxation of remainder interests when the tax is deferred. The alternate valuation date cannot be used in computing the tax. See subrule 86.10(2). If QTIP property has been valued at its special use value under Iowa Code chapter 450B, and is disposed of prior to the death of the surviving spouse, the portion of the QTIP property not retained by the surviving spouse shall be valued for taxation as follows:

1. At its special use value at the time of its disposition, if the QTIP property remains in qualified use under 26 U.S.C. Section 2032A.

2. At its fair market value at the time of its disposition, if there is a cessation of the qualified use under 26 U.S.C. Section 2032A. In case there is a cessation of the qualified use, the recapture tax provisions of Iowa Code section 450B.3 shall not apply. The tax on the remainder interest is treated as a payment of tax deferred and subject to the rules on deferred tax and not a recapture, with interest, of the tax originally imposed in the decedent grantor-donor's estate.

*f. Inclusion in the estate of the surviving spouse.*

(1) Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

(2) Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 701—86.9(450), or at its special use value under Iowa Code chapter 450B and rule 701—86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1) "b" and rule 701—86.10(450), if the property is otherwise eligible.

(3) This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, 2017, survived by a spouse, B, aged 65, a child, C, and C's stepchildren, D and E. Under A's will, all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between D and E, who are the stepchildren of child C. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at \$250,000 and personal property valued at \$200,000.

Tax on the basis of all property passing in fee to B

<u>Share</u>	<u>Tax</u>
\$450,000	\$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to D and E.

<u>Share</u>	<u>Tax</u>
Spouse B: Life estate factor .42226 \$450,000 × .42226 = \$190,017	-0-
D's share ½ remainder factor .57774 \$450,000 × .57774 ÷ 2 = \$129,991.50	\$15,498.73
E's share—same as D's share <u>\$129,991.50</u>	<u>\$15,498.73</u>
Total \$450,000.00	\$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would cost D and E \$30,997.46 if the election had not been made.

EXAMPLE 3. G, the surviving spouse of F, died testate, a resident of Iowa, on October 15, 2017. Under the terms of G's will, G's grandchildren, H and I, inherit G's entire estate in equal shares. G's net estate consists of \$200,000 in personal property and a 160-acre Iowa farm with a value of \$250,000 both of which were the subject of a qualified terminable interest election in F's estate and in which H and I own the remainder interest. G's net estate also consisted of \$100,000 in intangible personal property that G owned in fee simple.

G's net estate for Iowa inheritance tax purposes consists of the following:

- \$200,000, personal property from F's estate.
- \$250,000, 160-acre farm from F's estate.
- \$100,000, owned by G in fee simple.
- \$550,000 Total

The shares of H and I and their tax owed in G's estate are computed as follows:

<u>Share</u>	<u>Tax</u>
Beneficiary H: ½ of the net estate, or \$275,000	\$0
Beneficiary I: (same as H) <u>\$275,000</u>	<u>\$0</u>
Totals \$550,000	\$0

g. *The QTIP tax credit and the credit for tax on prior transfers.* The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section 450.10(6) shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code section 450.10(6) are otherwise met.

**86.5(12) Annuities.** Annuities in general, including the earnings, are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate*, 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation*, 350 Mass. 237, 214 N.E.2d 283 (1966). For exceptions for employee-sponsored retirement plans, including annuities, see 86.5(13).

**86.5(13) Employer-provided or employer-sponsored retirement plans and individual retirement accounts.** Iowa Code section 450.4(5) provides an exemption on that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary.

This exemption applies regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

For the purposes of this exemption:

*a.* An "individual retirement account" includes an individual retirement annuity or any other arrangement as defined in Section 408 of the Internal Revenue Code.

*b.* An "employer-provided or employer-sponsored retirement plan" includes a qualified retirement plan as defined in Section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in Section 457 of the Internal Revenue Code, and an annuity as defined in Section 403 of the Internal Revenue Code.

EXAMPLE 1. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the retirement plan is the decedent's niece. The balance in the retirement plan will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7 when paid to the beneficiary. As a result, Iowa inheritance tax would not be imposed on the value of the retirement plan.

EXAMPLE 2. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the pension is the decedent's niece. A portion of the payments received by the niece will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of payments included as net income. However, the remaining portion of the payments not reported as net income pursuant to Iowa Code section 422.7 would be subject to Iowa inheritance tax. See Iowa Code section 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, for the purpose of determining the taxable or exempt status of payments under a qualified plan, it is not relevant that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death.

**86.5(14) *Distribution of trust property.*** Property of a trust can be divided into two or more trusts, or one or more separate trusts can be consolidated with one or more other trusts into a single trust by dividing the property in cash or in kind, including in undivided interests, by pro-rata or non-pro-rata division or in any combination thereof. Division of property between trusts in this manner does not result in a "sale" of the divided property and a corresponding taxable gain.

**86.5(15) *Qualified tuition plans exempt.*** Effective for estates of decedents dying on or after July 1, 2008, in the event that the decedent was the sole plan participant in a qualified school tuition plan, as defined in Section 529 of the Internal Revenue Code; or in the event that a named co-plan participant does not have a lineal relationship to the named beneficiary of the qualified tuition plan, the value of the decedent's interest in the qualified tuition plan is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. This provision applies only to qualified tuition plans in existence on or after July 1, 1998.

**86.5(16) *Qualified ABLE plans exempt.*** Effective for estates of decedents dying on or after January 1, 2016, the value of the decedent's interest in the Iowa ABLE savings plan trust is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. The value of the decedent's interest in an ABLE savings program administered by another state with which the Iowa treasurer of state has entered into an agreement allowing Iowa residents to participate in the other state's qualified ABLE program under the terms of Iowa Code section 12I.10 is also not subject to Iowa

inheritance tax if the decedent is an Iowa resident. For more information on qualified plans administered by other states, see Iowa Code section 12I.10 and rule 701—40.81(422).

This rule is intended to implement Iowa Code sections 422.7, 450.2, 450.3, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A and Iowa Code section 450.4 as amended by 2015 Iowa Acts, chapter 137.

[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 2633C, IAB 7/20/16, effective 8/24/16; ARC 2691C, IAB 8/31/16, effective 10/5/16]

#### **701—86.6(450) The net estate.**

##### **86.6(1) Liabilities deductible.**

*a. Debts owing by decedent.* A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. *In re Estate of Tollefsrud*, 275 N.W.2d 412 (Iowa 1979); *In re Estate of Thomas*, 454 N.W.2d 66 (Iowa App. 1990); *Estate of Pauline Bladt*, Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

The term "debt of the decedent" does not include taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman*, 257 Iowa 263, 265, 132 N.W.2d 755 (1965). Please note, that this is a nonexclusive example of "debt of the decedent." Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent are not debts nor treated as expenses of settlement. *In re Estate of Bliven*, 236 N.W.2d 366, 371 (Iowa 1975); *In re Estate of Wells*, 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate of McMahon*, 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz*, Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy*, Department of Revenue and Finance, Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974).

The debt must have been paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson*, 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

*b. Mortgages—decendent's debt.* A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

*c. Mortgages—not decendent's debt.* If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe*, 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

*d. Mortgages—nonprobate property.* A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

*e. Inheritance and accrued taxes.*

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow*, 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke*, 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board*, 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9) "b." As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

*f. Federal taxes.* Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

*g. Funeral expenses.* The deduction is limited to the expense of the decedent's funeral, which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible

include, but are not limited to, family travel expenses. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter*, 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneebbs*, 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit*, 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant*, 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris*, 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneebbs*, 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

*h. Allowance for surviving spouse and dependents.* An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374; *In re Estate of DeVries*, 203 N.W.2d 308, 311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of the court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

*i. Court costs.* The deduction under this category is limited to Iowa court costs only. *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with "costs of administration" as defined in Iowa Code section 633.3(8) or "administration expenses" under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). "Court costs" is a narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk's docket, and paid routinely in the process of closing every estate. *In re Estate of Waddington*, 201 N.W.2d 77, 79 (Iowa 1972). The term "court costs" since August 15, 1975, also includes the expenses of selling property. See Iowa Code sections 450.12 and 633.3(8) and Internal Revenue Code Section 2053 for further details.

*j. Additional liabilities that are deductible.* Subject to subrules 86.6(4) and 86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent's death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;
2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent's estate;
3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and
4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent's gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent's estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. "Property subject to claims" is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent's estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph "a" of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor's commission, attorney's fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent's debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

**86.6(2) Prorated liabilities.**

*a.* The amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

*b. Liabilities that must be prorated.* If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are: (1) court costs, both foreign and domestic; (2) unsecured debts

of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

*c. Liabilities that are not prorated.* Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by: (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

*d. Prorated cash bequests.* Rescinded IAB 10/30/13, effective 12/4/13.

**86.6(3)** *Liabilities deductible from property not subject to the payment of debts and charges.*

*a. Estates with all of the property located in Iowa.* Subject to the special provisions in 86.6(3)“c,” the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. The liabilities must be paid. If a liability is not paid in full, the amount deductible is limited to the amount paid. If the amount claimed is not certified as paid by the time the inheritance tax return is filed, the statute requires that the director must be satisfied that the liabilities, or portions thereof deductible, will be paid.

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, gifts to each donee made within three years of death up to an amount equal to the annual federal gift tax exclusion, and property with a situs outside Iowa.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the remaining property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of the ratio the value of each person's share of the remaining property in the gross estate bears to the total value of the remaining property included in the gross estate.

(2) General rules.

1. The source of the funds used for payment of the excess liabilities is not relevant to the allowance of the deduction. It is sufficient for the allowance of the deduction that the liability be paid.

2. The applicability of the statute is limited to the deduction for inheritance tax purposes of those liabilities listed in Iowa Code subsection 450.12(1). It neither enlarges nor diminishes the rights of creditors under existing Iowa law.

3. The statute is not limited to estates which are probated and subject to the jurisdiction of the probate court. The statute also applies to estates which file an inheritance tax return for a tax clearance (CIT proceedings) or those otherwise not probated such as, but not limited to, inter vivos trusts whose assets are subject to inheritance tax, estates consisting of joint tenancy with right of survivorship property, estates whose assets consist of transferred property with a reserved life use or interest, estates whose assets consist of gifts made within three years of the decedent's death and estates consisting entirely of qualified terminal interest property (QTIP) in the estate of the surviving spouse.

The statute will apply to any estate when any share of the estate will remain taxable after being reduced by the liabilities in Iowa Code subsection 450.12(1) which are lawfully charged to the share and the deduction of any statutory exemption. Excess liabilities must be prorated over all of the property not subject to debts and charges regardless of whether or not the property is part of a taxable share.

*b. Estates with part of the property located outside Iowa.* Iowa Code section 450.12(2) and subrule 86.6(2) require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in 86.6(3) “c,” in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 86.6(3) “a”(1) “1” to “4.”

*c. Special rule for liabilities secured by property included in the gross estate.* If a liability which is deductible under Iowa Code section 450.12(1) “a” is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations.

**86.6(4) Resident and nonresident deductions distinction abolished.** Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 1545C, IAB 7/23/14, effective 8/27/14]

**701—86.7(450) Life estate, remainder and annuity tables—in general.** For estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners’ standard ordinary mortality table at the rate of 4 percent per annum.

**86.7(1) Tables for life estates and remainders.** This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. The two factors on the same line on the next page added together equal 100 percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within 12 months after the death of the decedent who created the life estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent’s death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174
95	.04866	.95134
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	1.00000

**86.7(2)** *Table for an annuity for life.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. To find the present value of an annuity or a given amount (specified sum) for life, annualize the annuity payments and multiply the result by the annuity factor in Column 3 opposite the age at the nearest birthday of the person receiving the annuity.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061
86	4.06	3.0988
87	3.80	2.8961
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564
95	1.80	1.2166
96	1.51	.9503
97	1.18	.6487
98	.83	.3189
99	.50	.0000

**86.7(3)** *Annuity tables when the term is certain.* This table is to be used to compute the present values of two types of annuities: (1) the use of property for a specific number of years and (2) an annuity of a specific amount of money for a number of years certain. To compute the present value of the first annuity, multiply the value of property by 4 percent. Then multiply the result by the annuity factor opposite the number of years of the annuity. Multiply the value of the property by the remainder factor for the present value of the remainder. For the second annuity annualize the payments and multiply the result by the annuity factor opposite the number of years of the annuity. Subtract the present value of the annuity from the value of the property from which the annuity is funded for the remainder value.

<u>Number of Years</u>	<u>Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years</u>	<u>Present Value of One Dollar, Payable at the End of a Certain Number of Years</u>
	ANNUITY	REMAINDER
1	\$0.96154	\$0.961538
2	1.88609	0.924556
3	2.77509	0.888996
4	3.62990	0.854804
5	4.45182	0.821927
6	5.24214	0.790315
7	6.00205	0.759918
8	6.73274	0.730690
9	7.43533	0.702587
10	8.11090	0.675564
11	8.76048	0.649581
12	9.38507	0.624597
13	9.98565	0.600574
14	10.56312	0.577475
15	11.11839	0.555265
16	\$11.65230	\$0.533908
17	12.16567	0.513373
18	12.65930	0.493628
19	13.13394	0.474642
20	13.59033	0.456387
21	14.02916	0.438834
22	14.45112	0.421955
23	14.85684	0.405726
24	15.24696	0.390121
25	15.62208	0.375117
26	15.98277	0.360689
27	16.32959	0.346817
28	16.66306	0.333477
29	16.98371	0.320651
30	17.29203	0.308319

**86.7(4)** *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* For estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in

computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following table is to be applied in the same manner as specified in subrule 86.7(1).

1980 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	.91904	.08096	50	.61730	.38270
1	.91919	.08081	51	.60576	.39424
2	.91689	.08311	52	.59399	.40601
3	.91443	.08557	53	.58199	.41801
4	.91186	.08814	54	.56979	.43021
5	.90914	.09086	55	.55740	.44260
6	.90629	.09371	56	.54483	.45517
7	.90329	.09671	57	.53206	.46794
8	.90014	.09986	58	.51906	.48094
9	.89683	.10317	59	.50582	.49418
10	.89338	.10662	60	.49234	.50766
11	.88977	.11023	61	.47862	.52138
12	.88603	.11397	62	.46471	.53529
13	.88219	.11781	63	.45064	.54936
14	.87828	.12172	64	.43647	.56353
15	.87429	.12571	65	.42226	.57774
16	.87027	.12973	66	.40801	.59199
17	.86617	.13383	67	.39372	.60628
18	.86200	.13800	68	.37936	.62064
19	.85773	.14227	69	.36489	.63511
20	.85333	.14667	70	.35031	.64969
21	.84878	.15122	71	.33565	.66435
22	.84404	.15596	72	.32098	.67902
23	.83912	.16088	73	.30639	.69361
24	.83399	.16601	74	.29199	.70801
25	.82865	.17135	75	.27787	.72213
26	.82306	.17694	76	.26405	.73595
27	.81724	.18276	77	.25053	.74947
28	.81117	.18883	78	.23727	.76273
29	.80487	.19513	79	.22422	.77578
30	.79833	.20167	80	.21134	.78866
31	.79155	.20845	81	.19866	.80134
32	.78451	.21549	82	.18625	.81375

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
33	.77723	.22277	83	.17419	.82581
34	.76970	.23030	84	.16260	.83740
35	.76192	.23808	85	.15151	.84849
36	.75389	.24611	86	.14093	.85907
37	.74562	.25438	87	.13081	.86919
38	.73710	.26290	88	.12108	.87892
39	.72836	.27164	89	.11163	.88837
40	.71940	.28060	90	.10235	.89765
41	.71022	.28978	91	.09309	.90691
42	.70083	.29917	92	.08368	.91632
43	.69122	.30878	93	.07390	.92610
44	.68138	.31862	94	.06350	.93650
45	.67131	.32869	95	.05221	.94779
46	.66101	.33899	96	.03994	.96006
47	.65046	.34954	97	.02678	.97322
48	.63966	.36034	98	.01321	.98679
49	.62860	.37140	99	.00000	1.00000

**86.7(5)** *Table for an annuity for life—for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

1980 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>	<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
0	73.30	22.976	50	27.45	15.433
1	72.56	22.980	51	26.61	15.144
2	71.63	22.922	52	25.77	14.850
3	70.70	22.861	53	24.94	14.550
4	69.76	22.796	54	24.13	14.245
5	68.82	22.728	55	23.32	13.935
6	67.87	22.657	56	22.52	13.621
7	66.93	22.582	57	21.73	13.301
8	65.98	22.504	58	20.95	12.976
9	65.03	22.421	59	20.18	12.645
10	64.07	22.334	60	19.41	12.308
11	63.12	22.244	61	18.66	11.966

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>	<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
12	62.16	22.151	62	17.91	11.618
13	61.21	22.055	63	17.18	11.266
14	60.27	21.957	64	16.45	10.912
15	59.32	21.857	65	15.75	10.557
16	58.39	21.757	66	15.05	10.200
17	57.46	21.654	67	14.38	9.843
18	56.53	21.550	68	13.71	9.484
19	55.61	21.443	69	13.06	9.122
20	54.69	21.333	70	12.42	8.758
21	53.77	21.219	71	11.79	8.391
22	52.85	21.101	72	11.17	8.024
23	51.93	20.978	73	10.57	7.660
24	51.01	20.850	74	10.00	7.300
25	50.08	20.716	75	9.44	6.947
26	49.15	20.576	76	8.91	6.601
27	48.23	20.431	77	8.39	6.263
28	47.30	20.279	78	7.90	5.932
29	46.36	20.122	79	7.42	5.605
30	45.43	19.958	80	6.96	5.283
31	44.50	19.789	81	6.52	4.967
32	43.57	19.613	82	6.09	4.656
33	42.64	19.431	83	5.68	4.355
34	41.72	19.242	84	5.29	4.065
35	40.79	19.048	85	4.93	3.788
36	39.87	18.847	86	4.58	3.523
37	38.94	18.640	87	4.26	3.270
38	38.03	18.428	88	3.95	3.027
39	37.11	18.209	89	3.66	2.791
40	36.21	17.985	90	3.37	2.559
41	35.30	17.756	91	3.09	2.327
42	34.41	17.521	92	2.81	2.092
43	33.52	17.280	93	2.52	1.848
44	32.63	17.035	94	2.22	1.588
45	31.75	16.783	95	1.90	1.305
46	30.88	16.525	96	1.56	.999
47	30.01	16.261	97	1.20	.670
48	29.15	15.991	98	.84	.330
49	28.30	15.715	99	.50	.000

**86.7(6)** *Table for life estates and remainders for estates of decedents dying on or after January 1, 2004.* For estates of decedents dying on or after January 1, 2004, the following table is to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The following table is to be applied in the same manner as specified in subrule 86.7(1).

2001 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

The two factors across the page equal 100 percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate or to determine if there would be any tax due.

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	0.94022	0.05978	60	0.54240	0.45760
1	0.93854	0.06146	61	0.52918	0.47082
2	0.93653	0.06347	62	0.51579	0.48421
3	0.93431	0.06569	63	0.50229	0.49771
4	0.93192	0.06808	64	0.48868	0.51132
5	0.92939	0.07061	65	0.47495	0.52505
6	0.92676	0.07324	66	0.46112	0.53888
7	0.92402	0.07598	67	0.44717	0.55283
8	0.92119	0.07881	68	0.43306	0.56694
9	0.91825	0.08175	69	0.41882	0.58118
10	0.91519	0.08481	70	0.40442	0.59558
11	0.91202	0.08789	71	0.38991	0.61009
12	0.90874	0.09126	72	0.37533	0.62467
13	0.90537	0.09463	73	0.36081	0.63919
14	0.90192	0.09808	74	0.34633	0.65367
15	0.89837	0.10163	75	0.33189	0.66811
16	0.89475	0.10525	76	0.31751	0.68249
17	0.89107	0.10893	77	0.30318	0.69682
18	0.88731	0.11269	78	0.28898	0.71102
19	0.88344	0.11656	79	0.27495	0.72505
20	0.87944	0.12056	80	0.26116	0.73884
21	0.87529	0.12471	81	0.24761	0.75239
22	0.87098	0.12902	82	0.23452	0.76548
23	0.86651	0.13349	83	0.22188	0.77812
24	0.86186	0.13814	84	0.20962	0.79038
25	0.85704	0.14296	85	0.19778	0.80222
26	0.85205	0.14795	86	0.18642	0.81358
27	0.84688	0.15312	87	0.17540	0.82460
28	0.84154	0.15846	88	0.16507	0.83493
29	0.83599	0.16401	89	0.15544	0.84456
30	0.83022	0.16978	90	0.14650	0.85350
31	0.82421	0.17579	91	0.13802	0.86198
32	0.81798	0.18202	92	0.12909	0.87091
33	0.81151	0.18849	93	0.12008	0.87992
34	0.80480	0.19520	94	0.11133	0.88867

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
35	0.79786	0.20214	95	0.10320	0.89680
36	0.79068	0.20932	96	0.09618	0.90382
37	0.78326	0.21674	97	0.09014	0.90986
38	0.77559	0.22441	98	0.08532	0.91468
39	0.76767	0.23233	99	0.07952	0.92048
40	0.75949	0.24051	100	0.07338	0.92662
41	0.75104	0.24896	101	0.06745	0.93255
42	0.74233	0.25767	102	0.06160	0.93840
43	0.73335	0.26665	103	0.05590	0.94410
44	0.72412	0.27588	104	0.05042	0.94958
45	0.71463	0.28537	105	0.04523	0.95477
46	0.70490	0.29510	106	0.04045	0.95955
47	0.69491	0.30509	107	0.03604	0.96396
48	0.68468	0.31532	108	0.03199	0.96801
49	0.67415	0.32585	109	0.02823	0.97177
50	0.66333	0.33667	110	0.02479	0.97521
51	0.65223	0.34777	111	0.02174	0.97826
52	0.64086	0.35914	112	0.01899	0.98101
53	0.62926	0.37074	113	0.01643	0.98357
54	0.61743	0.38257	114	0.01357	0.98643
55	0.60539	0.39461	115	0.01107	0.98893
56	0.59317	0.40683	116	0.00869	0.99131
57	0.58077	0.41923	117	0.00638	0.99362
58	0.56821	0.43179	118	0.00437	0.99563
59	0.55542	0.44458	119	0.00246	0.99754
			120	0.00000	1.00000

**86.7(7)** *Table for an annuity for life—for estates of decedents dying on or after January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

2001 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

To find the present value of an annuity or a given amount (specified sum) for life, multiply the annuity by the annuity factor opposite the age at the nearest birthday of the person receiving the annuity.

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
0	78.65	23.505
1	77.73	23.464
2	76.78	23.413
3	75.81	23.358
4	74.84	23.298
5	73.86	23.235
6	72.87	23.169
7	71.89	23.101
8	70.91	23.030
9	69.92	22.956
10	68.94	22.880
11	67.95	22.801
12	66.97	22.718
13	65.99	22.634
14	65.01	22.548
15	64.04	22.459
16	63.07	22.369
17	62.11	22.277
18	61.15	22.183
19	60.19	22.086
20	59.23	21.986
21	58.27	21.882
22	57.32	21.774
23	56.36	21.663
24	55.40	21.547
25	54.45	21.426
26	53.49	21.301
27	52.53	21.172
28	51.58	21.038
29	50.63	20.900
30	49.67	20.755
31	48.72	20.605
32	47.76	20.449
33	46.81	20.288
34	45.85	20.120
35	44.90	19.946
36	43.95	19.767
37	43.00	19.581
38	42.05	19.390
39	41.11	19.192
40	40.16	18.987
41	39.22	18.776
42	38.28	18.558

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
43	37.35	18.334
44	36.42	18.103
45	35.49	17.866
46	34.57	17.623
47	33.65	17.373
48	32.74	17.117
49	31.84	16.854
50	30.94	16.583
51	30.04	16.306
52	29.15	16.021
53	28.27	15.731
54	27.40	15.436
55	26.54	15.135
56	25.68	14.829
57	24.84	14.519
58	24.01	14.205
59	23.19	13.886
60	22.38	13.560
61	21.57	13.229
62	20.78	12.895
63	20.00	12.557
64	19.24	12.217
65	18.49	11.874
66	17.75	11.528
67	17.02	11.179
68	16.31	10.827
69	15.60	10.470
70	14.91	10.110
71	14.23	9.748
72	13.56	9.383
73	12.91	9.020
74	12.28	8.658
75	11.66	8.297
76	11.06	7.938
77	10.47	7.580
78	9.91	7.224
79	9.36	6.874
80	8.83	6.529
81	8.32	6.190
82	7.84	5.863
83	7.38	5.547
84	6.94	5.240
85	6.52	4.944

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
86	6.13	4.660
87	5.75	4.385
88	5.41	4.127
89	5.09	3.886
90	4.79	3.662
91	4.51	3.451
92	4.23	3.227
93	3.94	3.002
94	3.67	2.783
95	3.43	2.580
96	3.21	2.405
97	3.03	2.253
98	2.88	2.133
99	2.71	1.988
100	2.53	1.835
101	2.35	1.686
102	2.18	1.540
103	2.02	1.398
104	1.87	1.260
105	1.72	1.131
106	1.59	1.011
107	1.47	0.901
108	1.35	0.800
109	1.25	0.706
110	1.16	0.620
111	1.08	0.544
112	1.00	0.475
113	0.93	0.411
114	0.86	0.339
115	0.79	0.277
116	0.73	0.217
117	0.67	0.159
118	0.61	0.109
119	0.56	0.062
120	0.50	0.000

This rule is intended to implement Iowa Code sections 450.51 and 450.52.  
[ARC 1137C, IAB 10/30/13, effective 12/4/13]

**701—86.8(450B) Special use valuation.**

**86.8(1) In general.** Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2032A for computing the federal estate tax is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under

Iowa Code section 450.37. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and remainders in real estate specially valued is determined by (1) applying the life estate, remainder or term tables to the special use value—see rule 86.7(450), or (2) by dividing the special use value by the decedent's fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest, real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, real estate held by a partnership or corporation and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

**86.8(2) Definitions and technical terms.** References in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.3(5). Technical terms such as, but not limited to, “qualified real property”; “qualified use”; “cessation of qualified use”; “disposition”; “qualified heir”; “member of the family”; “farm”; “farming purpose”; “material participation”; and “active management” are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 2032A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

**86.8(3) Eligibility requirements.** The eligibility requirements for valuing real estate at its special use value for computing inheritance tax are the same as the eligibility requirements of 26 U.S.C. Section 2032A for the purpose of computing the federal estate tax imposed by 26 U.S.C. Section 2001. Real estate cannot be specially valued for inheritance tax purposes unless it is also eligible and is valued at its special use value for federal estate tax purposes. However, even though real estate is specially valued for federal estate tax purposes, the estate has the right to elect or not to elect to value real estate at its special use value for computing the inheritance tax. Real estate otherwise qualified will be eligible for special use valuation for Iowa inheritance tax purposes if a valid special use valuation election has been made on the federal estate tax return. What constitutes a valid election for federal estate tax purposes is determined under applicable federal law and practice and is not determined by the department.

**86.8(4) Real estate—not eligible.**

*a.* Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.

*b.* Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 86.2(8) and 86.2(9). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See *In re Estate of Millard*, 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 86.8(5)“e,” the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

**86.8(5) Election and agreement.**

*a. In general.* The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the

election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

*b. Form—election.* The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed copy of the election filed as part of the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

*c. Content of the election.* The election must be accompanied by the agreement specified in 86.8(5)“e” and shall contain the information required by federal regulation Section 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes will fulfill the requirements of this subrule.

*d. Protective elections.* A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 86.8(5)“c” and is to be attached, together with the agreement provided for in 86.8(5)“e,” to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

*e. Agreement.* An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent’s death. In the agreement, the qualified heirs must consent to personal liability for the additional inheritance tax imposed by Iowa Code section 450B.3 in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir’s share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

*f. Failure to file the election and agreement.* Failure to file with the inheritance tax return either the election provided for in 86.8(5)“b” or the agreement specified in 86.8(5)“e” shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance tax purposes at its market value in the ordinary course of trade under the provisions of Iowa Code section 450.37.

**86.8(6) Value to use.**

*a. Special use value.* The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property.

*b. Fair market value when a recapture tax is imposed.* The additional inheritance tax imposed by Iowa Code section 450B.3, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent’s death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 86.8(6)“c.” Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Revenue Service.

Iowa Code section 450.37 only applies to property which is not specially valued under Iowa Code chapter 450B.

*c. Fair market value limitations.* The following fair market value limitations shall govern the computation of the additional inheritance tax imposed, if any. If at the time of its disposition or cessation of the qualified use, the fair market value of the property which is the subject of the additional tax is:

1. Greater than its fair market value at the time of the decedent's death, the additional tax is computed on the fair market value at death.

2. Less than its fair market value at the time of death but greater than the special use value, the additional tax is computed on the lesser fair market value.

3. Equal to or less than the special use value of the property, no additional inheritance tax is imposed. In this event, no refund is allowed. Iowa Code chapter 450B makes reference only to the imposition of additional inheritance tax, not to an additional benefit if the agreement is not fulfilled.

As a result, failure to fulfill the agreement provided for in 86.8(5) "e" may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

**86.8(7) Imposition of additional inheritance tax.**

*a. In general.* If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 86.8(6) "c." Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

*b. Additional tax on life or term estates and remainders.* The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, subrule 86.2(7) implementing Iowa Code section 450.44 does not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

*c. Interplay of the additional inheritance tax with the Iowa estate tax for deaths occurring prior to January 1, 2005.* In the event of an early disposition or cessation of the qualified use of the specially valued real estate, the federal estate tax is recomputed with a corresponding recomputation of the credit allowable under 26 U.S.C. Section 2011 for state death taxes paid. If the maximum allowable credit for state death taxes paid as recomputed is greater than the total inheritance tax obligation on all of the shares of the estate, including the shares which have not been revalued, the amount of the maximum credit for state death taxes paid is the additional tax.

*d. Computation of the tax—full disposition or full cessation.* If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 86.8(6) "c" on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A

credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE. Farmer A, a widower, died July 1, 1992, a resident of Iowa, and by will left all of his property to his three nephews in equal shares. Nephew B operates the farm. Nephew C lives in Des Moines, Iowa, and Nephew D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

<u>Asset</u>	<u>Fair Market Value</u>	<u>Special Use Value</u>
160-acre Iowa farm	\$ 480,000 (\$3,000 per acre)	\$ 160,000 (\$1,000 per acre)
Grain and livestock	90,000	90,000
Stocks, bonds and bank accounts	<u>80,000</u>	<u>80,000</u>
Gross Estate	\$ 650,000	\$ 330,000
Less: Deductions without federal estate tax	<u>25,000</u>	<u>25,000</u>
Net estate before federal estate tax	\$ 625,000	\$ 305,000

COMPUTATION OF THE INHERITANCE TAX  
UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	\$305,000
Less: Federal estate tax	<u>4,120</u>
Net Estate	\$300,880

TAX ON SHARES

<u>Beneficiary</u>	<u>Share</u>	<u>Tax</u>
To each nephew	\$101,666.67	\$11,250.00
Total Tax Paid	\$11,250 × 3	= \$33,750.00

On October 15, 1995, Nephew B, the qualified heir, retires from farming and all three nephews sell the farm to a nonrelated party for \$3,200 per acre, or \$512,000. Under 86.8(6) "c," the \$3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX DUE TO THE EARLY  
DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax	\$625,000
Less: Revised federal estate tax (\$9,250 was deducted for credit for state death taxes paid)	<u>0</u>
Net Estate	\$625,000

<u>Tax on Shares</u>	<u>Share</u>	<u>Tax</u>
To each nephew \$208,333.33	\$27,250.00	
Less tax previously paid	<u>11,250.00</u>	
	16,000.00	
Additional tax due		
Interest at 10% from 4-03-93 to due date 4-15-96		<u>\$4,734.40</u>
Total Due Each Nephew		\$20,734.40
Total additional tax and interest for all three shares $\$20,734.40 \times 3 = \$62,203.20$ .		

NOTE: In this example, the total additional tax for the three nephews before a credit for tax previously paid is  $\$27,250.00 \times 3$  or  $\$81,750.00$ . The credit for state death taxes paid on the revalued federal estate is  $\$9,250.00$ . Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning the last day of the ninth month after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, 1996.

*e. Computation of the tax—partial disposition or cessation of the qualified use.*

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir (brother of the decedent) is  $\$100,000$  and the special use value of the three parcels is  $\$75,000$ . The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	\$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

Computation of Maximum Amount of Additional Tax

Tax based on fair market value ( $\$100,000 \times 10\%$ )	\$10,000
Tax based on special use value ( $\$75,000 \times 10\%$ )	<u>7,500</u>
Maximum amount of additional tax	\$ 2,500

Computation on the First Partial Additional Tax

Parcel 1, sale to an unrelated party

FMV of Parcel 1	<u>\$ 25,000</u>	×	\$2,500	=	\$625
FMV of all special use property	\$100,000		(Maximum add'l tax)		(First add'l tax)

(2) Second or any succeeding disposition or cessation of the qualified use. Compute the maximum amount of the additional tax as outlined in the first partial disposition or cessation of the qualified use. Increase the numerator of the fraction used to determine the first additional tax by the fair market value

of the second partial disposition or cessation of the qualified use. The denominator remains the same. The computed tax is then credited with the tax paid on the first partial disposition or cessation of the qualified use. Succeeding partial dispositions or cessations of the qualified use are handled in the same manner by increasing the numerator of the fraction and a corresponding increase in the credit for the prior additional tax paid.

Computation of the second and succeeding partial dispositions or cessations of the qualified use can be illustrated by the following examples:

**EXAMPLE 2.** Second partial additional tax. Same facts as in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2	<u>\$ 75,000</u>	×	\$2,500 (Maximum add'l tax)	=	\$1,875
FMV of all special use property	\$100,000				
Less tax paid on Parcel 1					<u>625</u>
Second Add'l Tax					\$1,250

**EXAMPLE 3.** Third partial additional tax. Same facts as in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3	<u>\$100,000</u>	×	\$2,500 (Maximum add'l tax)	=	\$2,500
FMV of all specially valued real estate	\$100,000				
Less tax paid on Parcels 1 & 2					<u>1,875</u>
Third Additional Tax					\$ 625

*f. No additional tax on shares not revalued.* The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

**EXAMPLE.** Decedent A, a widower and resident of Iowa, died testate July 1, 1992, survived by nephew B and niece C. His estate consisted of two Iowa farms and certain personal property. Under A's will, the niece and nephew share equally in the personal property. Nephew B received one farm and niece C the other one. Nephew B, a qualified heir, elected to specially value his farm and niece C did not. The inheritance tax was paid on this basis. Five years after A's death, nephew B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only nephew B owes an additional tax. Niece C's share in the estate is not revalued.

**86.8(8) Return for additional inheritance tax.** The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

**86.8(9) Due date for paying the additional inheritance tax.** The additional inheritance tax imposed by Iowa Code section 450B.3 and the return for the additional tax is due six months after the early disposition or cessation of the qualified use of the real estate specially valued.

**86.8(10) No extension of time to file or pay.** Iowa Code chapter 450B makes no provision for an extension of time to file the return for the additional tax and pay the additional inheritance tax due.

Therefore, if the return for the additional tax is not filed or the additional inheritance tax is not paid within six months after the early disposition or cessation of the qualified use, the return or the tax is delinquent and subject to penalty under subrule 86.8(13).

**86.8(11) *Interest on additional tax.*** The additional inheritance tax imposed under Iowa Code section 450B.3 accrues interest at the rate of 10 percent per annum until paid commencing the last day of the ninth month after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

**86.8(12) *Receipt for additional tax.*** The receipt for the additional tax imposed by Iowa Code section 450B.3 is separate and distinct from the receipt for inheritance tax required by Iowa Code section 450.64. The receipt must identify the property which was the subject of the early disposition or cessation of the qualified use, the owners of the property, the qualified heir, the amount paid and whether the additional tax paid is for a partial or full disposition or cessation of the qualified use.

**86.8(13) *Penalty for failure to file or failure to pay.*** Department rules 701—Chapter 10, pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance tax or to pay the additional tax due imposed by Iowa Code section 450B.3.

**86.8(14) *Duties and liabilities.***

*a. Duty to report an early disposition or cessation of the qualified use.* The agent designated in the agreement required by 86.8(5) "e" has the duty to notify the department of any early disposition or cessation of the qualified use of the property on or before the due date of the additional inheritance tax. An executed copy of the notice required by federal regulation Section 20.2032A(c)(4) will satisfy this subrule.

*b. Liability for payment of the tax.* The qualified heir or the heir's successor is personally liable for all the additional inheritance tax imposed under Iowa Code section 450B.3. It is the qualified heir's duty to collect the additional Iowa inheritance tax from each person whose share was revalued. In respect to the additional tax, the duty of the qualified heir is the same as the duty of the fiduciary of an estate or trust under Iowa Code section 450.5, for the regular inheritance tax. See subrule 86.2(1) regarding the responsibility of the fiduciary of an estate or trust. While the qualified heir is primarily liable for the payment of all of the additional tax, each person who has an interest in the real estate no longer eligible to be specially valued is also liable under the agreement provided for in 86.8(5) "e" for additional tax on that person's revalued share. Therefore, if the qualified heir fails to pay the additional tax imposed on any revalued share, the department may proceed to collect the delinquent tax from the person who received the share. The liability for the additional tax due from each person who had an interest in the revalued real estate is the same as the liability for the inheritance tax on property not specially valued. See *Eddy v. Short*, 190 Iowa 1376, 1380, 1832, 179 N.W. 818 (1920); *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906).

*c. Books and records.* It is the duty of the qualified heir to keep books and records necessary to substantiate the continued eligibility of the real estate for special use valuation. Upon request, the agent designated in the agreement shall furnish the department sufficient information relating to the use, ownership and status of the real estate to enable the department to determine whether there has been an early disposition or cessation of the qualified use.

**86.8(15) *Special lien for additional inheritance tax.***

*a. In general.* The special lien created by Iowa Code section 450B.6 is separate and distinct from the lien provided for in Iowa Code section 450.7, for the inheritance tax imposed at the time of the decedent's death. The special lien is to secure any additional inheritance tax that may be due within the ten-year period after the decedent's death, should there be an early disposition or cessation of the qualified use. The inheritance tax lien provided for in Iowa Code section 450.7 is only to secure the

tax imposed at the time of the decedent's death on the transfer of property including property that is specially valued. If an additional tax is imposed for the early disposition or cessation of the qualified use, it is secured by the lien created by Iowa Code section 450B.6.

*b. Form of the notice of the special lien.* The notice of the special lien for additional inheritance tax created by Iowa Code section 450B.6 must conform as nearly as possible to the special use valuation lien provided for in 26 U.S.C. Section 6324B.

*c. Notice of lien.* Unlike the lien provided for in Iowa Code section 450.7, notice of the special lien for additional inheritance tax must be recorded before it has priority over subsequent mortgagees, purchasers or judgment creditors. The special lien is perfected by recording the notice of the special lien in the recorder's office in the county where the estate is being probated (even though the real estate may be located in a different county). Failure to perfect the special lien by recording as provided for in Iowa Code section 450B.6 divests the qualified real property from the lien in the event of a sale to a bona fide purchaser for value.

*d. Duration of the special lien.* The special lien continues:

(1) Until the additional inheritance tax is paid, or ten years after the date the additional tax is due, whichever first occurs, if there is an early disposition or cessation of the qualified use, or

(2) For ten years after the decedent's death on all other property which has been specially valued.

*e. Release of the lien.* The special lien for additional inheritance tax:

(1) May be released at any time in whole or in part upon adequate security being given to secure the additional tax that may be due, if any.

(2) Is released by payment of the additional inheritance tax imposed by Iowa Code section 450B.3, on the property which was the subject of an early disposition or cessation of the qualified use.

(3) Is released when it becomes unenforceable by reason of lapse of time.

*f. Application to release the lien.* Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. Supporting documentation may include a copy of the federal release. If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien.

**86.8(16) Valuation of the decedent's interest in corporations, partnerships and trusts—special rules.** If the decedent's interest in a corporation, partnership or a trust has been valued at its special use valuation under 26 U.S.C. Section 2032A for federal estate tax purposes, it is also eligible to be valued at its special use value for inheritance tax purposes, subject to the limitation imposed by statute and these rules. See Internal Revenue Service letter ruling 8108179 (1980) for guidelines in valuing the decedent's interest. Other factors indicative of value, such as the value of other assets, net dividend-paying capacity, book value, profit and loss statements and net worth must also be taken into account in arriving at the value of the decedent's interest for inheritance tax purposes. See Revenue ruling 59-60, 1959-1 C.B. 243 for the factors to be considered in valuing closely held corporate stock. In the event the decedent's interest in a corporation, partnership or trust is no longer eligible to be specially valued, the additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

**86.8(17) Audits, assessments and refunds.** Subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance tax imposed by Iowa Code section 450B.3.

**86.8(18) Appeals.** Rule 701—86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance tax imposed by Iowa Code chapter 450B.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7.

[ARC 1545C, IAB 7/23/14, effective 8/27/14]

**701—86.9(450) Market value in the ordinary course of trade.** Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and subrules 86.9(1) and 86.9(2). If the value is established by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the department of revenue, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). Effective for estates with decedents dying on or after July 1, 2004, if an agreement cannot be reached regarding the valuation of real property, then the department may request, within 60 days after the return is filed with the department, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in Iowa Code section 450.37 and subrule 86.9(2). Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

**86.9(1) In general.** With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. “Market value in the ordinary course of trade” and “fair market value” are synonymous terms. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031(1)(b) and Iowa Code section 441.21(1)“b” for similar definitions of fair market value.

*a. Values not to be used.* Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent's property. Also, fair market value cannot be determined alone by setting out in the decedent's will the price for which property can be sold. *In re Estate of Fred W. Rekers*, Probate No. 28654, Black Hawk County District Court, July 26, 1972.

*b. Date of valuation.* Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent's death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any

appreciation or depreciation of the value of an asset after the decedent's death is not to be taken into consideration. *Insel v. Wright County*, 208 Iowa 295, 225 N.W.378 (1929).

**86.9(2) Market value—how determined.**

*a. In general.* The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property's monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. *Hetland v. Bilstad*, 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item's value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. *Juhl v. Greene County Board of Review*, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item's fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item's fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1. Under the provisions of the decedent's will, the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for \$2,500. The fair market value of the household goods on the day of sale is \$2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for \$2,500, which may or may not be the fair market value of the property. Family pride, sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

*b. Values established by recognized public markets.*

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

*c. Private sales that may establish fair market value.* Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

*d. Fair market value—no regularly established market.*

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable

to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent \$5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the \$5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of \$300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for \$10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is \$10,000 because it is collectible in full. Each nephew's share of the estate is \$155,000. Nephew C receives \$155,000 in cash and nephew B receives \$145,000 in cash plus his canceled note for \$10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris*, 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen*, 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard*, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell

and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for \$15,000. The amount received in settlement of the claim can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.*, 222 N.W.2d 459 (Iowa 1974).

*e. By agreement between the department, the estate and its beneficiaries.* Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or

3. The department does not request an appraisal within 60 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail, and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)"e"(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain

a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 60 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

*f. Values established—no agreement.*

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2) "e," the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, "real estate or real property" means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in rule 701—86.4(450). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2) "e," the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director's decision under Iowa Code chapter 17A.

*g. Amending returns to change values.*

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset's value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as "unknown" or "undetermined."

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department's request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County*, 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department's administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director's decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, 450.44 to 450.49, and 633.800 to 633.811.

[ARC 1137C, IAB 10/30/13, effective 12/4/13]

#### **701—86.10(450) Alternate valuation date.**

**86.10(1) When available.** The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is six months after the date of the decedent's death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See federal regulation Section 20.2032-1, as amended December 28, 1972, for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. The estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

#### **86.10(2) When not available.**

*a.* The alternate valuation date provided for in 26 U.S.C. Section 2032 cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W. 2d 469 (1950).

*b.* Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

*c.* The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing

requirements under current federal authority. The fact that the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirement is not relevant.

This rule is intended to implement Iowa Code sections 422.3 and 450.37.

**701—86.11(450) Valuation—special problem areas.**

**86.11(1) Valuation of life estate and remainder interests—in general.** Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart*, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans*, 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

**86.11(2) Single life estate and remainder.** The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 701—86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of \$2,000 per acre, or \$320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is .43306; that is, the use of the \$320,000 for life at the statutory rate of return of 4 percent is worth 43.306 percent of the value of the farm. Niece C's remainder factor is .56694. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

<u>Value of B's Life Estate</u>	$\$320,000 \times .43306 =$	\$138,579.20
<u>Value of C's Remainder</u>	$\$320,000 \times .56694 =$	<u>\$181,420.80</u>
Total Value		\$320,000.00

**86.11(3) Joint and succeeding life estates.** If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans*, 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews D and E in equal shares. The 160-acre farm had a fair market value at A's death of \$320,000. Neither the alternate valuation date nor special use value was elected.

#### COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. <u>Value of B's Life Estate:</u>		
Life estate factor for age 68 is .43306		
$\$320,000 \times .43306 =$		\$138,579.20
2. <u>Value of C's Succeeding Life Estate</u>		
Life estate factor for age 45 is .71463		
$\$320,000 \times .71463 =$	\$228,681.60	
Less: B's life estate	<u>\$138,579.20</u>	
Value of C's life estate		\$ 90,102.40
3. <u>Value of D's ½ remainder</u>		
Remainder factor for a life tenant aged 45 is .28537		
as ½ of $\$320,000 \times .28537 =$		\$ 91,318.40
4. <u>Value of E's ½ remainder</u>		
½ of $\$320,000 \times .28537$		<u>\$ 91,318.40</u>
Total Value — life estates and remainders		<u>\$320,000.00</u>

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of \$2,200 per acre, or \$528,000; the alternate value of the farm six months after death was \$2,100 per acre, or \$504,000. Its special use value is \$1,000 per acre or \$240,000. The life estates and the remainder are computed on the basis of the special use value of \$240,000.

#### COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. <u>B's share of joint life estate.</u>		
$\$240,000 \times .64086$ (life estate factor, age 52) =	\$153,806.40	
½ as B's share =		\$ 76,903.20
2. <u>C's share of joint life estate.</u>		
$\$240,000 \times .68468$ (life estate factor, age 48) =	\$164,323.20	

Less: ½ value of life estate for B’s life	\$ 76,903.20	\$ 87,420.00
<b>3. Value of the remainder.</b>		
The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .31532, based on C’s age of 48.		
<u>D’s share of the remainder.</u>		
½ \$240,000 × .31532 =		\$ 37,838.40
<u>E’s share of the remainder.</u>		
Same as D’s		\$ 37,838.40
Total value of joint life estates and the remainder		<u>\$240,000.00</u>

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant’s share during B’s life is worth \$76,903.20. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

**86.11(4) Fixed sum annuity for life or for a term of years.** The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 701—86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property, and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum \$5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A’s death is \$2,000 per acre, or \$480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE \$5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule 701—86.7(450), the 4 percent annuity factor for life at age 54 is 15.436 for each dollar of the annuity received. Therefore, C’s life annuity is computed as follows:

<u>C’s Annuity</u>		
\$5,000 × 15.436 =		\$ 77,180
<u>B’s Reversionary — Remainder Interest</u>		
Value of farm	\$480,000	
Less: C’s annuity	<u>\$ 77,180</u>	<u>\$402,820</u>
Total annuity and reversion — Remainder		\$480,000

NOTE: In this example, the \$5,000 annuity is worth less than a life estate in the farm. A life estate would be worth \$273,499.20 because the use of \$480,000 at 4 percent per year would return \$19,200 per year, which is much greater than the \$5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of \$100,000 be set aside from the residuary estate to be held in trust to pay \$500 per month to B for life, and upon B's death, the remaining principal and income, if any, are to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is 19.946 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is \$6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's \$6,000 ANNUITY

$\$500.00 \times 12 = \$6,000 \times 19.946 = \$119,676$ , which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is \$100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

**86.11(5) Valuation of remainder interests.** Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 701—86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard*, 251 Iowa 1282, 105 N.W.2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

*a.* If the tax on a remainder or other future property interest is paid within 9 months after the decedent's death (12 months for estates of decedents dying prior to July 1, 1981), the tax is to be based on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, 6 months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

*b.* If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value nor special use value can be used to value the property after nine months from the date of the decedent's death.

*c.* If the tax on the remainder or other future property interest is not paid under paragraphs "a" and "b," the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph "b." If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. For information regarding interest rate, see 701—Chapter 10. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur due to the lapse of time between the due date of the tax and the date the tax is paid.

*d.* Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term “present worth” means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent’s death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph “*b*” or “*c*” of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent’s death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In re Estate of Dwight E. Clapp*, Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

*e.* If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

*f.* Tax rates in effect at the date of the decedent’s death are the rates applicable for computation of the tax owed. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, 2009, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B’s death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was \$2,000 per acre, or \$480,000 on the date of A’s death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 2010, the tax on B’s life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 2011, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for \$2,100 per acre, or \$504,000. B’s life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph “*b*,” when the life estate is terminated before the life tenant’s death. The sale price of the farm and the life estate remainder factor reflecting B’s age on October 15, 2011, (B’s age is now 76) control the value of the remainder.

#### COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 701—86.7(450) for a life tenant aged 76 is .68249.

<u>C’s ½ remainder interest</u>	$\frac{1}{2} (\$504,000 \times .68249) =$	\$171,987.48
<u>D’s ½ remainder interest</u>	same as C’s	<u>171,987.48</u>
Total value of remainder		\$343,974.96

NOTE: In this example, the value of C’s and D’s remainder interest in the sale proceeds is greater than the value of the remainder at the time of A’s death due to the increase in the remainder factor because of B’s increased age and the increase in the fair market value of the farm. However, if B’s life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C’s and D’s remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, 2005, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A’s ownership of the remainder interest was not discovered until after life tenant B’s death on October 15, 2007. The fair market value of the farm was \$2,000 per acre or \$480,000 on July 1, 2005, and \$2,200 per acre or \$528,000 on October 15, 2007. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 701—86.10(450) and subrule 86.8(4), paragraph “*c*.” A’s estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, 2007, basing the tax on the fair market value and

the remainder factor corresponding with the life tenant's age (87) on July 1, 2005. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of \$2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, 2008, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

**86.11(6) Valuation of contingent property interests.** Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E, who own the remainder, will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepf*, 258 Iowa 33, 138 N.W.2d 886 (1965).

**86.11(7) Valuation of growing crops owned by the decedent.** Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an "arm's-length transaction," then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for \$3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times 2,000 \text{ bushels} \times \$3.10 \text{ per bushel} = \$3,728.10$$

**86.11(8) Valuation of cash rent farm leases.** If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

EXAMPLES: The decedent has a cash rent farm lease agreement (beginning March 1 through the end of February of the next year) with farmer X for automatic yearly rentals. The rent is due in two installments: \$10,000 on March 1 and \$10,000 on September 1.

1. Decedent dies February 1, 2011.  $\$20,000 \times 338/365 = \$18,520.55$ . Farmer X had paid his two installments in 2010. His next installment is due March 1, 2011, for the new farm rental year. Farmer X has overpaid by \$1,479.45 ( $\$18,520.55 - \$20,000 = -\$1,479.45$ ). No refund or credit is allowed.

2. Decedent dies April 20, 2011.  $\$20,000 \times 51/365 = \$2,794.52$ . Farmer X has paid his March 1 installment of \$10,000. Farmer X has overpaid by \$7,205.48 ( $\$2,794.52 - \$10,000 = -\$7,205.48$ ). No refund or credit is allowed.

3. Decedent dies October 10, 2011.  $\$20,000 \times 224/365 = \$12,273.97$ . Farmer X paid his March installment but has not paid his September installment. Farmer X has underpaid at the date of death.  $\$12,273.97 - \$10,000 = \$2,273.97$ . This amount must be reported as an asset. It is an accounts receivable due at date of decedent's death.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

[ARC 1137C, IAB 10/30/13, effective 12/4/13]

#### **701—86.12(450) The inheritance tax clearance.**

**86.12(1) In general.** The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

**86.12(2) Limitations on the clearance.** Limitations on the inheritance clearance include, but are not limited to:

*a.* If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

*b.* The clearance does not extend to property that is not reported on the return.

*c.* The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

**86.12(3) *The tax paid in full clearance.*** Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph “a,” for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

**86.12(4) *The no tax due clearance.*** If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

**86.12(5) *Clearance releases the lien.***

a. *In general.* Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. *The section 450.7 lien.* Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to July 1, 1995. A lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of \$2,000 per acre, or \$320,000 and personal property worth \$320,000. On May 24, 1995, the inheritance tax return was filed and tax of \$88,000 (\$44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth \$10,000 ( $\$10,000 \times 15\% = \$1,500$ ) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the \$1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

*c. The section 450B.6 lien.* This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

**86.12(6) Distribution of the clearance.** Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.1 as amended by 1999 Iowa Acts, chapter 152, section 32, 450.7 as amended by 1999 Iowa Acts, chapter 151, section 45, 450.27 as amended by 1999 Iowa Acts, chapter 152, section 33, and Iowa Code sections 450.5, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

**701—86.13(450) No lien on the surviving spouse's share of the estate.** Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.

**701—86.14(450) Computation of shares.** The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

**86.14(1) Right to take against the will.** In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and *In the Matter of Campbell*, 319 N.W.2d 275, 277 (Iowa 1982).

**86.14(2) Family settlements.** Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

**86.14(3) Order of abatement.** Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

**86.14(4) Contrary order of abatement.** An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order

of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see, *Estate of Lois C. Olin*, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

**86.14(5)** *“Stepped-up” basis.* If a decedent’s will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a “stepped-up” basis will be utilized when computing the shares which will result in the appropriate beneficiaries’ shares to include the tax obligation that was paid as an additional inheritance. A “stepped-up” basis is based on gifts prior to the residual share; shares paid out of the residue are not stepped-up.

EXAMPLE: Decedent’s will gives \$1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax:  $\$1,000 \times 10\% = \$100$ . Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example):  $\$100 \text{ divided by } 90\% = \$111.11$ . Add the stepped-up tax of \$111.11 to the original bequest of \$1,000. This results in a stepped-up share of \$1,111.11, which allows the nephew to keep \$1,000 after the tax is paid.

**86.14(6)** *Antilapse provision and the exception to the antilapse statute.* Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

**86.14(7)** *Disclaimer.* A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor’s fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor’s fiduciary. For additional details regarding disclaimers, please see Iowa Code Supplement chapter 633E.

Effective for estates with decedents dying on or after July 1, 2004, disclaimers are to be filed in compliance with the Iowa uniform disclaimer Act, Iowa Code Supplement chapter 633E. This Act sets forth new requirements for valid disclaimers. Criteria will be based on the type of property or the interest being disclaimed. General criteria for disclaimers have not changed. To be valid, a disclaimer must be in writing or be stored in electronic record or other medium that is retrievable, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be filed. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest in property of the estate.

A disclaimer becomes irrevocable when it is delivered, filed, or when it becomes effective, whichever occurs later. Delivery of a disclaimer may generally be made by personal delivery, first-class mail, or any other method likely to result in its receipt. However, specific interests being disclaimed require specific means of delivery. For explicit information regarding delivery of a disclaimer based on interest being disclaimed, see Iowa Code Supplement section 633E.12.

**86.14(8)** *Right of retainer.* If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee’s share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

**86.14(9)** *Deferred life estates and remainder interest.*

a. A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with the remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of the life tenant pursuant to Iowa Code section 450.46. Penalties and interest are not imposed if the tax is paid before the last day of the ninth month from the date of the death of the life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of the life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form, and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

b. If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

c. If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond's being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50. The estate may secure payment of the deferred tax by providing other security in lieu of a bond, including but not limited to securities named in Iowa Code section 450.48(2) and securities deemed satisfactory by the department.

**86.14(10) Credit on prior transfers.** A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

a. The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

b. The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate. This means that the tax in the current estate must be apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

EXAMPLE 1: *Limitation—maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate.*

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

Real estate	\$400,000
Cash, etc.	\$250,000
Expenses	\$150,000

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

½ interest in Sister's real estate (current value)	\$225,000
Full interest in his own real estate	\$500,000
½ interest in Sister's cash, etc.	\$ 50,000
Full interest in his own cash, etc.	\$500,000
Expenses	\$200,000

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the current tax due, \$103,875, by the amount of tax paid in the prior estate, \$21,375. The result is \$82,500.

Percentage of Brother A's tax of \$103,875 generated by Sister's property included in Brother B's estate:

$$\$275,000/\$1,075,000 = 25.58\%$$

$$\$103,875 \times 25.58\% = \$26,571.23$$

Maximum credit cannot be more than the tax paid in the prior estate, \$21,375. The tax due in this estate is \$82,500.

*EXAMPLE 2: Limitation—amount of credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate.*

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

Real estate	\$400,000
Cash, etc.	\$250,000
Expenses	\$150,000

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

½ interest in Sister's real estate (current value)	\$225,000
Full interest in his own real estate	\$500,000
½ interest in Sister's cash, etc.	\$ 50,000
Full interest in his own cash, etc.	\$500,000
Expenses	\$200,000

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the amount of the current tax due, \$103,875, by the tax paid in the prior estate, \$21,375. The result is \$82,500.

\$1,075,000 less prior estate properties worth \$275,000 equals \$800,000. Tax would equal \$76,375.

The greater of the two computations (\$82,500 v. \$76,375) is the tax due in the estate. \$82,500 would be due.

EXAMPLE 3: *Two-year requirement.* Same facts as above, except that Brother B dies two years and two months after the date of death of Sister. Tax is \$103,875 with no reduction since it is over the two-year limitation.

EXAMPLE 4: *Multiple beneficiary issues.* Same facts as above, except that beneficiaries of Brother B have changed. If there are multiple beneficiaries in the second estate, only the beneficiaries that are brother, sister, son-in-law, or daughter-in-law relationships to the prior decedent can utilize the credit. The credit is then determined by the property value passing in this estate that can be identified as being inherited by this decedent from a prior estate.

Brother B dies one year and two months after his Sister. He leaves his real estate to Brother A and the residual assets to his two nieces.

Brother B's share of prior decedent's (Sister's) estate equals \$725,000. Tax equals \$68,875. Reduce the current tax due, \$68,875, by the tax paid in the prior estate, \$21,375. The result is \$47,500.

Niece 1's share equals \$175,000. Tax equals \$22,250.

Niece 2's share equals \$175,000. Tax equals \$22,250.

Total tax for Brother B's estate with no reductions equals \$113,375.

Total tax with Brother B's reduced tax is \$92,000.

Computation without the prior decedent's (Sister's) property that passes to a qualified heir:

Brother B's share would be \$500,000. Tax equals \$46,375.

Niece 1's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Niece 2's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Total tax for this computation is \$90,875.

The greater of the two computations is \$92,000. \$92,000 would be due.

**86.14(11) Prorated cash bequests.** If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see *Estate of Dennis M. Billingsley*, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

This rule is intended to implement Iowa Code chapters 450 and 633E.  
[ARC 1137C, IAB 10/30/13, effective 12/4/13; ARC 4310C, IAB 2/13/19, effective 3/20/19]

**701—86.15(450) Applicability.** Any references made within Chapter 86 of these rules to Chapter 87 of these rules, “Iowa Estate Tax,” are applicable only for deaths that occurred prior to January 1, 2005.

This rule is intended to implement 2014 Iowa Acts, House File 2435, section 25.  
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◊ Two or more ARCs



CHAPTER 224  
TELECOMMUNICATION SERVICES

**701—224.1(423) Taxable telecommunication service and ancillary service.** The gross receipts from the sale of all telecommunication service and ancillary service are subject to the sales or use tax. This chapter applies to telecommunication service and ancillary service that are billed on or after November 23, 2011. For telecommunication service and ancillary service billed prior to November 23, 2011, refer to rule 701—18.20(422,423), Iowa Administrative Code.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

**701—224.2(423) Definitions.**

*“800 service”* means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

*“900 service”* means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900 service” and any subsequent numbers designated by the Federal Communications Commission.

*“Air-to-ground radiotelephone service”* means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunication service for hire to subscribers in aircraft.

*“Ancillary services”* means services that are associated with or incidental to the provision of a telecommunication service. “Ancillary services” includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

*“Call-by-call basis”* means any method of charging for telecommunication services in which the price is measured by individual calls.

*“Communications channel”* means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

*“Conference bridging service”* means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include telecommunication services used to reach the conference bridge.

*“Customer”* means the person or entity that contracts with the seller of telecommunication services. If the end user of telecommunication services is not the contracting party, the end user of the telecommunication service is the customer of the telecommunication service. For purposes of sourcing sales of telecommunication service, the end user of the telecommunication service is the customer of the telecommunication service when the end user is not also the contracting party. “Customer” does not include a reseller of telecommunication service or for mobile telecommunication service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

*“Customer channel termination point”* means the location where the customer either inputs or receives the communications.

*“Detailed telecommunication billing service”* means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

*“Directory assistance”* means an ancillary service of providing telephone number information and address information.

*“End user”* means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

*“Fixed wireless service”* means a telecommunication service that provides radio communication between fixed points.

“*Gross receipts from the sale of telecommunication service*” or “*gross receipts*” means all charges to any person which are necessary for the end user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 224.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state even though payment of the charge may also be necessary to secure other services.

“*Home service provider*” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

“*International*” means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“*Interstate*” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

“*In this state*” means that telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is “interstate” in nature and not subject to tax.

“*Intrastate*” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

“*Mobile telecommunication service*” means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. § 124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. Refer also to Iowa Code section 423.2(9) as amended by 2011 Iowa Acts, Senate File 515, section 5.

“*Mobile wireless service*” means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

“*Paging service*” means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

“*Pay telephone service*” means a telecommunication service provided through any pay telephone. “Pay telephone service” also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

“*Place of primary use*” means the street address representative of where the customer’s use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunication service, the place of primary use must be within the licensed service area of the home service provider.

“*Postpaid calling service*” means the telecommunication service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A postpaid calling service includes a telecommunication service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

“*Prepaid calling service*” means the right to access exclusively telecommunication services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, that are sold in predetermined units or dollars of which the number declines with use in a known amount.

“*Prepaid wireless calling service*” means a telecommunication service that provides the right to utilize mobile wireless service as well as other non-telecommunication services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in

advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

*“Private communication service”* means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

*“Residential telecommunication service”* means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

*“Service address”* means:

1. The location of the telecommunication equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph “1” is not known, “service address” means the origination point of the signal of the telecommunication service first identified by either the seller’s telecommunication system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs “1” and “2” are not known, the service address means the location of the customer’s place of primary use.

*“Telecommunication service”* means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. “Telecommunication service” does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer’s premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by a commercial mobile radio service provider, as defined in 47 CFR 20.3;

8. Ancillary services;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

*“Value-added non-voice data service”* means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

*“Vertical service”* means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

“Voice mail service” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

### **701—224.3(423) Imposition of tax.**

**224.3(1) Taxable telecommunication service and ancillary service.** The gross receipts from the sale of telecommunication service and ancillary service are subject to the sales or use tax. The following is a nonexclusive list of telecommunication services subject to the Iowa sales and use tax:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;
- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

**224.3(2) Other taxable services and circumstances.** The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Gross receipts from services performed by another company.* Gross receipts collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable gross receipts of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. *Directory assistance.* Charges for directory assistance service rendered in this state are subject to tax.

d. *Electrical installation and repair.* The gross receipts from the installation or repair of any inside wire that provides electrical current that allows an electronic device to function are subject to tax. These gross receipts are from the enumerated service of electrical repair or installation. The gross receipts from “inside wire maintenance charges” for services performed under a service or warranty contract are also subject to tax. Depending upon the circumstances, these gross receipts are for the enumerated service of “electrical repair” or are incurred under an “optional service or warranty contract” for an enumerated service. In either event, the receipts are subject to tax.

e. *Electrical installation or repair: billing methodology.* The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, are subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. *Nonitemized taxes and charges.* Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

*g. Rental of tangible personal property.* The gross receipts from the rental of any device for home or office use or to provide a telecommunication service to others are taxable as the rental of tangible personal property. The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device is also subject to tax.

*h. Sales of tangible personal property.* The sale of any device, new or used, is subject to tax both when the device is in place on the customer's premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. See Iowa Code section 423.3. Other exemptions may be applicable as well.

*i. Mandatory charges or fees.* Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and therefore subject to tax.

*j. Deposits.* Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of gross receipts.

*k. Municipal utilities.* Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. See subrule 224.4(5).

*l. Fax.* The service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state is subject to sales tax.

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via Klear Kopy's fax machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communication service on Klear Kopy's dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing which is attributable to expenses for faxing. For example, "bill to John Smith for August 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30." The \$30 is not gross receipts for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

**701—224.4(423) Exempt from the tax.** This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

**224.4(1)** Detailed communications billing service.

**224.4(2)** Internet access fees or charges.

**224.4(3)** Value-added non-voice data service.

**224.4(4)** Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

*a.* Fees and charges for securing only interstate telecommunication services.

*b.* Federal taxes.

*c.* Fees and charges for only interstate directory assistance.

**224.4(5)** Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or

instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

**224.4(6)** Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

**224.4(7)** 911 surcharge. A 911 emergency telephone service surcharge is a surcharge for a service which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for 911 emergency telephone service is not subject to sales tax if:

- a. The amount is no more than \$1 per month per telephone access line; and
- b. The surcharge is separately identified and separately billed.

**224.4(8)** Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

**224.4(9)** Resale exemption. Services or facilities furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualify for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

**224.4(10)** Online services. Any contracted online service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted online services, as long as they provide access to information through a computer server.

**224.4(11)** New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. For more information about the exemptions for new construction, see 701—Chapter 219.

[ARC 9814B, IAB 10/19/11, effective 11/23/11; ARC 4309C, IAB 2/13/19, effective 3/20/19]

#### **701—224.5(423) Bundled transactions in telecommunication service.**

**224.5(1)** A “bundled transaction” is the retail sale of two or more products where:

- a. The products are otherwise distinct and identifiable; and
- b. The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products for which the sales price varies or is negotiable based on the purchaser’s selection of the products included in the transaction.

**224.5(2)** In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider’s books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

b. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider’s books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

**224.5(3)** The provisions of this rule apply unless otherwise provided by federal law.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

#### **701—224.6(423) Sourcing telecommunication service.**

**224.6(1)** The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services unless the service falls under one of the exceptions set forth in subrule 224.6(2).

**224.6(2)** Exceptions. The following telecommunication services and products are sourced as follows:

*a.* Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

*b.* The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1) “e” shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer’s website. No items are delivered. The sale would be sourced to the consumer’s Iowa billing address.

EXAMPLE 4: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller’s website. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer’s billing address in Iowa.

EXAMPLE 5: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller’s website. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

*c.* A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

*d.* The sale of Internet access service is sourced to the customer’s place of primary use.

*e.* The sale of an ancillary service is sourced to the customer’s place of primary use.

*f.* A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

(1) The seller’s telecommunication system; or

(2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

*g.* The sale of telecommunication service sold on a call-by-call basis is sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

*h.* The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

*i.* The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. [ARC 9814B, IAB 10/19/11, effective 11/23/11; ARC 0527C, IAB 12/12/12, effective 1/16/13]

**701—224.7(423) General billing issues.** This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

**224.7(1) Retailers liable for collecting and remitting tax.** Retailers that sell taxable telecommunication service and ancillary service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

**224.7(2) Billing date and tax period.** Companies that bill their subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in their gross receipts. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

**224.7(3) Permitting business offices.** All companies must have a permit for each business office that provides telecommunication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of those offices.

**224.7(4) Credit.** A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

**224.7(5) Direct pay permit not applicable to telecommunication services.** The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

**224.7(6) Guaranteed amounts for coin-operated telephones.** If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable gross receipts collected.

[ARC 9814B, IAB 10/19/11, effective 11/23/11]

**701—224.8(34A) Prepaid wireless 911 surcharge.**

**224.8(1) Definitions.** The definitions in 701—224.2(423) apply to this rule. The following definitions are also applicable to this rule.

“*Consumer*” means a person who purchases prepaid wireless telecommunications service in a retail transaction.

“*Department*” means the department of revenue.

“*Prepaid wireless 911 surcharge*” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

“*Provider*” means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“*Retail transaction*” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include, but are not limited to, prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“*Seller*” means a person that sells prepaid wireless telecommunications service to another person.

**224.8(2) Registration.** Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

**224.8(3) Collecting, filing, and remitting.**

*a.* Each seller is responsible for collecting the applicable 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service located in paragraph 224.6(2) “*b.*” See also Iowa Code sections 34A.7B(4), 423.20 and 423.15.

*b.* The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

*c.* The prepaid wireless 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers as provided in paragraph 224.8(3) “*a.*” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

*d.* The amount of the prepaid wireless 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

*e.* The seller must complete a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

*f.* The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

*g.* The seller may deduct and retain 3 percent of prepaid wireless 911 surcharges that are collected by the seller from consumers.

*h.* The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells

a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

**224.8(4) *Audit, appeal, and enforcement.***

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. See also Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. See also Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

**224.8(5) *Procedures for documenting that a sale is not a retail transaction.*** The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

**224.8(6) *Procedures for remitting the surcharge to the treasurer.*** The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

[ARC 0527C, IAB 12/12/12, effective 1/16/13; ARC 4309C, IAB 2/13/19, effective 3/20/19]

**701—224.9(423) State sales tax exemption for central office equipment and transmission equipment.** Effective July 1, 2012, central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by the following providers: local exchange carriers and competitive local exchange service providers as defined in Iowa Code section 476.96; franchised cable television operators, mutual companies, municipal utilities, cooperatives, and companies furnishing communications services that are not subject to rate regulation as provided in Iowa Code chapter 476; long distance companies as defined in Iowa Code section 477.10; or for a commercial mobile radio service as defined in 47 C.F.R. §20.3. The exemption was phased in beginning in 2006 according to the schedule described in subrule 224.9(2).

**224.9(1) *Definitions.***

“*Central office equipment*” means equipment utilized in the initiating, processing, amplifying, switching, or monitoring of telecommunications services including ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function. Central office equipment includes:

1. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

2. Peripheral equipment used to support the transmission of communications over the network such as emergency power equipment, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

3. Circuit equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

4. Radio equipment including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

“*Transmission equipment*” means equipment utilized in the process of sending information from one location to another location. Transmission equipment includes ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function.

**224.9(2) Schedule for phase-in of exemption.** This exemption was phased-in beginning in 2006 according to the following schedule:

*a.* If the sale or rental occurs on or after July 1, 2006, through June 30, 2007, one-seventh of the state tax on the sales price shall be refunded.

*b.* If the sale or rental occurs on or after July 1, 2007, through June 30, 2008, two-sevenths of the state tax on the sales price shall be refunded.

*c.* If the sale or rental occurs on or after July 1, 2008, through June 30, 2009, three-sevenths of the state tax on the sales price shall be refunded.

*d.* If the sale or rental occurs on or after July 1, 2009, through June 30, 2010, four-sevenths of the state tax on the sales price shall be refunded.

*e.* If the sale or rental occurs on or after July 1, 2010, through June 30, 2011, five-sevenths of the state tax on the sales price shall be refunded.

*f.* If the sale or rental occurs on or after July 1, 2011, through June 30, 2012, six-sevenths of the state tax on the sales price shall be refunded.

*g.* If the sale or rental occurs on or after July 1, 2012, the sales price is exempt and no payment of tax and subsequent refund are required.

**224.9(3) Refund claims.** For sales or rental occurring on or after July 1, 2006, through June 30, 2012, a refund of the tax paid as provided in subrule 224.9(2) must be applied for, not later than six months after the month in which the sale or rental occurred, in the manner and on the forms provided by the department. Refunds shall only be of the state tax collected. Refunds authorized shall accrue interest at the rate in effect under Iowa Code section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

This rule is intended to implement Iowa Code section 423.3(47A).  
[ARC 0527C, IAB 12/12/12, effective 1/16/13]

These rules are intended to implement Iowa Code chapter 423 as amended by 2011 Iowa Acts, Senate File 515.

[Filed ARC 9814B (Notice ARC 9675B, IAB 8/10/11), IAB 10/19/11, effective 11/23/11]

[Filed ARC 0527C (Notice ARC 0407C, IAB 10/17/12), IAB 12/12/12, effective 1/16/13]

[Filed ARC 4309C (Notice ARC 4176C, IAB 12/19/18), IAB 2/13/19, effective 3/20/19]



CHAPTER 238  
FLOOD MITIGATION PROGRAM

**701—238.1(418) Flood mitigation program.** The flood mitigation program is a program administered by the flood mitigation board with the assistance of the Iowa department of homeland security and emergency management to assist governmental entities in undertaking projects approved under Iowa Code chapter 418. This chapter sets forth the revenue department's administration of the calculation of sales tax increment funding and the remittance of such funding to governmental entities. The administrative rules for other aspects of the flood mitigation program may be found at 605—Chapter 14.

This rule is intended to implement Iowa Code chapter 418 and section 423.2(11).  
[ARC 1103C, IAB 10/16/13, effective 11/20/13]

**701—238.2(418) Definitions.**

“*Area*” means the area used to determine the sales tax increment as described in subrule 238.3(2).

“*Base year*” means the fiscal year ending during the calendar year in which the governmental entity's project is approved by the flood mitigation board under Iowa Code section 418.1.

“*Board*” means the flood mitigation board as created in Iowa Code section 418.5.

“*Corresponding quarter*” means the quarter in the base year and the quarter in the year in which the increment is measured that end in the same month. For example, if the base year is fiscal year 2013 and the year in which the increment is first measured is 2014, then the quarter ending in September 2012 of the base year would correspond to the quarter ending in September 2014 of the calendar year.

“*Department*” means the Iowa department of revenue.

“*Governmental entity*” means any of the following:

1. A county.
2. A city.
3. A joint board or other legal or administrative entity established or designated in an agreement pursuant to Iowa Code chapter 28E between any of the following:
  - Two or more cities located in whole or in part within the same county.
  - A county and one or more cities that are located in whole or in part within the county.
  - A county, one or more cities that are located in whole or in part within the county, and a drainage district formed by mutual agreement under Iowa Code section 468.142 located in whole or in part within the county.

“*Project*” means the construction and reconstruction of levees, embankments, impounding reservoirs, or conduits that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of Iowa Code section 418.4.

“*Retail establishment*” means a business operated by a retailer as defined in Iowa Code section 423.1.

“*Sales subject to the tax*” means the sales made by retail establishments in the area that are taxable under Iowa Code section 423.2.

“*Sales tax*” means the sales and services tax imposed pursuant to Iowa Code section 423.2.

This rule is intended to implement Iowa Code section 418.1.  
[ARC 1103C, IAB 10/16/13, effective 11/20/13]

**701—238.3(418) Sales tax increment calculation.**

**238.3(1) Sales tax increment calculation formula.** The department shall calculate quarterly the amount of increased sales tax revenues for each governmental entity approved to use sales tax increment revenues and the amount of such revenues to be transferred to the sales tax increment fund pursuant to Iowa Code section 423.2(11)“b.” The department shall calculate the amount of the sales tax increment as follows:

*a.* Determine the amount of sales subject to the tax under Iowa Code section 423.2 in each applicable area specified in subrule 238.3(2) during the corresponding quarter in the base year from retail establishments in such areas. The base year shall be calculated when the period for processing returns for the final quarter in the base year is complete.

*b.* Determine the amount of sales subject to the tax under Iowa Code section 423.2 in each applicable area specified in subrule 238.3(2) during the corresponding quarter in each subsequent calendar year from retail establishments in such areas.

*c.* Subtract the base year quarterly amount determined under paragraph 238.3(1)“*a*” from the subsequent calendar year quarterly amount in paragraph 238.3(1)“*b*.”

*d.* If the amount determined under paragraph 238.3(1)“*c*” is positive, the product of the amount determined under paragraph 238.3(1)“*c*” multiplied by the tax rate imposed under Iowa Code section 423.2 shall constitute the amount of increased sales tax revenue.

*e.* Only sales that are made by retail establishments in the area are taken into consideration when the sales subject to tax are determined. Sales otherwise sourced to the area are not considered in the calculation.

**238.3(2)** *Area used to determine the increment.* The area used to determine the sales tax increment shall include:

*a.* For projects approved for a governmental entity as defined in Iowa Code section 418.1(4)“*a*,” only the unincorporated areas of the county.

*b.* For projects approved for a governmental entity as defined in Iowa Code section 418.1(4)“*b*,” only the incorporated areas of the city.

*c.* For projects approved for a governmental entity as defined in Iowa Code section 418.1(4)“*c*,” the incorporated areas of each city that is participating in the chapter 28E agreement, the unincorporated areas of the participating county, and the area of any participating drainage district not otherwise included in the areas of the participating cities or county, as applicable.

**238.3(3)** *Identification of retailers.* Each governmental entity shall assist the department of revenue in identifying retail establishments in the governmental entity’s applicable area that are collecting sales tax. This process shall be ongoing until the governmental entity ceases to utilize sales tax revenue under this chapter.

This rule is intended to implement Iowa Code section 418.11.  
[ARC 1103C, IAB 10/16/13, effective 11/20/13]

#### **701—238.4(418) Sales tax increment fund.**

**238.4(1)** *Establishment of the sales tax increment fund.* A sales tax increment fund is established as a separate and distinct fund in the state treasury under the control of the department. The fund consists of the amount of the increased state sales and services tax revenues collected by the department within each applicable area specified in Iowa Code section 418.11(3) and deposited in the fund pursuant to Iowa Code section 423.2(11)“*b*.” Moneys deposited in the fund are appropriated to the department for the purposes of this rule. Moneys in the fund shall only be used for the purposes of this rule.

**238.4(2)** *Sales tax increment accounts.* An account is created within the fund for each governmental entity that has adopted a resolution under Iowa Code section 418.4(3)“*d*.”

**238.4(3)** *Deposits into the sales tax increment fund.* The department shall deposit in the fund the moneys described in subrule 238.4(1) beginning the first day of the quarter following receipt of a resolution under Iowa Code section 418.4(3)“*d*.” However, in no case shall a sales tax increment be calculated under Iowa Code section 418.11 or such moneys be deposited in the fund under this rule prior to January 1, 2014. Additionally, moneys will not be deposited in the fund before the period for processing returns for a given quarter is complete.

**238.4(4)** *Requests for remittances; limitations.*

*a.* Upon request of a governmental entity, the department shall remit the moneys in the governmental entity’s account within the fund to the governmental entity for deposit in the governmental entity’s flood project fund. Such requests shall be made not more than quarterly. Requests for remittance shall be submitted on forms prescribed by the department.

*b.* In lieu of quarterly requests, a governmental entity may submit a certified schedule of principal and interest payments on bonds issued under Iowa Code section 418.4. If such a certified schedule is submitted, the department shall, subject to the remittance limitations of this chapter, remit from the governmental entity's account to the governmental entity for deposit in the governmental entity's flood project fund the amounts necessary for such principal and interest payments in accordance with the certified schedule.

*c.* A governmental entity shall not during any fiscal year receive remittances under this rule exceeding \$15 million or 70 percent of the total yearly amount of increased sales tax increment revenue in the governmental entity's applicable area and deposited in the governmental entity's account or the annual maximum amount established by the board pursuant to Iowa Code section 418.9(4), whichever is less.

*d.* The total amount of remittances during any fiscal year for all governmental entities approved to use sales tax revenues under this chapter shall not exceed, in the aggregate, \$30 million. Remittances from the department of revenue shall be deposited in the governmental entity's flood project fund under Iowa Code section 418.13.

*e.* Each quarter, the department will transfer into the sales tax increment fund the full amount of the increased sales tax subject to the limitations stated in this rule. The director of the department may adjust the amount transferred during the year if it becomes apparent that the total amount transferred will exceed the limitations stated in this rule. If, when the total of all the transfers made to a governmental entity during the year is calculated at the end of the fiscal year, it is determined that the governmental entity received more than the maximum amount permissible under this rule, the department may withhold funds in the subsequent fiscal year to recoup the excess payments.

*f.* If the governmental entity has unused funds from a prior quarter in its account within the sales tax increment fund, subject to paragraphs 238.4(4) "a" to "e," those funds will be available in subsequent quarters so long as the amount is necessary for the purposes of this chapter.

**238.4(5) *Authorized expenditures.***

*a.* Requests for remittance shall be made for the amount of moneys in the governmental entity's account necessary to pay the governmental entity's costs or obligations related to the project, according to the sales tax revenue funding needs specified in the approved project plan.

*b.* Allowed costs or obligations under Iowa Code section 418.13(1) include the costs of the approved project, reimbursements for funds advanced internally or to help make payments on bonds incurred to pay for approved projects, and principal and interest on bonds issued under Iowa Code section 418.14.

**238.4(6) *Remittance of funds to the general fund.*** If the department determines that the revenue accruing to the fund or accounts within the fund exceeds \$30 million, or exceeds the amount necessary for the purposes of this chapter if the amount necessary is less than \$30 million, then those excess moneys shall be credited by the department for deposit in the general fund of the state. The board shall assist the department in determining whether the fund or accounts within the fund have met the limitations of this rule.

**238.4(7) *Reporting requirements.*** Each governmental entity approved by the board to use sales tax increment revenues for a project under this chapter shall submit two reports to the board certifying the total amount of nonpublic investment, as defined in Iowa Code section 418.9(2) "d," that has occurred in the governmental entity's area as defined in Iowa Code section 418.11(3). The first report shall be submitted not later than five years after the board approved the project. The second report shall be submitted to the board not later than ten years after the board approved the project.

**238.4(8) *Failure to meet nonpublic investment requirements.*** If the nonpublic investment requirements of Iowa Code section 418.9(2) "d" are not satisfied, the board shall reduce the governmental entity's amount of sales tax increment revenues eligible to be remitted during the remaining period of time for receiving remittances by an amount equal to the shortfall in nonpublic investment. However, such a reduction shall not be to an amount less than zero.

This rule is intended to implement Iowa Code sections 418.12 and 418.13.

[ARC 1103C, IAB 10/16/13, effective 11/20/13; ARC 4311C, IAB 2/13/19, effective 3/20/19]

[Filed ARC 1103C (Notice ARC 0955C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]  
[Filed ARC 4311C (Notice ARC 4175C, IAB 12/19/18), IAB 2/13/19, effective 3/20/19]

CHAPTER 24  
CLAIMS AND BENEFITS

[Prior to 11/17/75, Ch 3]

[Prior to 9/24/86, Employment Security[370]]

[The filed emergency amendments were rescinded and the amendments to Chapter 4 were adopted following Notice, 12/31/86 IAB, effective 2/4/87]

[Prior to 3/12/97, Job Service Division [345] Ch 4]

**871—24.1(96) Definitions.** Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

**24.1(1) *Additional claim.*** An application for determination of eligibility filed on an established claim which follows a period of employment.

**24.1(2) *Administrative office (state).*** Same as central office.

**24.1(3) *Agent state.*** The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency. See also liable state.

**24.1(4) Reserved.**

**24.1(5) *Annual benefit amount.*** See maximum annual benefits under benefits.

**24.1(6) *Appeals.*** See rule 871—26.1(96).

*a. Administrative appeal.* A request for a review by an appeals authority of a state employment security agency's determination on a claim for benefits, on a status report, or on an employer's contribution rate, or a request for a review by a higher appeals authority of a decision made by a lower appeals authority.

*b. Employment appeal board of the department of inspections and appeals.* The employment appeal board of the department of inspections and appeals is established to hear and decide disputed claims. The employment appeal board of the department of inspections and appeals will consist of three members appointed by the governor with the approval of two-thirds of the members of the senate. One member will represent the general public, one member will represent employers, and one member will represent employees.

This subrule is intended to implement Iowa Code section 96.6(4).

**24.1(7) *Applicant.*** Any individual applying for work at a workforce development center.

**24.1(8) and 24.1(9) Reserved.**

**24.1(10) *Average weekly wages.*** See wages.

**24.1(11) *Base period.*** The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

*a.* The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or

*b.* The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

**24.1(12) *Base period employer and chargeable employer.***

*a. Base period employer.* An employer who paid wages for employment to a claimant during the claimant's base period or an employer who is responsible for an individual's wages pursuant to Iowa Code section 96.3, subsection 5, pertaining to workers' compensation benefits.

*b. Chargeable employer.* An employer who had base period wages accruing to the employer's account due to an employer liability determination.

**24.1(13) Benefit amount.**

*a. Maximum weekly benefit amount.* The highest weekly benefit amount provided in a state employment security law.

*b. Minimum weekly benefit amount.* The lowest weekly benefit amount for a week of total unemployment provided in a state employment security law.

*c. Weekly benefit amount.* The full amount of benefits a claimant is entitled to receive for a week of total unemployment.

**24.1(14) Benefit decision.** The decision reached by a lower or higher appeals authority with respect to an appealed claim. See also benefit determination, under determination.

**24.1(15) Benefit determination.** See determination.

**24.1(16) Benefit eligibility conditions.** Statutory requirements which must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

**24.1(17) Benefit formula.** The combination of mathematical factors specified in the state employment security law as the basis for computing an individual's weekly benefit amount and maximum benefit amount.

*a. Annual wage formula.* A benefit formula which uses the claimant's total wages in insured work for a one-year period for computing the claimant's maximum benefit amount.

*b. High quarter formula.* A benefit formula which uses, for determining a claimant's weekly benefit amount, the quarter of the base period in which the claimant's wages in insured work were highest.

**24.1(18) Benefits.** Money payments to an individual with respect to unemployment.

*a. Regular benefits.* Benefits payable to an individual under this or any other state law (including benefits payable to federal civilian employees and ex-servicemembers pursuant to 5 U.S.C., chapter 85) other than extended benefits.

*b. Extended benefits.* Benefits payable to an individual (including benefits payable to federal civilian employees pursuant to 5 U.S.C., chapter 85) for weeks of unemployment which begin in an extended benefit period, which is a period when extended benefits are paid in this state.

**24.1(19) Benefit wages.** See wages.

**24.1(20) Benefit year.** That period to which the limitation of maximum duration of benefits is applicable, a year or approximately a year.

**24.1(21) Benefit year, individual.** The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is the Sunday of the current week in which the claimant first files a valid claim.

**24.1(22) Calendar week.** See week.

**24.1(23) Central office.** The state administrative office of the division of unemployment insurance services of the department of workforce development.

**24.1(24) Reserved.**

**24.1(25) Claim.** A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

*a.* A claim may be filed under any one or more of the following programs:

(1) The state program of unemployment insurance (UI),

(2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and

(3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

*b.* Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) *Additional UI, UCFE, or UCX claim.* A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(2) *Additional claim.* An application for determination of eligibility filed on an established claim which follows a period of employment.

(3) *Additional interstate claim.* A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(4) *Appealed claim.* See appeal, administrative.

(5) *Combined wage claim.* A claim filed under the interstate wage combining plans. See interstate agreement.

(6) *Compensable claim.* A request for benefit payment which certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(7) *Contested claim.* A claim which has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(8) *Continued claim.* A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application which certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(9) *Initial claim.* An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(10) *Initial interstate claim.* A new or an additional interstate claim.

(11) *Interstate claim.* A claim filed in one state (agent state) against another state (liable state).

(12) *Intrastate claim.* A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(13) *Mail claim.* Rescinded IAB 8/16/17, effective 9/20/17.

(14) *New claim.* An application for the establishment of a benefit year.

(15) *New interstate claim.* The first interstate claim filed by a claimant against a liable state which serves as a request for determination of insured status.

(16) *New intrastate extended benefits claim.* The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those which become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(17) *New UI, UCFE, or UCX claim.* A request for determination of insured status for purposes of establishing a new benefit year.

(18) *Reopened claim.* The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment which falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a claim series previously established, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(19) *Second benefit year claim.* A new claim with an effective date for a second benefit year which is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(20) *Transitional claim.* Rescinded IAB 1/3/18, effective 2/7/18.

(21) *Valid UI, UCFE or UCX claim.* A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

(22) *Voice response continued claim.* Rescinded IAB 8/6/03, effective 9/10/03.

**24.1(26) Claimant.**

- a. An individual who has filed a request for determination of insured status or a new claim, or
- b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

**24.1(27)** Reserved.

**24.1(28)** *Claim series.* A series of claims filed for continuous weeks of unemployment or for a period of unemployment during which the lapse in compensability or in reporting is deemed by the state insufficient to interrupt the series.

**24.1(29)** *Compensable claim.* See claim.

**24.1(30)** *Compensable week.* See week.

**24.1(31)** *Compensation.* Same as benefits.

**24.1(32)** *Contested claim.* See claim.

**24.1(33)** *Continued claim.* See claim.

**24.1(34)** *Covered employment.* Same as insured work.

**24.1(35)** *Covered worker.* An individual who has earned wages in insured work.

**24.1(36)** *Day.* The period of time between any midnight and the midnight following.

**24.1(37)** *Department.* The chief executive officer of the department of workforce development is the director who shall be appointed by the governor with the approval of two-thirds of the members of the senate. It shall be the duty of the director to administer Iowa Code chapter 96.

**24.1(38)** *Determination.*

a. *Benefit determination.* A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

b. *Coverage determination.* A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law. See status determination.

c. *Determination of insured status.* A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. *Initial determination.* The first determination with respect to a claim or a request for determination of insured status.

e. *Monetary determination.* Same as determination of insured status.

f. *Nonmonetary determination.* A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

g. *Reconsidered determination.* Same as redetermination.

h. *Redetermination.* A determination made with respect to a claimant after reconsideration by the initial determining authority.

i. *Status determination.* A determination as to whether an employing unit whose status is not known is a subject employer.

**24.1(39)** *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

**24.1(40)** *Duration of benefits.* The number of weeks for which benefits are paid or payable for total unemployment in a benefit year. Because there may be deductible wages and other compensation, duration is often described in terms of the total amount of benefits arrived at by multiplying the weekly benefit amount by the number of weeks of total unemployment.

a. *Actual duration.* The number of full weeks of benefits received by an individual, or the equivalent thereof expressed in terms of dollars.

b. *Maximum duration.* The highest number of weeks of total unemployment for which benefits are payable to any individual in a benefit year under a state employment security law.

**24.1(41)** *Earnings limit.* An amount equal to the weekly benefit amount plus \$15.

**24.1(42)** *Eligibility requirements.* Same as benefit eligibility conditions.

**24.1(43) *Employment interview.*** A conversation between an applicant and an interviewer directed toward obtaining and recording information pertinent to classification and selection, and giving information pertinent to job seeking.

**24.1(44) *Employment office.*** An office maintained by the department of workforce development in accordance with Iowa Code sections 96.12 and 96.25.

**24.1(45) *Employment security administration fund.*** See funds.

**24.1(46) *Employment security law.*** A body of law which establishes a free public employment service, or a system of unemployment insurance, or both and which may also establish other systems compensating for wage loss, such as temporary disability insurance in Iowa Code chapter 96.

**24.1(47) *Employment security program.*** The federal-state program comprising public employment services and unemployment insurance.

**24.1(48) *Fact-finding interview.*** A face-to-face or telephonic discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement containing information on a specific eligibility or disqualification issue. This differs from an eligibility review interview in that a specific issue must exist as a result of a statement made by either the claimant, the liable state, an employer, or the staff of the department.

**24.1(49) *First UI, UCFE, or UCX payment.*** A payment issued to a claimant for the first compensable week of unemployment in a benefit year.

**24.1(50) *Full-time week.*** See week.

**24.1(51) *Funds.***

*a. Administrative funds.* Funds made available from federal, state, local and other sources to meet the cost of state employment security administration.

*b. Contingency fund.* An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state employment security agencies arising from increases in workload or other specified causes.

*c. Special employment security contingency fund.* A contingency fund established pursuant to Iowa Code section 96.13(3) into which all interest, fines, and penalties are paid.

*d. Employment security administration fund.* A special fund in the state treasury, established by state law, in which are deposited moneys granted by the manpower administration and monies from other sources, for the purpose of paying the cost of administering the state employment security program.

*e. Title V funds.* Funds appropriated by Congress to pay unemployment insurance benefits under Title V of the United States Code to federal, civilian and military employees.

*f. Unemployment fund.* A special fund established under a state employment security law for the receipt and management of contributions and the payment of unemployment account, clearing account, and unemployment trust fund account.

*g. Unemployment trust fund.* A fund established in the treasury of the United States which contains all moneys deposited with the treasury by state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

**24.1(52) *Handbook.*** The handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

**24.1(53) *High quarter formula.*** See benefit formula.

**24.1(54) to 24.1(56)** Reserved.

**24.1(57) *Individual base period.*** See base period.

**24.1(58) *Individual benefit year.*** See benefit year.

**24.1(59) *Initial claim.*** See claim.

**24.1(60) *Initial determination.*** See determination.

**24.1(61) *Insured unemployment.*** Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

**24.1(62) Insured work.** Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

**24.1(63) Insured worker.** An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

**24.1(64) Interstate agreement.**

*a. Interstate benefit payment plan.* The plan under which each state acts as an agent for every other state in taking claims for individuals who are not in the state in which they earned their base period wages.

*b. Interstate reciprocal coverage agreement.* An administrative interstate agreement, permitted under most state employment security laws, which provides for the election of coverage of services under specified conditions which may or may not constitute an exception to the mandatory coverage provisions of the state law.

*c. Wage-combining agreements.* An interstate agreement which allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

**24.1(65) Interstate claim.** See claim.

**24.1(66) Interstate claimant.** An individual who files a claim for benefits in an agent state on the basis of employment covered by the employment security law of a liable state.

**24.1(67) Benefit rights information.** Information provided to a claimant for the purpose of explaining the claimant's rights and responsibilities under the law. Such information may be given on a group basis or on an individual basis or the information may be provided electronically.

**24.1(68) Office.** Rescinded IAB 8/16/17, effective 9/20/17.

**24.1(69) Lag quarter.** The completed quarter between a claimant's base period and the quarter which includes the beginning date of such claimant's benefit year.

**24.1(70) Layoffs.** See separations.

**24.1(71) Liable state.** Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state. See also agent state.

**24.1(72) Mail claim.** Rescinded IAB 8/16/17, effective 9/20/17.

**24.1(73) Mass separation.** The separation from a given employing unit of a large number of workers at approximately the same time and for a reason common to all such workers.

**24.1(74) Mass separation notice.** A report of a mass separation sent to the local workforce development center by an employer, stating the number of workers separated and listing their names and other required data. Such a notice serves as a substitute for individual separation notices.

**24.1(75) Maximum benefit amount.** The maximum total amount of benefits an individual may receive during the individual's benefit year.

**24.1(76) Maximum benefits.** The maximum total amount of benefits payable to a claimant during the claimant's benefit year.

**24.1(77) Maximum weekly benefit amount.** See benefit amount.

**24.1(78) Microfiche.** Rescinded IAB 8/6/03, effective 9/10/03.

**24.1(79) Military separations.** See separations.

**24.1(80) Minimum weekly benefit amount.** See benefit amount.

**24.1(81) Month.** The time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

**24.1(82) Multistate worker.** An individual who performs service for one employer in more than one state.

**24.1(83) New claim.** See claim.

**24.1(84) Noncovered employment.** Excluded employment, or employment for an employer below the size-of-firm coverage requirements of the state employment security law.

**24.1(85) Notice of separation.** A report submitted by an employer at the time when a worker is separated from employment, on which the employer indicates the dates of the last day worked, the separation date and the reason the worker was separated.

**24.1(86) *Odd job earnings.*** Any earnings which a claimant may have during a week of unemployment as a result of temporary work with an employing unit other than the claimant's regular employing unit.

**24.1(87) *Opening.*** A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.

**24.1(88) *Outstanding job order request.*** An active request for referral of one or more applicants to fill one or more job openings in a single occupational classification; also, the record of such request.

**24.1(89) *Clearance order.*** Rescinded IAB 8/6/03, effective 9/10/03.

**24.1(90) *Partial benefits.*** Benefits payable to an individual for a week of partial unemployment.

**24.1(91) *Partial earnings allowance.*** The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

**24.1(92) *Partial unemployment.*** See week of unemployment.

**24.1(93) *Part-time worker.*** A person engaged in, or available only for, part-time work.

**24.1(94) *Placement.*** An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.

**24.1(95)** Reserved.

**24.1(96) *Qualifying employment.*** The amount of insured work which an individual must have had within a specified period in order to be an insured worker. See also benefit eligibility conditions.

**24.1(97) *Qualifying wages.*** See wages.

**24.1(98) *Quits.*** See separations.

**24.1(99) *Railroad unemployment insurance account.*** An account, established pursuant to the Railroad Unemployment Insurance Act, maintained in the federal unemployment trust fund for the payment of benefits provided in that Act.

**24.1(100) *Readout.*** Printed data from the claimant database or other types of records stored in the computer.

**24.1(101) *Reciprocal coverage agreement.*** See interstate agreements.

**24.1(102) *Reconsidered determination.*** Same as redetermination—see determination.

**24.1(103) *Referee appeals.*** See appeal, administrative. (Administrative law judge)

**24.1(104) *Referral.*** The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.

**24.1(105) *Registration.*** The process of applying for work through an office of the department of workforce development.

**24.1(106) *Report to determine liability.*** Same as status report.

**24.1(107) *Reporting requirements.*** The rules of procedures of the department of workforce development concerning the frequency and time of required reporting by claimants.

**24.1(108) *Renewal.*** The transfer from the inactive to the active file of the application of an applicant who is again considered to be available for referral to job openings.

**24.1(109) *Request for determination of insured status.*** A request by an individual for a determination of insured status.

**24.1(110) *Selection.*** The process of choosing a qualified applicant for referral to a job by carefully analyzing and comparing employer requirements with applicant interests and abilities.

**24.1(111) *Self-employment.***

**24.1(112) *Self-filing (of claim).*** The partial or complete filling out of a claim form or request for determination of insured status by the claimant.

**24.1(113) *Separations.*** All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

*a. Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

*b. Quits.* A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

*c. Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

*d. Other separations.* Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

**24.1(114) Short-time placement.** A placement in a job which the employer expects to involve work in each of three days or less, whether or not consecutive.

**24.1(115) Social security number.** The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

**24.1(116) Status determination.** See determination.

**24.1(117) Supplemental benefit payment.** A payment issued for the sole purpose of adjusting an underpayment for one or more previous weeks.

**24.1(118) Taxable wages.** See wages.

**24.1(119) Total unemployment.** See week of unemployment.

**24.1(120)** Reserved.

**24.1(121) Transient.** Rescinded IAB 1/3/18, effective 2/7/18.

**24.1(122) Unemployment fund.** See funds.

**24.1(123) Unemployment trust fund.** See funds.

**24.1(124) Unemployment trust fund account.** See accounts.

**24.1(125) Valid claim.** See claim.

**24.1(126) Verification.** The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

**24.1(127) Visiting claimant.** Rescinded IAB 1/3/18, effective 2/7/18.

**24.1(128) Wage combining agreement.** See interstate agreement.

**24.1(129) Wage credits.** Wages earned in insured work.

**24.1(130) Wages.** Average weekly wages.

*a.* For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

*b.* For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

**24.1(131) Qualifying wages.** The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

**24.1(132) Taxable wages.** Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

**24.1(133)** Reserved.

**24.1(134) Weekly indemnity insurance benefits.** Payment for nonoccupational illness or injury pursuant to a benefit plan implemented by an employer.

**24.1(135) Week.** A seven-day period beginning at 12:01 a.m. on Sunday and terminating at midnight on the following Saturday.

*a. Calendar week.* A period of seven consecutive days usually ending at Saturday midnight, used by some state employment security agencies as a unit in the measurement of employment or unemployment.

*b. Compensable week.* A week for which benefits have been claimed.

*c. Full-time week.* The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

**24.1(136)** *Weekly benefit amount.* See benefit amount, or,

**24.1(137)** *Weekly benefit amount.* The compensation payable to an individual, with respect to employment, under the employment security law of any state.

**24.1(138)** *Week of unemployment.* A week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount (usually the weekly benefit amount), or,

**24.1(139)** *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings which do not exceed the earnings limit.

*a. Week of partial unemployment.* A week in which an individual worked less than the regular full-time hours for such individual's regular employer, because of lack of work, and earned less than the weekly benefit amount (plus the partial earnings allowance, if any, in the state's definition of unemployment) but more than the partial earnings allowance, so that, if eligible for benefits, the claimant received less than such claimant's full weekly benefit amount plus \$15.

*b. Week of part total unemployment.* A week of otherwise total unemployment during which an individual has odd jobs or subsidiary work with earnings in excess of the amount specified in the state law as allowable without resulting in a reduction in the individual's benefit payment.

*c. Week of total unemployment.* A week in which an individual performs no work and earns no wages.

**24.1(140)** *Workload.* The measure of the volume of work for each functional area of the state agency; i.e., the number of contribution (payroll) reports processed, the number of claims taken, the number of applications for employment.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5) "c," 96.6, 96.7(2) "a"(2), 96.11, 96.19(16), and 96.23.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17; ARC 3562C, IAB 1/3/18, effective 2/7/18; ARC 3811C, IAB 5/23/18, effective 6/27/18]

## **871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.**

**24.2(1)** Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

*a.* Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

*b.* When filing an initial claim for benefits, an individual must provide the following information to the department:

- (1) The name and complete mailing address of such individual's last employing unit or employer including work history for all employers within the individual's base period.
- (2) The location of the last job.
- (3) Last day of work.
- (4) The reason for separation from work.
- (5) That such individual is unemployed.
- (6) That the individual registers for work.

(7) The individual's last job occupation.

(8) Number, full name, social security number, date of birth, and relationship of any dependents claimed. The identity of an individual identified as a dependent shall be verified by the department before the individual is added to the claim as a dependent. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant or stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been claimed for the preceding tax year on the claimant's income tax return. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(9) The individual's social security number and alien registration number, if applicable.

(10) Such other information as required by the department.

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."

(2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group "6."

(4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document work searches made either in-person, online or by submitting a resumé.

(5) Group "7" claimants are workers who are employed on a reduced workweek with an employer who is under voluntary shared work contract approved by the department. This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

*d.* Reserved.

*e.* In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

*f.* After the initial claim has been filed, the claimant will receive from the local office or the administrative office a Form 65-5318, which is a notice of the action taken on the claim, and if such claimant is eligible for benefits this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

*g.* No benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;

2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;

3. That the individual indicates the number of employers contacted for work, the contact information for each employer contacted, and the result of the contact;

4. That the individual knows the law provides penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;

6. That the individual understands the individual's responsibility to review the individual's claim records to ensure there is no delay in filing the individual's weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;

7. Other information required by the department.

*h.* Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may only be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if the claimant filed an interstate claim against another state which has been determined as ineligible.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits

remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

*i.* An individual shall be entitled to partial benefits for any week of less than full-time work, provided the wages earned during such week are less than the individual's weekly benefit earning limit, plus \$15. If the individual has been placed on reduced employment the individual may be entitled to partial benefits, and should file a claim in accordance with the instructions pertaining to the partial claims procedure.

*j.* Reserved.

*k.* Any individual who is disqualified for benefits because of the individual's failure to report as directed to file a claim following the date specified may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed the petitioner shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

**24.2(2)** Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

*a.* A notice of claim filing, which includes the name and social security number of the individual claiming benefits, shall be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

*b.* Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitation. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, or union membership card or supply personally identifying information.

*c.* If a claim was filed in a previous quarter and was determined not eligible because of no wage records, or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously has filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker shall explain or send notice to the claimant that another claim filed in the same quarter would also be determined as ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

*d.* If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim shall be taken.

*e.* Partially unemployed claims.

(1) A partially unemployed individual shall file a claim for benefits in the same manner as an initial claim for unemployment insurance.

(2) Reporting wages. A partially unemployed individual shall report all wages which are earned for each week benefits are claimed.

(3) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus \$15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

*f.* If the check of the files does not disclose a monetarily valid claim in another state, a new claim shall be taken.

**24.2(3)** Filing a claim for unemployment insurance benefits (interstate only).

*a.* Initial interstate claims. All interstate claimants must file an Iowa claim electronically or through a department representative.

*b.* When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the department shall require an interstate claimant to complete and file an Initial Interstate Claim, Form 61-1000(IB-1), unless otherwise directed by the interstate handbook.

**24.2(4)** Cancellation of unemployment insurance claim.

*a.* A request for cancellation of an unemployment insurance claim may be made by the individual and be directed to the benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

*b.* A cancellation request which is the result of employer coercion or intimidation shall be denied and the employer could be subjected to serious misdemeanor charges.

*c.* Cancellation requests within the ten-day protest period. The benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.  
 (2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

*d.* Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

*e.* If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state shall not be reestablished with the same effective date.

*f.* Voiding a claim. If it is determined a claim has been filed under an incorrect social security number, the claim shall be voided rather than canceled.

*g.* All unemployment insurance claims canceled shall be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1) "h," 96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.19(4), 96.19(24), and 96.20.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17; ARC 3303C, IAB 8/30/17, effective 10/4/17; ARC 3401C, IAB 10/11/17, effective 11/15/17; ARC 3648C, IAB 2/14/18, effective 3/21/18; ARC 3811C, IAB 5/23/18, effective 6/27/18; ARC 3812C, IAB 5/23/18, effective 6/27/18; ARC 3813C, IAB 5/23/18, effective 6/27/18]

### **871—24.3(96) Social security number needed for filing.**

**24.3(1)** The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. A claim cannot be processed without a social security number.

**24.3(2)** The claim will not become valid until the identity has been verified by the department. If the claimant has not provided the information to verify identity within seven calendar days of filing of a

claim, the claim will be voided. The claimant must submit another claim for benefits. The effective date of the claim would be the Sunday of the week the identity was verified.  
[ARC 3303C, IAB 8/30/17, effective 10/4/17; ARC 3647C, IAB 2/14/18, effective 3/21/18]

#### **871—24.4(96) Benefit rights information.**

**24.4(1) *Intrastate benefits.*** Benefit rights information is provided to each individual filing an initial claim for benefits to explain those provisions in the law and rules which govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights information may be given by an individual or group type interview or by telephone or electronically. A Form 70-6200, Facts About Unemployment Insurance, will be provided which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

**24.4(2) *Interstate benefits.*** Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state which will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

**24.4(3) *Federal benefits.*** Rescinded IAB 8/6/03, effective 9/10/03.

#### **871—24.5(96) Mass separation—definition and procedure.**

**24.5(1) *Mass separation.*** A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

*a.* The special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

*b.* If other facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

- (1) Interested employer involved.
- (2) Bona fide union which represents the workers.
- (3) Public facility (i.e., courthouse, city hall).

**24.5(2) *Cooperation of employers.*** To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center shall provide the information to legal counsel for the unemployment insurance services division so that the mass claim separation can be coordinated between the affected parties. This information should include:

- a.* The number of workers to be separated.
- b.* The date of separation and, if staggered, the number on each date.
- c.* Reason for layoff.
- d.* Its probable duration.
- e.* If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.
- f.* Rescinded IAB 8/6/03, effective 9/10/03.
- g.* Reserved.
- h.* If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rules 871—24.16(96) and 871—24.17(96).

**24.5(3) *Methods of mass claim taking.*** The department may adopt a plan, which is based on the employer's workers, the circumstances and the size of the layoff.

**24.5(4) *Announced mass separation.*** If a mass separation occurs about which the department of workforce development has not been advised in advance in sufficient time to preschedule claimants, then the claimants will be advised of the alternative methods to file their claims as quickly as possible.

The department will develop a plan to provide service to the claimants as quickly as possible under the circumstances.

This rule is intended to implement Iowa Code section 96.6(1).  
[ARC 3265C, IAB 8/16/17, effective 9/20/17]

**871—24.6(96) Reemployment services and eligibility assessment procedure.**

**24.6(1)** The department of workforce development will provide a program which consists of profiling claimants and providing reemployment services.

**24.6(2) Purpose.**

*a.* Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

*b.* The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

**24.6(3)** Reemployment services and eligibility assessment may include, but are not limited to, the following:

- a.* An assessment of the claimant's aptitude, work history, and interest.
- b.* Employment counseling regarding reemployment approaches and plans.
- c.* Job search assistance and job placement services.
- d.* Labor market information.
- e.* Job search workshops or job clubs and referrals to employers.
- f.* Résumé preparation.
- g.* Other similar services.

**24.6(4)** As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

**24.6(5)** The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

**24.6(6)** A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.

*a.* Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

*b.* Reserved.

**24.6(7) Eligibility assessment procedure.**

*a.* Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.

*b.* No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

*c.* Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.

*d.* A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

*e.* Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

*f.* Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

**24.6(8)** Conducting the first eligibility assessment interview.

- a.* All available evidence must be examined to detect potentially disqualifying issues.
- b.* The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.
- c.* The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.
- d.* This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.
- e.* The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.
- f.* The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).  
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

**871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.**

**24.7(1)** An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and has insufficient wage credits in the base period may qualify for unemployment insurance benefits. Under specific circumstances as described below, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period which were prior to the workers' compensation or indemnity insurance benefits.

**24.7(2)** An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

**24.7(3)** The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:

- a.* Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and
- b.* Did not receive wages from insured work for:
  - (1) Three or more calendar quarters in the base period, or
  - (2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

**24.7(4)** Subject to the provisions of subrule 24.7(3), the department shall use the following criteria for allowances and disqualifications.

- a.* *Allowances.* When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

(1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.

(2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

*b. Disqualifications.* The request for retroactive substitution of base period quarters shall be denied if the individual received workers' compensation or indemnity insurance benefits in:

(1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.

(2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

(3) Less than three base period quarters.

**24.7(5)** The individual shall be requested to complete the Affidavit and Questionnaire, Form 60-0286, which requests the following information:

*a.* Individual's name and social security number.

*b.* Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.

*c.* Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.

*d.* Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.

*e.* Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

**24.7(6)** The department will mail the redetermined initial claim to the individual. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the redetermined claim which are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits shall have the right to protest as provided in rule 871—24.8(96).

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

**871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.**

**24.8(1)** Issuance of a notice of the filing of an initial claim or a request for wage and separation information to employing units.

*a.* The Form 65-5317, Notice of Claim, and the Form 68-0221, Request for Wage and Separation Information, shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

*b.* A notice of the filing of an initial claim or a request for wage and separation information shall be mailed to an owner, partner, executive officer, departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

**24.8(2)** Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

*a.* The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

*b.* The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

*c.* If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

*d.* The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) Rescinded IAB 2/10/99, effective 3/17/99.

**24.8(3)** Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

*a.* A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be accomplished by properly completing the form or computerized format provided by the department.

*b.* A notice of separation, and any paper response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment or by completing the computerized form designated by the department.

*c.* Rescinded IAB 8/2/17, effective 9/6/17.

*d.* Failure by an employing unit or its authorized agent to timely submit any notice or response requested by the department shall result in the department representative's making a determination of the individual's rights to benefits based on the information available.

**24.8(4)** Mailing of determinations, redeterminations and decisions to employing units.

*a.* An employing unit which has filed a timely response or protest to the notice of the filing of an initial claim shall be notified in writing of the determination as to the individual's rights to benefits. If an employing unit of the individual has submitted timely information affecting the individual's rights to benefits, including facts which disclose that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit shall be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision shall contain a statement setting forth the employing unit's right of appeal.

c. Determinations as to an individual's right to benefits, decisions as to the cause of termination of the individual's employment, decisions as to an employing unit's experience record and correspondence related thereto shall be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was mailed; or

(2) The address requested by the employing unit on the document filed with the department in response or protest to the notice of the filing of an initial claim;

(3) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative shall comply, provided there is on file with the department an approved authorization (power of attorney) designating the agent to represent the employing unit.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

### **871—24.9(96) Determination of benefit rights.**

#### **24.9(1) *Monetary determinations.***

a. When an initial claim for benefits is filed, the department shall send to the individual claiming benefits a notification consisting of a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

c. If newly discovered facts are obtained by the department or a written request for reconsideration is filed by the individual and is timely, an unemployment insurance representative shall examine the facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the monetary record shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual within ten days of the date of the mailing of the redetermination specifying the grounds of objection to the redetermined monetary record. For the purposes of this paragraph, if the newly discovered facts obtained by the department would result in a change of the individual's maximum benefit amount of \$25 or less, the department representative is not required to issue a redetermination unless a redetermination is requested by the individual, the employer, or a representative of another state or federal agency responsible for the administration of an unemployment insurance law.

d. For the purposes of this subrule, the appeal period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday, or holiday. Also, failure of an individual to properly complete and sign any document relating to the adjudication of a claim shall result in the return of the document to the individual for proper completion or signature; however, an extension of the appeal period to allow for the return of the documents shall not be granted.

#### **24.9(2) *Nonmonetary determinations.***

a. When a protest of an initial claim for benefits is filed, the department shall mail to the individual claiming benefits, and the most recent or any other base period employing unit, Form 65-5323, Unemployment Insurance Decision, which affects the individual's right to benefits.

b. When an issue could result in a decision detrimental to an interested party, the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with the party's equipment, may record (video or audio) the proceedings. All participants must be informed of the recording of the interview. The recording of the interview must not be disruptive or distracting in nature.

c. Each of these decisions of the unemployment insurance representative shall constitute a final decision unless there are newly discovered facts which affect the validity of the original decision or a written request for reconsideration is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the decision specifying the grounds of objection to the decision.

d. If newly discovered facts are obtained by the department or a written request for reconsideration is timely filed by the individual, or the most recent or any other base period employing unit, an unemployment insurance representative shall examine the newly discovered facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the decision shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the redetermination specifying the grounds for objection to the redetermined decision.

e. For the purposes of this subrule, the protest period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday or holiday. Also, failure by an individual or an employing unit to properly complete or sign any document relating to the adjudication of a claim shall result in the return of the document to the individual or employing unit for proper completion or signature; however, an extension of the protest period to allow for the return of the document shall not be granted.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17; ARC 3813C, IAB 5/23/18, effective 6/27/18]

#### **871—24.10(96) Employer and employer representative participation in fact-finding interviews.**

**24.10(1)** “Participate,” as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer’s representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer’s representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

**24.10(2)** “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer’s representative in writing after each such appeal.

**24.10(3)** If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension

by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

**24.10(4)** “Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7) “b” as amended by 2008 Iowa Acts, Senate File 2160.

**871—24.11(96) Eligibility review program.** Rescinded **ARC 3812C**, IAB 5/23/18, effective 6/27/18.

**871—24.12** Reserved.

**871—24.13(96) Deductible and nondeductible payments.**

**24.13(1) Procedures for deducting payments from benefits.** Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual’s average weekly wage during the highest earnings quarter of the individual’s base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual’s weekly benefit amount on the basis of the formula used to compute an individual’s weekly benefit payment as provided in rule 871—24.18(96). The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual’s weekly benefit amount on a dollar-for-dollar basis.

**24.13(2) Deductible payments from benefits.** The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual’s weekly benefit payment as provided in rule 871—24.18(96):

*a. Holiday pay.* However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

*b. Commissions.* However, the commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

*c. Incentive pay.* However, the incentive payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

*d. Strike pay.* However, the strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

*e. Remuneration other than cash.* The cash value of all remuneration payable in any medium other than cash, board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

*f. Stand-by pay.* When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay which is deductible from benefits when earned by the individual during the period when the individual is claiming benefits.

*g. Tips or gratuity.* However, the amount of the tips or gratuity is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

**24.13(3) Fully deductible payments from benefits.** The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

*a. Wage interruption insurance payment.* Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

*b. Excused personal leave.* Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).

*c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.*

*d. Workers' compensation, temporary disability only.* The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

*e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer.* An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

**24.13(4) Nondeductible payments from benefits.** The following payments are not considered as wages and are not deductible from benefits:

*a. Self-employment income.* However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

*b. Bonuses.* The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

*c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.*

*d. Payment for unused sick leave.*

*e. National guard duty pay.* This includes reserve unit drill pay for any branch of the armed service.

*f. Supplemental unemployment benefit plans approved by the department.* See 871—subrule 23.3(1), paragraph "e," for criteria and employer procedure for obtaining department approval.

*g. Pension to the blind.*

*h. Payment for terminal leave.* Any payment received by military personnel for unused leave upon discharge.

*i. Compensation for military service-connected disability from the Department of Veterans Affairs.*

*j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.*

*k. Deferred wage compensation.* Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits shall not be deductible during the period in which the individual is claiming benefits.

*l. Witness and jury fees.* These fees are reimbursement for expenses and are not considered as wages.

*m. Supplemental security income.* This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

*n. Federal social security benefit and social security disability payments.*

*o. Payments conditional upon the release of any rights.*

*p. Payments requiring the individual to work through a specific day to be eligible.*

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.19(38).

[ARC 1367C, IAB 3/5/14, effective 4/9/14; ARC 3303C, IAB 8/30/17, effective 10/4/17]

**871—24.14 and 24.15** Reserved.

**871—24.16(96) Vacation pay.**

**24.16(1)** If the employer properly notifies the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term “vacation pay” shall include paid time off and annual leave payments.

**24.16(2)** If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of the extension in writing to the department before the period of extension begins.

**24.16(3)** If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

**24.16(4)** Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).  
[ARC 1367C, IAB 3/5/14, effective 4/9/14]

**871—24.17(96) Vacation pay procedure.**

**24.17(1)** Employer notice specified vacation or holiday pay only. The Form 65-5317, Notice of Claim, the Form 62-2048, Request for Federal Wage and Separation Information, and the Form 62-2049, Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, shall be used as notification to the department that vacation pay is applicable. The Forms 65-5317, 62-2048, and 62-2049 received in the administrative office shall be routed to the appropriate office for the following action:

*a.* Upon receipt of the vacation information, the unemployment insurance representative shall compare the amount of vacation reported by the employer with the computer record. If the computer record shows any discrepancies with the vacation information provided by the employer that would affect the claimant’s eligibility for unemployment insurance benefits for any week claimed, the claimant shall be afforded the opportunity to present facts and evidence, which may include an informational fact-finding interview scheduled by the department. The unemployment insurance representative may afford the employer the opportunity to present additional facts and evidence after ascertaining such from the claimant. If the employer is afforded such an opportunity to provide additional facts and evidence, the unemployment insurance representative shall also afford the claimant the opportunity to present additional facts and evidence.

*b.* After affording the claimant an opportunity to present facts and evidence regarding the receipt of vacation pay, and potentially affording the employer and the claimant an opportunity to provide additional facts and evidence, the representative shall consider all information submitted by the interested parties and issue to the employer and the claimant the appropriate decision concerning the vacation pay. The unemployment insurance representative shall then check the current status of the claim on the computer record to ascertain if any weeks have been reported.

*c.* If the computer record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, the unemployment insurance representative shall take no further action on the weeks not claimed.

*d.* The claimant shall be instructed to only report vacation pay applicable to the first week. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

**24.17(2)** Reserved.

This rule is intended to implement Iowa Code section 96.5(7).  
[ARC 3116C, IAB 6/7/17, effective 7/12/17]

**871—24.18(96) Wage-earnings limitation.** An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

**871—24.19(96) Determination and review of benefit rights.**

**24.19(1)** Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

**24.19(2)** Each interested party will be afforded the opportunity to have a fact-finding interview by telephone regarding matters which are scheduled for a hearing. An interested party may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department shall reserve the right to call any interested party in for an in-person fact-finding interview.

**24.19(3)** Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the benefits bureau may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3265C, IAB 8/16/17, effective 9/20/17]

**871—24.20 and 24.21** Reserved.

**871—24.22(96) Benefit eligibility conditions.** For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

**24.22(1) Able to work.** An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

*a. Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the

work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

*b. Interpretation of ability to work.* The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

**24.22(2) Available for work.** The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

*a. Shift restriction.* The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

*b. Job test.* The best method of testing availability for work is an offer of work or job test. If a job test is not possible because of lack of a suitable offer, the active search for work is relied on and conclusions are likely to be based entirely on the fact that the individual did or did not make a search, without regard to the fact that the individual's personal efforts had little probability of success.

*c. Intermittent employment.* An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

*d. Jury duty.* The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but is a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individual full-time. Witness and jury fees will be considered as reimbursement for expenses and not as wages.

*e. Company employment office.* The department is not bound by a union/company contract that requires the individual to report at the company employment office. The individual is an independent agent seeking work, and may be found available, if an otherwise diligent search of work is made.

*f. Part-time worker, student—other.* Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

*g. Work release program while incarcerated.* For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3); but the department will review any situation concerning an individual incarcerated in a jail, who can meet the able to work, availability for work, and actively seeking work requirements of Iowa Code section 96.4(3).

*h. Available for part of week.* Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

*i. On-call workers.*

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38) "a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

*j. Leave of absence.* A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

*k. Effect of religious convictions on Sabbath day work.* An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses to work on the Sabbath designated by the individual's religion, because of conscientious observance of the Sabbath as a matter of religious conviction, is also deemed to have good cause for refusing the work.

*l. Available for work.* To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist, or if that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

*m. Restrictions and reasonable expectation of securing employment.* An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

*n. Corporate officers.* To be considered available, the corporate officer must meet the same tests of availability as are met by other individuals. The individual must be desirous of other work, be free from serious limitations and be seriously searching for work.

*o. Lawfully authorized work.* An individual who is not lawfully authorized to work within the United States will be considered not available for work.

**24.22(3) Earnestly and actively seeking work.** Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may

be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

*a. Basic requirements.* An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

*b. Number of employer contacts.* It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

*c. Union and professional employees.* Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

*d. Week-to-week disqualification.* Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

*e. Seniority rights.* An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This

waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

*f. Search for work.*

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

*g. Reverse referral.* A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

*h. Job search assistance.* Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

This rule is intended to implement Iowa Code section 96.4(3).

[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3812C, IAB 5/23/18, effective 6/27/18]

**871—24.23(96) Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

**24.23(1)** An individual who is ill and presently not able to perform work due to illness.

**24.23(2)** An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

**24.23(3)** If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

**24.23(4)** If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the

availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

**24.23(5)** Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

**24.23(6)** If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

**24.23(7)** Where an individual devotes time and effort to becoming self-employed.

**24.23(8)** Where availability for work is unduly limited because of not having made adequate arrangements for child care.

**24.23(9)** Reserved.

**24.23(10)** The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

**24.23(11)** Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

**24.23(12)** If a claimant is in jail or prison, such claimant is not available for work.

**24.23(13)** Rescinded IAB 8/6/03, effective 9/10/03.

**24.23(14)** An individual is deemed not available for work because such individual cannot be contacted by the department for referral to possible employment.

**24.23(15)** Where a claimant has demanded a wage in excess of the wages most commonly paid in such claimant's locality for the suitable work the individual is seeking.

**24.23(16)** Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

**24.23(17)** Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

**24.23(18)** Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

**24.23(19)** Availability for work is unduly limited because the claimant is not willing to accept work in such claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

**24.23(20)** Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

**24.23(21)** Rescinded IAB 8/6/03, effective 9/10/03.

**24.23(22)** Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

**24.23(23)** The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

**24.23(24)** Rescinded IAB 8/2/17, effective 9/6/17.

**24.23(25)** If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

**24.23(26)** Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

**24.23(27)** Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

**24.23(28)** A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

**24.23(29)** Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

**24.23(30)** Failure to attend the major portion of the scheduled workweek for department approved training.

**24.23(31)** Where the claimant spent the major portion of the period traveling while relocating.

**24.23(32)** The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(38) "c" are met.

**24.23(33)** Where the claimant left employment prior to a scheduled date of layoff when such claimant could have remained in employment during this period. No disqualification may be imposed in accordance with Iowa Code section 96.5(1) "g" for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

**24.23(34)** Where the claimant is not able to work due to personal injury.

**24.23(35)** Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

**24.23(36)** Rescinded IAB 8/6/03, effective 9/10/03.

**24.23(37)** An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

**24.23(38)** Rescinded IAB 8/6/03, effective 9/10/03.

**24.23(39)** Where the work search has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

- a. First offense—six weeks' penalty.
- b. Second offense—nine weeks' penalty.
- c. Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.

**24.23(40)** Reserved.

**24.23(41)** The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38) "c" and 96.29.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3812C, IAB 5/23/18, effective 6/27/18]

**871—24.24(96) Failure to accept work and failure to apply for suitable work.** Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

**24.24(1) Bona fide offer of work.**

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant

shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

**24.24(2) *Job within claimant's capabilities.***

*a.* The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

*b.* If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

**24.24(3) *Each case decided on its own merits.*** Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

**24.24(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).*** Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

**24.24(5) *Bumping rights to a job.*** A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

**24.24(6) *Claimant physically unable to perform job.*** A medical certification from a medical practitioner must be submitted to support the claimant's statement that work offered is not suitable because of the claimant's physical condition.

**24.24(7) *Gainfully employed outside of area where job is offered.*** Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

**24.24(8) *Refusal disqualification jurisdiction.*** Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

**24.24(9) Reserved.**

**24.24(10) *Distance to new job.*** Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

**24.24(11) *Bulletin board notice of work.*** A bulletin board notice for employees to work during a plant shutdown shall not constitute an offer of work by the company. Such offer of work must be by personal contact to the employee.

**24.24(12) *Claimant discourages prospective employers.*** When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant shall be deemed to have refused suitable work as contemplated by the statute.

**24.24(13)** *Claimant moved to another state.* A claimant who moves to another state shall not be subject to disqualification for refusal to return to a previously held job.

**24.24(14)** *Employment offer from former employer.*

*a.* The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3) “*b*” are controlling in the determination of suitability of work.

*b.* The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

**24.24(15)** *Suitable work.* In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- a.* Any risk to the health, safety and morals of the individual.
- b.* The individual’s physical fitness.
- c.* Prior training.
- d.* Length of unemployment.
- e.* Prospects for securing local work by the individual.
- f.* The individual’s customary occupation.
- g.* Distance from the available work.
- h.* Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.
- i.* Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.
- j.* Whether the position offered is due directly to a strike, lockout, or other labor dispute.
- k.* Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.
- l.* Whether the individual would be required to join or resign from a labor organization.

**24.24(16)** *Disabled accessibility to job.* A job offer shall not be suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.19(38), and 96.29.

**871—24.25(96) Voluntary quit without good cause.** In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs “*a*” through “*i*,” and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

**24.25(1)** The claimant’s lack of transportation to the work site unless the employer had agreed to furnish transportation.

**24.25(2)** The claimant moved to a different locality.

**24.25(3)** The claimant left to seek other employment but did not secure employment.

**24.25(4)** The claimant was absent for three days without giving notice to employer in violation of company rule.

**24.25(5)** Reserved.

**24.25(6)** The claimant left as a result of an inability to work with other employees.

**24.25(7)** The claimant failed to return to work upon the termination of a labor dispute.

**24.25(8)** The claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant shall be considered to be on leave from employment. It shall only be considered a voluntary quit issue when upon release from military service such claimant does not return to such claimant’s employer to apply for employment within 90 days; provided, that such person shall

give evidence to the employer of satisfactory completion of such military service and further provided that such person is still qualified to perform the duties of such position.

**24.25(9)** Reserved.

**24.25(10)** The claimant left employment to accompany the spouse to a new locality. No disqualification shall be imposed when Iowa Code section 96.5(1) "b" is applicable.

**24.25(11)** The claimant left to get married.

**24.25(12)** The claimant left without notice during a mutually agreed upon trial period of employment.

**24.25(13)** The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

**24.25(14)** Reserved.

**24.25(15)** Reserved.

**24.25(16)** The claimant is deemed to have left if such claimant becomes incarcerated.

**24.25(17)** The claimant left because of lack of child care.

**24.25(18)** The claimant left because of a dislike of the shift worked.

**24.25(19)** The claimant left to enter self-employment.

**24.25(20)** The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

**24.25(21)** The claimant left because of dissatisfaction with the work environment.

**24.25(22)** The claimant left because of a personality conflict with the supervisor.

**24.25(23)** The claimant left voluntarily due to family responsibilities or serious family needs.

**24.25(24)** The claimant left employment to accept retirement when such claimant could have continued working.

**24.25(25)** The claimant left to take a vacation.

**24.25(26)** The claimant left to go to school.

**24.25(27)** The claimant left rather than perform the assigned work as instructed.

**24.25(28)** The claimant left after being reprimanded.

**24.25(29)** The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

**24.25(30)** The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

**24.25(31)** The claimant left work to keep from earning enough wages during the year to adversely affect claimant's receipt of federal old-age benefits (social security).

**24.25(32)** The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

**24.25(33)** The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

**24.25(34)** The claimant left because work was irregular due to weather conditions; however, this working condition was not unusual in claimant's type of employment.

**24.25(35)** The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician;

b. Obtain certification of release for work from a licensed and practicing physician;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

d. Fully recover so that the claimant could perform all of the duties of the job.

**24.25(36)** The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

**24.25(37)** The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule

shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

**24.25(38)** Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

**24.25(39)** Reserved.

**24.25(40)** Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, 96.19(6) "a," and 96.19(38).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

**871—24.26(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits.** The following are reasons for a claimant leaving employment with good cause attributable to the employer:

**24.26(1)** A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

**24.26(2)** The claimant left due to unsafe working conditions.

**24.26(3)** The claimant left due to unlawful working conditions.

**24.26(4)** The claimant left due to intolerable or detrimental working conditions.

**24.26(5)** The claimant was laid off by the employer for being pregnant; however, availability must still be determined.

**24.26(6)** Separation because of illness, injury, or pregnancy.

*a. Nonemployment related separation.* The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

*b. Employment related separation.* The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

**24.26(7)** Reserved.

**24.26(8)** The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who

live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

**24.26(9)** The claimant left employment upon the advice of a licensed and practicing physician for the sole purpose of taking a family member to a place having a different climate and subsequently returned to the claimant's regular employer and offered to perform services, but the claimant's regular or comparable work was not available. However, during the time the claimant was at a different climate the claimant shall be deemed to be unavailable for work notwithstanding that during the absence the claimant secured temporary employment. (Family is defined as: wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.)

**24.26(10)** A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

**24.26(11)** The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

**24.26(12)** When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

**24.26(13)** A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

**24.26(14)** Rescinded IAB 7/28/99, effective 9/1/99.

**24.26(15)** Employee of temporary employment firm.

*a.* The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

*b.* The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

*c.* Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

*d.* Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

**24.26(16)** The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

**24.26(17)** Separation due to incarceration.

*a.* The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

*b.* If the claimant fails to satisfy the requirements of subparagraph 24.26(17)“a”(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96). If all of the conditions of subparagraphs 24.26(17)“a”(2), (3) and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

**24.26(18)** Reserved.

**24.26(19)** The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

**24.26(20)** The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

**24.26(21)** The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

**24.26(22)** The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

**24.26(23)** The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

**24.26(24)** Reserved.

**24.26(25)** Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

**24.26(26)** Reserved.

**24.26(27)** Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

**24.26(28)** The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer,

provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

[ARC 3401C, IAB 10/11/17, effective 11/15/17]

**871—24.27(96) Voluntary quit of part-time employment and requalification.** An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1) "g."

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

**871—24.28(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.**

**24.28(1)** The claimant shall be eligible for benefits even though having voluntarily left employment, if subsequent to leaving such employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

**24.28(2)** The claimant shall be eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if subsequent to the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

**24.28(3)** Reserved.

**24.28(4)** Reserved.

**24.28(5)** The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

**24.28(6)** The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

**24.28(7)** The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

**24.28(8)** The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1) "a."

**871—24.29(96) Business closing.**

**24.29(1)** Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual

who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

**24.29(2)** Going out of business means any factory, establishment, or other premises of an employer which closes its door and ceases to function as a business; however, an employer is not considered to have gone out of business at the factory, establishment, or other premises in any case in which the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business.

**24.29(3)** Verification of going out of business. When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business at a factory, establishment, or other premises, the unemployment insurance representative completes a Form 60-0240, Verification of Business Closing, and refers Form 60-0240 to the field audit section for assignment to a field auditor who verifies the business closing. A Form 62-2056, Review of Business Status for Closing Credits, is completed for each succeeding claimant who requests to be included in a redetermination for business closing credits. This form is added to the Form 60-0240 already in the department file for the appropriate pending investigation. Upon return of the Form 60-0240 from the field audit section, an unemployment insurance representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing based on the results of the investigation.

**871—24.30** Reserved.

**871—24.31(96) Subsequent benefit year condition.**

**24.31(1)** The claimant must have been paid benefits on a previous claim.

**24.31(2)** If the claimant has the qualifying wages for the establishment of a second benefit year as specified in Iowa Code section 96.4(4) which were earned prior to the filing of the previous claim, the claimant must, during or subsequent to that year, have worked in (except in back pay awards) and have been paid wages for insured work totaling at least eight times the claimant's weekly benefit amount from the claimant's previous benefit year as of the end of the benefit year end date. Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

**24.31(3)** Insured work means insured work in any state.

**24.31(4)** Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

**24.31(5)** The amount equal to eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work need not be in addition to the qualifying wages for the establishment of a second benefit year.

**24.31(6)** Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work shall be removed upon the verification that the claimant worked in and has been paid wages for insured work totaling eight times the claimant's weekly benefit amount from the claimant's previous benefit year during or subsequent to the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

**871—24.32(96) Discharge for misconduct.**

**24.32(1) Definition.**

*a.* "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards

of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

*b.* Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits until the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

**24.32(2)** Reserved.

**24.32(3)** *Gross misconduct.*

*a.* For the purposes of these rules, gross misconduct shall be defined as misconduct involving an indictable offense in connection with the claimant's employment, provided that such claimant is duly convicted thereof, has signed a statement admitting that such claimant has committed such act, or has admitted to the department that claimant has committed such act.

*b.* An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than \$500 or by imprisonment in the county jail for more than 30 days.

*c.* If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers regardless of when the act occurred during the benefit year.

**24.32(4)** *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

**24.32(5)** *Trial period.* A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

**24.32(6)** *False work application.* When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

**24.32(7)** *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

**24.32(8)** *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

**24.32(9)** *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.  
[ARC 3401C, IAB 10/11/17, effective 11/15/17]

**871—24.33(96) Labor disputes.**

**24.33(1) Definition.** As used in sections 96.5(3) “b”(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

**24.33(2) Initial requirements—workforce development center.**

*a.* As soon as the workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a report on Form 68-0535, Labor Dispute Report, shall be sent to the administrative office of the department of workforce development, attention: legal counsel, unemployment insurance services division, advising of the labor dispute or work stoppage.

*b.* If the labor dispute or work stoppage is terminated before the report is transmitted to the legal counsel, unemployment insurance services division, the information concerning the termination of the dispute and the date of the worker’s return to work must also be entered on Form 68-0535.

*c.* When the labor dispute or work stoppage is terminated subsequent to the filing of the initial Form 68-0535, the legal counsel, unemployment insurance services division, shall be notified of the termination and return to work dates.

*d.* In those instances where an association represents a group of employers, include the names and addresses of the employers who are involved in the labor dispute in your report. Include also the name and address of the association and the name of the association official who can furnish information about the work stoppage.

*e.* In taking initial claims in which there is a labor dispute, the workforce development center will complete an initial application for unemployment, Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, in the normal manner and will also include the union name and local union number.

*f.* If a claim notice is inadvertently returned by the employer to the workforce development center stating there is a labor dispute, the protest with the postmarked envelope attached shall be transmitted to the unemployment insurance service center.

*g.* If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement must be taken from each individual claiming benefits.

*h.* Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

*i.* Statements from each individual claiming benefits will be taken whenever the work stoppage is considered as a nonunion stoppage, meaning no union representation at the premises of the employer. In such cases, each individual’s statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

*j.* When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues which caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

*k.* The requirements in subrules 24.33(1) and 24.33(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

*l.* During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has

been discharged from employment, and an additional claim must be taken if the individual continues in claim status.

*m.* When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the caller for inclusion in the labor dispute report to the unemployment insurance services division.

*n.* The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on Form 65-5317, Notice of Claim. The employer will receive a copy of the decision which may be appealed.

*o.* Form 65-5317, Notice of Claim Filing, will be used by the employer to report total unemployment due to strike, lockout or other labor dispute.

*p.* Employer shall use Form 60-0154, Notice of Separation or Refusal of Work, or the electronic version of that form, to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal. Form 60-0154 shall not be used by employers to report labor disputes because the document is not designed for that type of an employment separation or work refusal.

**24.33(3) Initial determination.**

*a.* In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division shall promptly review the evidence submitted, and such additional evidence as may be required, and shall make a decision upon the issues involved under that subsection.

*b.* The representative of the unemployment insurance services division shall promptly notify all interested parties to the claim of the decision. Said parties shall have ten days, from the date of mailing the decision to the last known address of record, to appeal the decision.

[ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17]

**871—24.34(96) Labor dispute—policy.**

**24.34(1)** Reserved.

**24.34(2)** Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

**24.34(3)** The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

*a.* If the relationship is severed by the employer, Iowa Code section 96.5(2) concerning discharge for misconduct shall govern.

*b.* If the relationship is severed by the employee, Iowa Code section 96.5(1) concerning voluntary leaving shall govern.

**24.34(4)** An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute, must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

**24.34(5)** Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute shall be deemed to be involved in such labor dispute.

**24.34(6)** If an initial determination by the representative of the unemployment insurance services division of a labor dispute issue is appealed, the case shall be assigned to an administrative law judge, who shall receive the testimony of any party to the hearing and shall issue a decision on the labor dispute. Such decision may be appealed in conformity with these rules to the employment appeal board of the Iowa department of inspections and appeals.

**24.34(7)** An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual shall be deemed to have involuntarily left employment.

*a.* The division shall presume that any strike or lockout is being conducted in a lawful manner unless evidence to the contrary has been introduced. The division shall presume that any picketing is

being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

*b.* The division shall presume that where an injunction has been sought against actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct and such injunction shall have been denied on the basis that actual or threatened unlawful conduct has not been established that the picket line is peaceful unless evidence is introduced which establishes the violent nature of picket line activity.

*c.* If an injunction is obtained, the division shall presume the picket line is peaceful as of the date the injunction is issued unless evidence is introduced which proves the contrary proposition.

**24.34(8)** A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

*a.* The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout and the claimants shall not be disqualified because of a labor dispute.

*b.* A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

**24.34(9)** To constitute a labor dispute there must be a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment shall be deemed to have voluntarily quit.

**24.34(10)** When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

**24.34(11)** Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

*a.* Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

*b.* Suitable if the offer was made to a former employee, who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) shall apply.

*c.* Suitable if the offer is made to a new employee, who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

**24.34(12)** Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs relationship with employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

**871—24.35(96) Date of submission and extension of time for payments and notices.**

**24.35(1)** Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

*a.* If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

*b.* If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

*c.* If transmitted by any means other than those outlined in paragraphs 24.35(1) “*a*” and “*b*,” on the date it is received by the division.

**24.35(2)** The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

*a.* For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

*b.* The division shall designate personnel who are to decide whether an extension of time shall be granted.

*c.* No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

*d.* If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

**24.35(3)** Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee’s last-known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

**24.35(4)** Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system shall be considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted shall be presumed to be the date of the document, unless otherwise indicated by the facts.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3247C, IAB 8/2/17, effective 9/6/17]

**871—24.36(96) Interstate benefits.**

**24.36(1)** An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals absent from the state(s) in which wage credits were earned.

**24.36(2)** The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state law and rules and shall be in substantial compliance with those rules promulgated by the United States Department of Labor as published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650.

**871—24.37(96) Payment of benefits to interstate claimants.**

**24.37(1)** Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

*a. Applicability.* This regulation shall govern the department in its administrative cooperation with other states adopting a similar regulation for the payment of unemployment insurance benefits to interstate claimants.

*b. Definitions.* As used in this rule unless the context clearly requires otherwise:

(1) *“Interstate benefit payment plan.”* This is the plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(2) *“Interstate claimant.”* This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) *“State.”* This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

(4) *“Agent state.”* This means any state in which an individual files a claim for benefits from another state.

(5) *“Liable state.”* A liable state is any state against which an individual files, from another state, a claim for benefits.

(6) *“Benefits.”* This is the compensation payable to an individual, with respect to unemployment, under the employment security law of any state.

(7) *“Week of unemployment.”* This is any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

*c. Registration for work.*

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, rules, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

*d. Benefit rights of interstate claimants.*

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state’s requalification criteria.

(3) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims filed on or after July 5, 1953.

(4) The effective date of an interstate claim shall be the Sunday of the week the claim was filed, except if proof is obtained from another state that the claimant filed in that state and it was determined that the claim should have been filed in Iowa.

*e. Claim for benefits.*

(1) Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(2) Rescinded IAB 8/6/03, effective 9/10/03.

*f. Determination of claims.*

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

*g. Appellate procedure.*

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

**24.37(2) Extended benefits interstate claims.** When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).  
[ARC 3811C, IAB 5/23/18, effective 6/27/18]

#### **871—24.38(96) Combined wage claim.**

**24.38(1) Purpose of plan.** The combined wage program is to enable an unemployed worker with covered employment or wages in more than one state to combine all such employment and wages in one state in order to qualify for benefits or to receive increased benefits.

*a.* Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations. This includes the District of Columbia, U.S. Virgin Islands and the Commonwealth of Puerto Rico.

*b.* The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the paying state shall be the benefit year, base period, qualifying wages, benefit rate, and duration of benefits applicable to a combined wage claimant.

*c.* The rights of the individual under the combined wage claim plan shall be determined by the paying state after the combining of all wages available from the transferring states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department shall respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

*d.* All other provisions of the unemployment compensation laws and rules of the state agency of the paying state shall be applied to the combined wage claim.

*e.* The state in which the claim is filed will be the paying state except in those cases in which the individual does not qualify after the transfer has been completed or if the claimant meets the definition of a commuter.

**24.38(2) Exception to combining wage credits.** Under the following circumstances, wages and employment are not transferable to the paying state:

*a.* Any employment and wages which have been transferred to any other paying state and not returned unused.

*b.* Wages that have been used by the transferring state as the basis of a monetary determination which established a benefit year.

*c.* Any employment and wages that have been canceled or are unavailable as a result of a transferring state determination made prior to the request for transfer.

**24.38(3)** The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits which said claimant will be paid.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

**871—24.39(96) Department-approved training.** The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

**24.39(1)** The claimant must make application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The date the training will be complete or the degree will be obtained.
- d. The occupation which the training is allowing the claimant to maintain or pursue.
- e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

**24.39(2)** A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. The educational establishment must be a college, university or technical training institution.
- b. The training must be completed 104 weeks or less from the start date.
- c. The individual must be enrolled and attending the training program in person as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

**24.39(3)** The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3562C, IAB 1/3/18, effective 2/7/18; ARC 4301C, IAB 2/13/19, effective 3/20/19]

**871—24.40(96) Training extension benefits.**

**24.40(1)** The purpose of training extension benefits is to provide the individual with continued eligibility for benefits so that the individual may pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who was laid off or voluntarily quit with good cause attributable to the individual's employer from full-time employment in a declining occupation or is involuntarily separated from full-time employment as a result of a permanent reduction of operations.

**24.40(2)** The weekly benefit amount shall be pursuant to the same terms and conditions as regular unemployment benefits and the benefits shall be for a maximum of 26 times the weekly benefit amount of the claim which resulted in eligibility. Both contributory and reimbursable employers shall be relieved of charges for training extension benefits.

**24.40(3)** The course or courses must be full-time enrollment for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand, high-technology, and declining occupations. The lists shall be available on the department's website and at workforce centers.

*a.* High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one which requires a high degree of training in the sciences, engineering, or other advanced learning area and has work opportunities available in the labor market area or the state of Iowa.

*b.* A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

*c.* A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

*d.* A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

*e.* A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

**24.40(4)** The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.

**24.40(5)** Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the benefits have been exhausted, in order to maintain eligibility for training extension benefits.

This rule is intended to implement 2009 Iowa Code Supplement section 96.3(5).  
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3562C, IAB 1/3/18, effective 2/7/18]

**871—24.41(96) Unemployed parents program (FIP/UP).** Under Public Law 94-566, an unemployed parent who is eligible for both unemployment insurance and family investment program/unemployed parent (FIP/UP) shall be required to collect any unemployment insurance to which the individual is entitled before receiving any payments under the FIP/UP program.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

**871—24.42(96) Retention of DHS referral form.** When an unemployed parent presents the DHS referral Form PA-2138-5 to the workforce development center representative, the representative will take the form, sign it and complete an application for job placement assistance and/or employment insurance benefits.

**24.42(1)** The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on Form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to human services.

**24.42(2)** A FIP/UP claimant may have the claim protested which can affect eligibility. Human services may request additional information on a subsequent Form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

**871—24.43 and 24.44** Reserved.

**871—24.45(96) Trade Act of 1974.** Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618), shall be determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, chapter 29, parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

**871—24.46(96) Extended benefits.**

**24.46(1) Purpose.** Extended benefits are benefits paid to an eligible individual during periods of high unemployment in a state under the Federal-State Extended Unemployment Compensation Act of 1970 and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615. The purpose of extended benefits is to extend the period of time for which an individual may receive benefits to allow the individual additional time to locate employment in recognition of the likelihood that employment is more difficult to find during periods of high unemployment in a state. The cost of extended benefits is shared between the federal and state governments.

**24.46(2) Determination of when extended benefits are paid.**

*a. When paid.* The state “on” indicator determines when extended benefits are paid in this state. A state “on” indicator is in effect during a week for which the rate of insured unemployment is 5 percent or greater and 120 percent or greater than the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

*b. When not paid.* The state “off” indicator determines when extended benefits are not paid in this state. A state “off” indicator is in effect during a week for which the rate of insured unemployment is less than 5 percent or less than 120 percent of the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

*c. Period of payment.* The extended benefit period is the period of time when extended benefits are paid in this state. An extended benefit period begins with the third week following a week for which there is a state “on” indicator in effect. An extended benefit period ends either with the completion of the thirteenth consecutive week beginning with the third week following a state “on” indicator, or later, with the completion of the third week following the first week for which there is a state “off” indicator. However, another extended benefit period shall not begin until the fourteenth week following the end of a previous extended benefit period.

*d. Rate of insured unemployment.* For the purposes of this subrule, the rate of insured unemployment means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits (excluding state plant closing benefits and benefits paid to federal civilian employees and ex-servicemembers under 5 U.S.C., chapter 85) in this state for weeks of unemployment with respect to the most recently completed 13-consecutive-week period by the average monthly insured employment for the first four of the six most recently completed calendar quarters immediately preceding the end of the 13-week period.

**24.46(3) Announcement and notice of the beginning and ending of an extended benefit period.**

*a. Announcement by director.* The beginning or ending date, whichever is appropriate, of an extended benefit period is announced by the director of the department of workforce development through appropriate news media in this state. As the case may be, the announcement clearly describes the unemployed individuals who may become eligible or ineligible for extended benefits.

*b. Notice to individuals.* The Form 65-5309, Notice to Individuals, is used by the department to notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year which will not end prior to the beginning of the extended benefit. The notice describes those actions required of the individual to claim the extended benefits.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits of the ending of an extended benefit period. The notice describes the effect on the individual's right to extended benefits.

**24.46(4) Amount and duration of extended benefits.**

*a. Weekly extended benefit amount.* An individual's weekly extended benefit amount paid for a week of total unemployment during the individual's eligibility period is equal to the individual's weekly regular benefit amount paid for a week of total unemployment during the individual's applicable benefit year.

*b. Duration of extended benefits.* The total amount of extended benefits which an individual may receive during the individual's applicable benefit year is limited to 50 percent of the total amount of regular benefits, excluding any state plant closing benefits, received by the individual during that benefit year or 13 times the individual's weekly regular benefit amount paid for a week of total unemployment during that benefit year whichever is less; however, an individual is limited to two weeks of extended benefits if the individual files an interstate claim for extended benefits in a state in which an extended benefit period is not in effect.

*c. Eligibility period.* The eligibility period is the period of weeks in and after an individual's benefit year which begin in an extended benefit period when an individual is eligible to receive extended benefits; however, if a benefit year ends within an individual's eligibility period for extended benefits, the remaining extended benefits which the individual is entitled to receive in that portion of the eligibility period which extends beyond the end of the individual's benefit year, is reduced, but not below zero, by an amount arrived at by multiplying the number of weeks of Federal Trade Readjustment Act benefits received by the individual during the benefit year times the individual's weekly extended benefit amount.

*d. Applicable benefit year.* The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual's eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

**24.46(5) Eligibility requirements for extended benefits.** Except where the results are inconsistent with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615, the provisions of this state's law which apply to claims for, and the payment of, regular benefits apply to claims for, and the payment of, extended benefits. An individual is eligible to receive extended benefits for a week of unemployment during the individual's eligibility period if the department finds that all of the following conditions are met:

*a.* The individual is an exhaustee. An exhaustee is an individual who has exhausted all entitlements to regular benefits under this or any other state law as well as federal civilian employee, railroad unemployment insurance, and ex-servicemember benefits.

An individual is also an exhaustee:

(1) If the individual may be entitled to additional regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year.

(2) If the individual's benefit year has expired prior to the week, and the individual has no, or insufficient, wages on the basis of which to establish a new benefit year.

(3) If the individual has no right to benefits under other laws of the federal government, as specified in the regulations issued by the United States Secretary of Labor, or a contiguous country with which the United States has an agreement, but if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to the benefits, then the individual is an exhaustee.

*b.* The individual has one and one-half times the high quarter wages. An individual is required to have been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

*c.* The individual is required to actively seek, apply for or accept, suitable work. When an individual files an initial claim for extended benefits, the Form 60-0274, Notice for Individuals Claiming

Extended Benefits, is used to determine the individual's prospects for obtaining work and to notify the individual that, beginning with the week following the week in which the individual is furnished this notice:

(1) If the individual's prospects for obtaining work within a reasonably short period are "good," the individual is required to actively seek, apply for or accept, suitable work in which, all other considerations being reasonably equal, the gross average weekly wage equals or exceeds 65 percent of the individual's average weekly wage from the highest earnings quarter of the individual's base period.

(2) If the individual's prospects for obtaining work within a reasonably short period are "not good," the individual is required to actively seek, apply for or accept, suitable work which is within the individual's capabilities to perform and which offers a gross average weekly wage which exceeds the individual's weekly extended benefit amount for a week of total unemployment plus any supplemental unemployment benefits; however, the individual is not required to actively seek, apply for or accept, work which offers a gross average weekly wage less than the federal or state minimum wage whichever is higher.

(3) For the purposes of this paragraph, reasonably short period means four weeks. If an individual whose prospects for obtaining work are "good" has not secured work within four weeks following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, then the individual is notified on Form 65-5309, Notice to Individuals, that the individual's prospects for obtaining work are now considered as "not good."

(4) For the purposes of this paragraph, actively seeking work means that, for each week following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, the individual is required to provide tangible evidence on the weekly claim for benefits that the individual is making a systematic and sustained effort to search for suitable work.

(5) If prospects are determined to be "not good," an individual shall not be disqualified for failing to apply for or accept work which is not offered in writing or is not listed with this state's employment service.

*d.* The individual is required to requalify following a disqualification for failure to actively seek, apply for or accept, suitable work. To become eligible for extended benefits following a disqualification for failure to actively seek, apply for or accept, suitable work, the individual is required to be employed in insured work for four weeks, which need not be consecutive, and earn four times the individual's weekly extended benefit amount.

**871—24.47(96) Disaster benefits.** Benefits under the Disaster Relief Act of 1974. Unemployment benefits payable under Public Law 93-288, the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 625 and 650, and Chapter 32, Part 1710.16. These benefits are payable to claimants who are unemployed due to natural disasters. A claimant who is eligible for regular unemployment benefits shall not be eligible for disaster unemployment assistance.

**871—24.48(96) UCFE claims.** Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees shall be determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650. These benefits are payable under the Federal Employer's Compensation Act, 5 U.S.C. 8101-8150, 8191-8193, and are based on wages earned by civilians in covered federal employment.

**871—24.49(96) UCX claims.** Benefits under the Ex-servicemember's Unemployment Compensation Act.

**24.49(1) Applicable law.** Unemployment benefits for ex-military personnel shall, in addition to being determined in accordance with applicable Iowa law and rules, be determined in substantial compliance with the rules and guidelines of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 614 and 650.

**24.49(2) *When payable.*** These benefits are payable under the Ex-servicemember's Unemployment Compensation Act of 1958, 5 U.S.C. 8850. They allow unemployment compensation to be based on wages earned while on active military duty.

**871—24.50(96) Temporary extended unemployment compensation.**

**24.50(1) to 24.50(5)** Rescinded IAB 8/6/03, effective 9/10/03.

**24.50(6)** Overpayments will be offset up to and including 100 percent of the federal temporary extended unemployment compensation benefit payment.

**24.50(7)** Waiver of overpayments.

*a.* Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

*b.* In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

*c.* In determining whether equity and good conscience exist, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

[ARC 3303C, IAB 8/30/17, effective 10/4/17]

**871—24.51(96) School definitions.**

**24.51(1)** Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

**24.51(2)** Educational service agency means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

**24.51(3)** Employment definitions.

*a.* Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution which consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services which consist of directing or supervising the instructional activities of others; or services which consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution which consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor which is varied in character and requires the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) Principal administrative: Services performed for an educational institution which consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations which have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies. Neither providing a title nor withholding it should be controlling in itself.

*b.* Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

**24.51(4)** Holiday recess. See vacation period subrule 24.51(8).

**24.51(5)** Institution of higher education means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

**24.51(6)** Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

**24.51(7)** School duration period.

*a.* Academic year is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

*b.* Term is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term shall mean the same as a quarter period. If the educational institution operates on a trimester basis, then term shall mean the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

*c.* Twelve-month employment. School employees that perform services for educational institutions 12 months of a calendar year or years.

**24.51(8)** Vacation period or holiday recess. In Iowa Code section 96.4(5), the term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

**24.51(9)** Between terms or academic years denial means any week of unemployment which begins during the period between two successive academic years or during a similar period between two

regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such terms or academic years.

**871—24.52(96) Determining eligibility of school claims after employer protest.**

**24.52(1)** Claim filed. When a claim has been filed by an employee of an educational institution, the department shall send a Form 65-5317, Notice of Claim, to the educational institution and such educational institution wishing to protest such a claim shall return such notice to the department and shall include on it a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to Form 65-5317, Notice of Claim.

**24.52(2)** If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding should result in a disqualification, the effective starting date of the disqualification shall be determined as follows:

*a.* No earlier than the effective starting date of the claim as it would serve no useful purpose. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue shall still be adjudicated since the issue is determined as a voluntary quit rather than a job refusal pursuant to subrules 24.25(37) and 24.26(19).

*b.* The Sunday of the week in which the job was offered under any of the following conditions:

- (1) The employer protest was made within ten-day protest period.
- (2) The department was notified within ten days of the date of the offer.
- (3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

*c.* The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation, the effective starting date of disqualification shall be the Sunday of the week in which the job offer was made.

*d.* The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment shall be adjudicated under the voluntary quit section of the law pursuant to subrules 24.25(37), 24.26(19) and 24.52(11).

**24.52(3)** Professional employee. Unemployment insurance payments which are based on school employment shall not be paid to a professional employee for any week of unemployment which begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or both such terms. However, unemployment insurance payments can be made which are based on non-school-related wage credits pursuant to subrule 24.52(6).

**24.52(4)** Nonprofessional employee.

*a.* Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

*b.* The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed

weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph “e.”

**24.52(5)** Twelve-month, year-round employee. An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term shall be adjudicated under Iowa Code section 96.5(3), regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

**24.52(6)** Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

**24.52(7)** Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

*a.* A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

*b.* A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

**24.52(8)** Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis. Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9) “b” and paragraph 24.13(2) “o.”

**24.52(9)** Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

**24.52(10)** Substitute teachers.

*a.* Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

*b.* Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2) “i”(1).

*c.* Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2) “i”(3).

*d.* However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2) “i”(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.

- (3) Placing no restrictions on their employability.
- (4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

*e.* A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

**24.52(11)** Declination of new contract or reasonable assurance.

*a.* The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year shall have the separation adjudicated under the voluntary quit provision of Iowa Code section 96.5(1) pursuant to subrule 24.25(37).

*b.* This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.26(19) and 24.26(22).

**24.52(12)** Delayed offer and acceptance of a contract or reasonable assurance of employment in the succeeding term or year. School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year shall be disqualified under the “between terms denial” provision.

**24.52(13)** Continuing supplemental (part-time) school employment after loss of nonschool employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account, whether contributory or reimbursable, pursuant to Iowa Code section 96.7(3) “a”(2).

**871—24.53(96) Noncovered school-related employment.**

**24.53(1)** Pursuant to rule 871—23.20(96), wages earned by a student who performs services in the employ of a school at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) cannot be used as wage credits for claim or benefit purposes. However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

**24.53(2)** Pursuant to rule 871—23.20(96), wages earned by the spouse of such a student in employment with the educational institution attended by the student cannot be used for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

**24.53(3)** Pursuant to rule 871—23.21(96), wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be considered as insured employment.

**871—24.54(96) Church school coverage.** Schools affiliated with a church are exempt from coverage but may volunteer coverage by request to the department of workforce development. Schools not affiliated with a church are covered employers with covered employment. Church school coverage is defined pursuant to rule 871—23.27(96).

**871—24.55** and **24.56** Reserved.

**871—24.57(96) Athletes—disqualifications.** “Athletes” as used in Iowa Code section 96.5(9), is intended to apply to professional athletes. A professional athlete is an individual whose occupation is participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes and are not within the scope of Iowa Code section 96.5(9).

**24.57(1)** As used in Iowa Code section 96.5(9), “any services, substantially all of which consist of participating in sports or athletic events” means all services performed by an individual in any subject employment during the individual’s base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

**24.57(2)** As used in Iowa Code section 96.5(9), “participating in sports or athletic events” means any services performed in an athletic activity by an individual as:

- a. A regular player or team member.
- b. An alternate player or team member.
- c. An individual in training to become a regular player or team member.
- d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

**24.57(3)** The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the department after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

**24.57(4)** For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

- a. The individual has an express or implied multiyear contract which extends into the subsequent sport season, or,
- b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and
- c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and
- d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

**24.57(5)** Benefits which will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

**24.57(6)** When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

**24.57(7)** Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

**24.57(8) Athletes—denial of benefits.** An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

**871—24.58(96) Voluntary shared work.** The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce by allowing certain employees to collect unemployment insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application which must be approved by the department. The employer shall submit the plan to the department 30 days prior to the proposed implementation date. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and claim for benefits and return them to the employer who will submit them to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

**24.58(1)** A shared work plan will last no longer than 52 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks.

**24.58(2)** Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

**24.58(3)** A plan which has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and must demonstrate that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

**24.58(4)** Approval of a plan may be denied or revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40 including, but not limited to, the providing of false or misleading information to the department, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

**24.58(5)** The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the department within 30 days from the date the decision is issued. The employer's appeal will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

**24.58(6)** If the employer provides as part of the plan a training program that will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall consider the employee to be attending department-approved training and shall relieve the employer of charges for benefits paid to the individual attending training under the plan.

This rule is intended to implement 2009 Iowa Code Supplement section 96.40 as amended by 2010 Iowa Acts, Senate File 2279.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

**871—24.59(96) Child support intercept.** An individual who owes a child support obligation and who has been determined to be eligible for unemployment insurance benefits under Iowa Code chapter 96, shall have this information furnished to the child support recovery unit. The department of workforce development shall deduct and withhold from benefit payments the amount which is specified by the child support recovery unit. The term "benefits" for child support intercept purposes shall be defined as meaning any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

**24.59(1)** *Information furnished to child support recovery unit.* The department of workforce development shall furnish information to the child support recovery unit concerning all new claims

filed that are monetarily eligible for benefits under any state or federal program administered by the department.

**24.59(2) *Action taken by child support recovery unit.*** The child support recovery unit shall contact the claimant so that an opportunity is afforded to the claimant for a signed agreement to have a specified amount deducted and withheld from the claimant's benefits. The child support recovery unit shall submit a copy of the signed agreement to the department of workforce development and the department shall deduct and withhold the amount specified in the agreement.

**24.59(3) *Garnishments.*** Failure of the child support recovery unit to reach an agreement with the claimant for a specified amount to be deducted may result in the child support recovery unit initiating a garnishment action through legal process under Iowa Code chapter 642. The department of workforce development shall deduct and withhold from the claimant's benefits the amount specified. Notwithstanding section 96.15, benefits under chapter 96 are not exempt from garnishment, attachment, or execution if garnished by the child support recovery unit as established in Iowa Code section 252B.2, to satisfy the child support obligation of an individual who is eligible under this chapter. Child support obligation is defined as only those obligations which are enforced pursuant to the plan as described in Section 454 of the Social Security Act under Part D of Title IV entitled "State Plan for Child Support."

**24.59(4) *Treatment of amount deducted for child support.*** Any amount deducted from unemployment insurance payments for child support obligations shall be treated as if it were paid to the individual as benefits under Iowa Code chapter 96.

**24.59(5) *Processing of payments.*** The child support recovery unit shall furnish to the department the name and address of the designated public official to whom the amount deducted must be remitted. After the deduction, the remaining balance shall be credited to the claimant.

**24.59(6) *Notice to claimant.*** The department shall mail a notice to the claimant which explains the beginning date and the amount of the deduction from the claimant's weekly benefit amount which satisfies the individual's child support obligation to the child support recovery unit. This notice will be issued when the first deduction is made from the benefit payment. The notice shall explain the authority for the deduction and include the claimant's right of appeal.

**24.59(7) *Appeal rights on the child support deduction.***

*a.* Any appeal on a child support deduction is limited to either the validity of workforce development's authority to make the deduction or the accuracy of the amount deducted.

*b.* The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

*c.* The department does not have the authority under Iowa Code chapter 96 to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

**871—24.60(96) Alien.** Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

**24.60(1)** Section 3304(a)(14) of the Federal Unemployment Tax Act requires that the state law deny benefits which are based on services performed by an alien who has not been legally admitted to the country as a permanent resident. This provision does not deny benefits on the basis of services performed by noncitizens. It applies to services performed by individuals who do not have legal status of permanent residence in this country.

**24.60(2)** It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

*a.* If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

*b.* If the answer is “no,” the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual’s status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94, Arrival and Departure Record, and the Forms I-151 and I-551, Alien Registration Receipt Card. These forms are issued by the U.S. Citizenship and Immigration Services and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual’s alien registration number at the time of claim filing.

*c.* Any or all documents presented to the department by an alien shall be subject to verification with the U.S. Citizenship and Immigration Services. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—25.10(96), prosecution on overpayments.

**24.60(3)** Disqualification of aliens.

*a.* Aliens shall be disqualified for services performed unless such alien is an individual who:

- (1) Was lawfully admitted for permanent residence at the time such services were performed or;
- (2) Was lawfully present in this country for purpose of performing such service or;
- (3) Was permanently residing in this country under color of law at the time such services were performed.

*b.* Color of law permanent residence is defined as:

(1) An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

(2) An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

(3) An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

(4) Reserved.

(5) An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

(6) An alien who has been formally granted deferred action or nonpriority status by the U.S. Citizenship and Immigration Services.

**24.60(4)** Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 which indicates eligibility to perform service in this country.

*a.* Nonimmigrant aliens who are allowed to perform certain types of service are:

Class of worker	Symbol on I-94	Employment Permitted
(1) Ambassador, Consular officers and their immediate families	A-1	May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(2) Other foreign government officials and their immediate families.	A-2	Same as for A-1.
(3) Treaty trader, spouse and children Treaty investor, spouse and children	E-1 E-2	Admitted to work for a specific employer or as a sole proprietorship or partnership.
(4) Student	F-1 M-1	May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien.
(5) Representatives of foreign governments to international organization such as the U.N.	G-1 G-2 G-3 G-4 G-5	May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(6) Temporary worker of distinguished merit and ability	H-1	Are admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers.
(7) Temporary workers performing services unavailable in the U.S.	H-2	Same as for H-1.
(8) Trainee	H-3	Same as for H-1.
(9) Exchange visitor Spouse and children	J-1 J-2	May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized."
(10) Fiancé or fiancée of USC entering solely to conclude valid marriage Child of a K-1	K-1 K-2	May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
(11) Intra company transferee entering to continue employment with same employer. Dependents.	L-1 L-2	Admitted upon petition by an employer. May only work for that employer. May accept employment if approved by the Immigration Service. I-94 will be stamped: "Employment Authorized."
(12) NATO representatives	NATO-1 NATO-2 NATO-3 NATO-4 NATO-5 NATO-6 NATO-7	Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."

*b.* Immigrant aliens who are not allowed to perform services are:

Class of worker	Symbol on I-94	Employment Status
(1) Attendant, servant or personal employee of an A-1 or A-2	A-3	May not accept employment.
(2) Temporary visitor for business	B-1	May not accept employment.
(3) Temporary visitor for pleasure	B-2	May not accept employment.
(4) Alien in transit	C-1 C-2 C-3	May not accept employment.
(5) Transit without a visa	TRWOV	May not accept employment.
(6) Seaman	D-1 D-2	May not accept employment.
(7) Dependent of student	F-2 M-2	May not accept employment.
(8) Spouse or child of an H-1, H-2 or H-3	H-4	May not accept employment.
(9) Representative of foreign information media including spouse and children	I	May not accept employment.

This rule is intended to implement Iowa Code section 96.5(10).

[ARC 3812C, IAB 5/23/18, effective 6/27/18]

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<sup>1</sup> See rule 345—4.50(96)

<sup>2</sup> Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.



CHAPTER 91  
GENERAL REQUIREMENTS FOR ALL OBJECTS

[Prior to 1/14/98, see 347—Chs 41 to 49]

[Prior to 8/16/06, see 875—Ch 203]

**875—91.1(89) Codes and code cases adopted by reference.**

**91.1(1)** *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2017) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2017) except for objects that meet one of the following criteria:

- a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;
- b. A miniature boiler installed before March 31, 1967;
- c. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or
- d. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

**91.1(2)** *ASME code cases.* If the manufacturer of an object listed ASME Code Case 2668-1, 2760, 2764-1, or 2869 on the manufacturer's data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

**91.1(3)** *Inspection code adopted by reference.* The National Board Inspection Code (2017) is adopted by reference, and reinstallations, installations, alterations, and repairs after September 1, 2018, shall comply with it.

**91.1(4)** *Electric code adopted by reference.* The National Electrical Code (2017) is adopted by reference, and reinstallations and installations after September 1, 2018, shall comply with it.

**91.1(5)** *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2016), and the Building Services Piping Code, ASME B31.9 (2017), are adopted by reference, and reinstallations and installations after September 1, 2018, shall comply with them up to and including the first valve.

**91.1(6)** *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2015) is adopted by reference, and reinstallations and installations after September 1, 2018, shall comply with it. Reporting requirements concerning CSD-1 are set forth at rule 875—90.11(89).

**91.1(7)** *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2018) are adopted by reference, and installations and reinstallations after September 1, 2018, shall comply with them.

**91.1(8)** *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2016), is adopted by reference, and installations and reinstallations after September 1, 2018, shall comply with it.

**91.1(9)** *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2018), is adopted by reference, and installations and reinstallations after September 1, 2018, shall comply with it.

**91.1(10)** *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2017), is adopted by reference, and installations and reinstallations after September 1, 2018, shall comply with it.

**91.1(11)** *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2015), is adopted by reference, and installations and reinstallations after April 1, 2016, shall comply with it.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 8590B, IAB 3/10/10, effective 4/14/10; ARC 9232B, IAB 11/17/10, effective 12/22/10; ARC 9790B, IAB 10/5/11, effective 11/9/11; ARC 0319C, IAB 9/5/12, effective 10/10/12; ARC 0416C, IAB 10/31/12, effective 12/5/12; ARC 1011C, IAB 9/18/13, effective 10/31/13; ARC 1964C, IAB 4/15/15, effective 5/20/15; ARC 2403C, IAB 2/17/16, effective 4/1/16; ARC 2589C, IAB 6/22/16, effective 7/27/16; ARC 3635C, IAB 2/14/18, effective 3/21/18; ARC 3903C, IAB 7/18/18, effective 9/1/18; ARC 4303C, IAB 2/13/19, effective 3/20/19]

**875—91.2(89) Safety appliance.** No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection. An object shall not be operated unless all applicable safety appliances are properly functional and operational.

**875—91.3(89) Pressure-reducing valves.** Rescinded **ARC 3903C**, IAB 7/18/18, effective 9/1/18.

**875—91.4(89) Blowoff equipment.** The blowdown from an object that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees Fahrenheit. If the local jurisdiction has a temperature limit of less than 150 degrees Fahrenheit, the temperature of the water leaving the blowoff equipment shall comply with the limit set by the local jurisdiction. The pressure of the water leaving the blowoff equipment shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

**875—91.5(89) Location of discharge piping outlets.** The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall be so arranged that there will be no danger of scalding personnel. When the safety valve or temperature and pressure relief valve discharge is piped away from the object to the point of discharge, provision shall be made for properly draining the piping. The size of the discharge piping shall not be reduced from the size of the relief valve.

**875—91.6(89) Pipe, valve, and fitting requirements.** Pipes, valves, and fittings subject to the effects of galvanic action shall not be used on objects covered by these rules. Dielectric fittings shall be used where dissimilar metals are joined.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 3903C**, IAB 7/18/18, effective 9/1/18]

**875—91.7(89) Electric steam generator.** Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

**875—91.8(89) Alterations, retrofits and repairs to objects.** Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

**875—91.9(89) Boiler door latches.** Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

**875—91.10(89) Clearance.**

**91.10(1)** All objects installed prior to September 20, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

**91.10(2)** This subrule applies to installations and reinstallations after September 20, 2006. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or any other document that the unit requires more than 24 inches of service clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or exit from the object.

**875—91.11(89) Fall protection.** Safe access to all necessary parts of boilers over eight feet tall shall be provided by a runway platform or fall protection system consistent with the requirements below.

**91.11(1) Runway platform.** A steel runway platform in compliance with the criteria of 29 CFR 1910.23 and 1910.27 shall be installed across the tops of objects or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit remotely located from each other.

**91.11(2) Fall protection system.** A fall protection system shall be in compliance with the requirements of 29 CFR 1910.132.

**875—91.12(89) Exit from rooms containing objects.** All rooms exceeding 500 square feet of floor area and containing one or more objects having a fuel-burning capacity of 1 million Btu's shall have two means of exit remotely located from each other on each level.

**875—91.13(89) Air and ventilation.**

**91.13(1) Notice concerning other rules.** The division and the Iowa department of public safety both enforce requirements concerning air and ventilation. Objects that are covered by both sets of rules must comply with both sets of rules.

**91.13(2) Documentation.** Documentation of compliance with any requirement of this rule shall be maintained in the boiler room. However, it is not necessary to maintain documentation of the louvered area.

**91.13(3) National combustion air standards.**

*a. Installations and reinstallations.* Installations and reinstallations shall comply with the edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC currently adopted at rule 875—91.1(89) or with the Iowa combustion air standard in subrule 91.13(4). However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA.

*b. Existing objects.* An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available from the board's staff upon request.

**91.13(4) Iowa combustion air standard.** A permanent source of outside air shall be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations. The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu's per hour, required air, and louvered area. The minimum net louvered area shall not be less than 1 square foot. The following table shall be used to determine the net louvered area in square feet:

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than shown above.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 3635C, IAB 2/14/18, effective 3/21/18]

**875—91.14(89) Condensate return tank.** Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

**875—91.15(89) Conditions not covered.** Any condition not governed by these rules shall be governed by the construction or installation code.

**875—91.16(89) Nonstandard objects.** Rescinded IAB 3/12/08, effective 4/16/08.

**875—91.17(89) English language and U.S. customary units required.** All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English, and all measurements shall be in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

**875—91.18(89) National Board registration.** Except for cast iron boilers and cast aluminum boilers, all objects shall be registered with the National Board.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 3903C, IAB 7/18/18, effective 9/1/18]

**875—91.19(89) ASME stamp.** All objects shall bear the appropriate ASME stamp. Objects shall not be utilized in a manner inconsistent with the stamp.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 3903C, IAB 7/18/18, effective 9/1/18]

**875—91.20(89) CSD-1 reports and related documentation.** Rescinded ARC 2589C, IAB 6/22/16, effective 7/27/16.

These rules are intended to implement Iowa Code chapter 89.

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